BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 27, 2011

Jefferson City, Missouri

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In the Matter Of the Application of Kansas City Power and Light Company for Approval to Make Certain Changes in Its Charges for Electric Service to Continue Implementation of Its Regulatory Plan	File No. ER-2010-0355
In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in Its Changes for Electric Service.	File No. ER-2010-0356

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ROBERT CLAYTON, Chairman
TERRY M. JARRETT,
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JUDGE PRIDGIN: All right. Good morning. We are on the record. I'm wondering if I could get whoever put that easel up where it is to move it. It's -- Commissioner Kenney's going to be joining in from St. Louis and he can't see.

Thank you very much.

MR. DEARMONT: Is that sufficient right there?

JUDGE PRIDGIN: I think so. Yes. Thank you. That's his line of sight. Thank you.

As I understand, we would be beginning with mini openings on cost of capital, proceeding on to Dr. Hadaway and then going back to wrap up Mr. Elliott's cross and redirect; is that correct?

MR. STEINER: That's correct.

JUDGE PRIDGIN: All right. Anything further from counsel before we begin this morning? All right. I guess that would be time then for mini openings on cost of capital.

Mr. Zobrist, when you're ready, sir.

MR. ZOBRIST: Thank you, Judge. May it please the Commission. I'm going to outline briefly the issues that we're going to deal with in the cost of capital portion of this. Most of my comments will be directed to the return on equity.

And I'm going to put a couple of graphs and charts on the ELMO. I don't have extras. I can distribute those later. I'll try to zoom in on the statistics here because the -- the -- there are -- there are three expert witnesses in this case who will be presenting testimony.

Dr. Sam Hadaway will be the ROE witness for the company. Dr. Hadaway has appeared before the Commission in KCP&L's prior two rate cases. We will also hear from Mr. Michael Gorman who presented testimony last year on behalf of I believe the Office of the Public Counsel or perhaps it was one of the industrial groups. And then we'll also be hearing from David Murray on behalf of Staff.

JUDGE PRIDGIN: This is all public, correct, Mr. Zobrist? What's on the ELMO?

MR. ZOBRIST: Yeah. This is all public. This has all been testimony of the witnesses. And I know that the resolution is not very good here and what I will try to do is zoom in on a couple of the cost of equity estimates here.

All of the experts in the case present discounted cash flow studies. Staff witness Murray presents a constant growth and a multi-stage analysis. Mr. Gorman and Dr. Hadaway present both a constant

growth, a long-term growth which Mr. Gorman calls a sustainable growth model, and then a multi-stage model. Both Mr. Murray and Mr. Gorman do a capital asset pricing model. Dr. Hadaway does not because he -- he took a look at it and found that the rates were too low and he rejected it. Mr. Gorman and Dr. Hadaway also do a risk premium analysis.

And I'm going -- is it all right, Judge, if I go over here and --

JUDGE PRIDGIN: Yes, sir.

MR. ZOBRIST: Let me -- the major point I want to illustrate to the Commission is the variations in the ROE estimates. Dr. Hadaway's midpoint is 10.5. Mr. Gorman's is 9.82 for discounted cash flow. Mr. Murray doesn't actually come up with a specific discounted cash flow point, but he has a range that goes from his constant growth from 8.7 to 9.7 percent and then a multi-stage which is lower.

And I'm also going to contrast these with the returns on equity that have been issued by state regulatory Commissions across the country during the last year. And the most interesting point about this is that when you look at the ranges that have been issued by other Commissions which can -- and which this Commission has referred to in establishing a zone

of reasonableness, the only witness who is within all of the zones of reasonableness if you take 50 or 100 basis points from that ROE midpoint of the state regulatory Commissions, which is 10.32 for the fourth quarter and it's also 10.32 ROE for the third quarter of 2011, Dr. Hadaway is the only one that really falls within those -- those ranges.

It is the opinion of the company that Dr. Hadaway, who takes a long view of the data and whose growth rates -- and growth rates will be an important issue that we will discuss throughout the day today, his growth rates are long term and they are reasonable and they project the life of the economy over the long term and not in terms of a -- a short term or snapshot.

And the reason this is important is because there are great differences in the growth rates used by all of the witnesses in this case, which I'd like to illustrate right now.

For the constant growth method, which all three of the witnesses do and which are based upon analyst's projections, Dr. Hadaway uses a growth rate of 5.69 percent. Mr. Gorman's is a little short of that, 5.41 percent. Mr. Murray's is substantially below at 4 to 5 percent.

Dr. Hadaway then used a long-term growth rate for both his other DCF studies. Mr. Gorman drops his down to a degree and Mr. Murray kind of goes through the floor. And these -- this is the reason why we have such great disparity between the ROE estimates in this case. It is the growth rates.

Now, I'd like to show you just what the authorized rates of returns have been in the United States here for the past four quarters. And a number of the witnesses I believe have talked about these.

The first line, which I cut off just so you could see these numbers, relates to the vertically integrated utilities which would be pertinent to both KCPL and GMO in this case. And the first quarter you can see was 10.59 percent, then it dropped down to 10.18 and then it began to come back up in the third quarter of 10.32 for both the third and the fourth quarters. The bottom column is for all utilities in the United States and so that includes some utilities that don't have fully integrated operations.

And so if we would take the third and the fourth quarter of 10.32 percent and say that's the center of our zone of reasonableness, and the Commission has used that before, and just spread out either 50 or 100 points, what you're going to see is

that all -- all of Dr. Hadaway's range of ROEs, which are from 10.2 to 10.8, fall within that hypothetical zone of reasonableness.

Mr. Murray's 9.0 recommended ROE falls well below that. He has one only -- only I believe the top of his constant growth recommendation of 9.7 is anywhere near that hypothetical zone of reasonableness.

Mr. Gorman is closer at 9.5, but even that is 18 points only from the bottom. If you would take 100 points below the midpoint of 10.32, you go down to 9.32. His 9.50 recommendation is only 18 points from the bottom.

On the -- on the -- on the contrary, when you take a look at where Dr. Hadaway is, again going upward from the 10.32, if you add 100 basis points, we go to 11.32. His entire range of 10.2 to 10.8 is within that zone of reasonableness. And even his highest point with the 25 basis adder which the company is requesting, is still below the -- the top point. It's 43 points above the midpoint and actually 57 points below the top.

Now, one of the other reasons for the wide variety is not only the difference in growth rates used by the experts, but also by what has

happened to the economy. Now, this is the five-year treasury bond. I think most of the experts tend to either take a look at the 30-year treasury bond, the long-term bond or more clos-- or more short-term bonds.

But what this illustrates in the far column is January of this year and we go through by month to December. Well, what happened is when this case was filed in June, we were basing our data on April. And April is the peak, right where I put my index finger. That was the date of when KCPL and GMO filed their cases. So for the next three months, we went into a trough.

So when Staff filed its report and when the other parties filed their direct examination and even their rebuttal examinations -- pardon me, rebuttal testimonies, we were going into the trough and the economy was coming down, down, down.

And indeed that's why Dr. Hadaway in his rebuttal testimony revised his range down -- I think the top was 11 percent and he reduced it from 10.2 to 10.8 with his midpoint of 10.5. I believe it had been 10.75.

Well, what has happened since then? This is not entirely captured by the testimony in the case.

The economy is improving and rates are going up. And it's very important for all of the witnesses to be asked about these recent trends because what we have seen in the past two years as result of the economic recession is great -- a great degree of volatility in the markets, a great deal of volatility and spreads between the utility bonds and the treasury bonds and interest rates.

And what we're seeing at this point now is that there is a recovery that is building that GDP growth, gross domestic product growth, is increasing and so many of the recommendations -- particularly the low recommendations that the experts have introduced into this case -- need to be modified in light of the latest data. And Dr. Hadaway is certainly here today to address those recent trends. He does not make any change in his recommending. They are the same. But if anything, the recovery that we're seeing in the economy validates his opinions in this case.

There are two other issues I just want to talk about quickly. We do have a capital structure issue that I believe relates to some debt issues at GMO. Mr. Cline will be dealing with those tomorrow.

The other disputed issue with regard to capital structure is the value of the equity units

that Great Plains Energy issued in 2009. Staff argues that the cost of these equity units was higher than it should have been and that this was caused by the GMO, formerly Aquila's, stresses on GPE credit ratings.

Mr. Cline will testify that the cost of these equity units was not a function of the credit rating. It is really -- the actual costs should be included in the capital structure because the key variable is the issuer's dividend yield; what is necessary to compensate investors who will not receive the actual common stock for in this case three years.

Your Honor, that's all that I have at this time. And we will be presenting Dr. Hadaway as our first witness later this morning.

JUDGE PRIDGIN: Mr. Zobrist, thank you. Did other parties wish to give their mini openings on cost of capital now or later?

MR. WOODSMALL: Now is fine.

MR. DEARMONT: Now would be preferable.

JUDGE PRIDGIN: Dr. Dearmont or Mr. Thompson?

MR. DEARMONT: Is there a location that I could place the easel that would allow Commissioner Kenney to see it from St. Louis, do you know?

JUDGE PRIDGIN: I would think if you put

it near the court reporter, kind of in the -- facing towards -- because there's his camera right there.

MR. WOODSMALL: Do you need help, Eric?

MR. DEARMONT: I think I have it. Thank you.

MR. DEARMONT: Good?

MR. MILLS: Got the top two-thirds of it.

JUDGE PRIDGIN: Mr. Mills, thank you.

MR. DEARMONT: Thank you. Good morning and may it please the Commission. Staff recommends that the Commission approve an overall rate of return of 7.8 percent to 8.28 percent for KCPL and 7.74 percent to 8.22 percent for GMO. These recommendations include a proposed return on equity for each entity in the range of 8.5 percent to 9.5 percent.

The company witness, Dr. Samuel Hadaway, recommends a return on equity of approximately 10.5. And witness Michael Gorman falls in between Staff and the company in recommending an ROE of about 9.5.

In addition to what I will call the market-based recommendations of these witnesses, company witness Jimmy Alberts proposes a 25-basis point adder to Dr. Hadaway's recommendation in order to compensate the company for what it claims are

customer service and reliability achievements.

Although Staff counselor Meghan McClowry will be handling this issue, I can tell you that Staff believes that the Commission should firmly reject this proposal because these achievements do not paint a complete picture of KCPL's customer service and reliability performances.

COMMISSIONER KENNEY: Can you guys hear me over there?

JUDGE PRIDGIN: Yes, sir, we can.

COMMISSIONER KENNEY: I think your microphone might be on mute. I can't hear you guys.

JUDGE PRIDGIN: Mr. Dearmont, is your microphone on?

MR. DEARMONT: I don't know if I have a mute option. Is that better, Commissioner?

COMMISSIONER KENNEY: I can see you but I can't hear you.

JUDGE PRIDGIN: Mr. Dearmont -- Commissioner Kenney can you hear me, sir?

CHAIRMAN CLAYTON: No, he can't hear any of us. Are we muted?

MR. DEARMONT: Commissioner Kenney, can you hear me now?

JUDGE PRIDGIN: You'll just have to

continue. I'll let Daniel know.

MR. DEARMONT: Okay. Apologize. This 25 basis point adder would amount to roughly $7 million above and beyond whatever the Commission decides to be KCPL's and GMO's costs of equity. This adder is not compensation for services rendered. It's essentially a gift.

Staff recommends that the Commission deny this request for several reasons. Most importantly, because KCPL and GMO's customer service -- excuse me, customers already pay for every aspect, every component used to deliver customer service and reliability to those customers. Customers pay for the control processes, the systems, the practices, procedures -- the procedures, the maintenance, the plant, the training, the education, everything else that goes into providing them with safe and reliable service.

The bottom line is that KCPL and GMO are asking the Commission to require customers to pay more in rates for customer service than it costs to provide them that service. Staff believes that this is inappropriate --

CHAIRMAN CLAYTON: I'm just playing with this.

MR. DEARMONT: No, go ahead.

CHAIRMAN CLAYTON: Did you figure it out?

MR. MILLS: Apparently not because he hasn't made any sign that he can hear us.

CHAIRMAN CLAYTON: Keep going.

MR. DEARMONT: These cases also involve a dispute regarding the appropriate cost of a unique type of capital called an equity unit. An equity unit is sort of a debt/equity hybrid that's reported as debt on a utility's balance sheet because it represents an interest in an identifiable subordinated debt. However, whenever the purchaser acquires an equity unit, the purchaser enters into a contract requiring them to purchase common stock at a point in the future at a pre-determined price. In this respect, the equity unit converts to equity at a point in the future.

These equity units represent an interest in debt previously issued by GPE. And while the cost to issue these units is readily determinable because it's embedded like with debt, the problem here is that GPE had to issue these equity units at a cost higher than it would have had it not acui-- acquired the Aquila debt.

Staff adjusted the cost of these equity

units in attempt to remove the influence of what we believe is this Aquila debt anchor. As contained in the reconciliation filed in this case, the issues involving rate of the return and capital structure are worth approximately $29 million.

And now that the introduction is out of the way, I have to tell you that I've had the opportunity to work on rate or return in the last few large cases that we've had. And it seems to me that while this can be one of the most complex issues in a rate case, that at least in my opinion it doesn't have to be one of the most complex issues.

In looking at the testimony, if we stick to the bigger picture, the 30,000-foot view of this picture, there are a few things that jump out to me. One, the United States is emerging from a severe recession. As a result, the projected economic growth is expected to be rather low for the next few years. Two, the fed's fund rate, which affects short-term debt cost is at an all-time low. Three, recent utility bond yields on investment grade debt have dropped to levels not experienced in the last 40 years.

No offense to any of the experts in this case, but in reading the testimony, I get lost in the

CAPMs and risk premiums and the dividend yields and geometric versus arithmetic means and everything else that goes into this rate of return rate-making suit. So I have a suggestion. And I agree with counselor for the company, Mr. Zobrist, that we really need to focus our attention on just what matters in this case.

And it's my opinion that there is only one thing that matters in this case and that one thing can even be boiled down to one letter. That letter is G. Growth rate. Everyone knows the formula for the constant growth single stage DCF. Right? Cost of capital equals dividend expected over the next 12 months, current price of the stock, plus G, growth rate. This case is all about G. All about G. That's the only thing that the Commission should focus on because that's the only thing that makes a difference in the recommendations of all the witnesses.

In the case of the single stage constant growth, DCF Staff uses a G, a growth rate, of about 4 to 5 percent. Company, on the other hand, uses a growth rate of 6 percent. Now, in both cases the parties claim that these growth rates either represent or at least correspond with expected growth in GDP.

As a result, as was on the previous display, Staff's constant growth yielded a result of

8.7 to 9.7 percent. Dr. Hadaway's version of this model produced a result that's approximately 11 point -- 11.0.

Now, Staff also relied heavily and mostly on a multi-stage DCF, which is a slight variation of the constant growth. Staff's multi-stage uses three stages. First stage, years one through five; second stage, six through ten; third stage, 11 to I believe year 200.

Now, in this model for the first stage, Staff uses EPS projections. Okay? Now, these are projections made by equity analysts in the real market. And those projections are appropriate for this stage and only this stage because they are made for the express purpose of representing investor expectations for five years and only five years.

Stage two is confusing so I'm going to skip that stage. It's the transition stage, the linear transition. It's the math stage. Mr. Murray would be happy to discuss that with you in more detail.

But stage three is really what's important because that's the G stage. That is the G stage of the multi-stage DCF. In the multi-stage, Staff uses a G here of 3 to 4 percent. Dr. Hadaway

again uses an implied perpetual growth rate of approximately 6 percent.

Now, in reaching these -- these -- these G growth rates, these final terminal stage growth rates, Staff looked at a number -- a number of factors. I'd like to share and discuss those factors with you. First of all, Staff looked at expected long-term growth in electricity demand, plus inflation.

Now, in the spirit of full disclosure, the Commission examined this in the recent UE case and did not accept this reason. However, Staff also examined a rule of thumb which generally states that in order to get a rough estimate of the current costs of equity, you can add 3 to 4 percent to the cost of the company's long-term debt. Using this rule of thumb results in an ROE in the range of 8.14 percent to 9.71 percent.

Staff also looked at the perpetual growth rates generally assumed by Goldman Sachs when performing DCF analysis of regulated electric companies. Staff also looked at the implied perpetual growth rates used by financial advisors hired by Aquila to provide fairness opinions on a price to pay for the GMO properties, and included by these advisors

in publicly filed documents filed with the Securities Exchange Commission, the SEC.

Sagent Advisors use an implied perpetual growth rate of 1.79 percent. Credit Suisse, another firm hired by GMO and KCP&L to perform this analysis used an implied perpetual growth rate of 1.0 percent to 1.7 percent. Staff also found information provided by Goldman Sachs when hired by GPE as a joint book running manager in conjunction with the 2009 issuance of those equity units we talked about.

Finally, GDP. A lot of this discussion in this case involves -- involves GDP. Staff doesn't particularly care for the use of GDP in and of itself, but the Commission did express a preference for this growth proxy in the recent case of AmerenUE. If the Commission does want to use GDP, Staff strongly urges you to use a reliable and independent measure of long-term GDP growth.

One such measure is provided by the Congressional Budget Office, which we refer to as CBO. CBO currently estimates long-term GDP growth to be about 4.5 percent. Now, remember where we are. 4.5 percent falls right in between Staff's estimate and the company's G estimate, the important measure of this case. Although GPE itself uses this discount

rate in the non-rate context and in doing so describes CBO data as, quote, One of the best published views of go forward growth and inflation. Dr. Hadaway, on the other hand, uses a self-calculated measure of GDP equaling 6 percent.

If you listen to nothing else I say today, I ask you to focus on three things. One, focus on G in this case. That's what makes the biggest difference. Two, review the report given by Goldman Sachs to GPE's board of directors attached to Mr. Murray's surrebuttal testimony as Schedule 6. Three, if you're going to use GDP, choose a reliable independent estimate. Even if we split the baby, even if we use CBO and go right in between the recommendations of Dr. Hadaway and Mr. Murray, we still land in the range of 9.5 to the upper 9's in this case.

So I have no further questions -- or statements. If you have any questions for me, I'd be happy to attempt to address those.

JUDGE PRIDGIN: Mr. Chairman?

CHAIRMAN CLAYTON: I don't have any questions. I just wanted to congratulate you on making it through your opening statement with our technical difficulties, the door opening and shutting

and then me jumping out from behind the curtain and causing some alarm.

MR. DEARMONT: That's all right. What are you going to do?

CHAIRMAN CLAYTON: You went unflustered and great job.

JUDGE PRIDGIN: Mr. Dearmont, thank you.

MR. DEARMONT: Thank you.

JUDGE PRIDGIN: Mr. Mills?

MR. MILLS: No. Not at this point.

JUDGE PRIDGIN: I'm sorry. Mr. Woodsmall?

MR. WOODSMALL: Good morning. I sit back and listen to the company's opening statement and their request for a 10.75 percent return on equity and I think to myself, where has this company been? Clearly this company his not been reading your recent ROE rec-- or decisions.

For instance, last year in the MGE case, you granted MGE a return on equity of 10.1 percent. Then last May you also granted AmerenUE a return of 10.1 percent. In that UE case, the Commission found that testimony of Michael Gorman to be persuasive. The Commission's order repeatedly relied upon Mr. Gorman's logic in tearing apart the deficiencies

of the company's recommendation.

As mentioned, consistent with the recommendation of Mr. Gorman, the Commission authorized AmerenUE a return of 10.1 percent. Mr. Gorman is again appearing today on behalf of the industrials in this case. Given the changes in the economy that we've seen recently in the last year, Mr. Gorman is now recommending a slightly lower return on equity of 9.65 percent for KCP&L.

As Mr. Gorman documents, not only is this a return that's reasonable for KCP&L, it also allows them to meet all the credit metrics necessary to maintain their current investment grade credit rating. He actually goes through all the credit metrics with his projected 9.65 percent ROE and he shows that they will maintain their current investment grade credit rating.

Now, Mr. Zobrist put up a chart and he mentioned the recent slight increase in bond yields and how it should affect the ROE recommendation. In fact, that was a great segue because I was going to tell you how it affects Mr. Gorman's recommendation.

Mr. Gorman has considered this change. Mr. Gorman will tell you that in his direct testimony, he -- he originally recommended a return on equity of

9.65 percent. Then we were still at the trough that he -- that Mr. Zobrist showed. He updated his study in the -- in the context of the GMO case and it went down to 9.5 percent and that's what Mr. Zobrist discussed, 9.5 percent.

However, there's been a recent tick up in bond yields. And Mr. Gorman will tell you when he takes the stand, that because of that, he is back to his 9.65 percent. So Mr. Gorman is using most recent information and he is still at 9.65. And that considers the increased bond yields that we've seen lately.

Much has changed since the Commission issued its decision last May in the AmerenUE case. First of all, numerous surrounding jurisdictions have issued return on equity decisions for other similar electric utilities. For instance, just last month the Iowa Utilities Board granted Interstate Power and Light a 10.0 percent return on equity. In addition, the Kansas Corporation Commission in its decision last month granted KCP&L a return on equity of 10.0 percent.

You may be telling yourself then given what you gave AmerenUE and what the Iowa and Kansas Commissions have done, that a 10.0 percent return on

equity is appropriate. Such logic would be wrong. While bond yields have increased slightly in the last couple months, Mr. Gorman will tell you that since the time of the studies utilized in the AmerenUE and other recent decisions, utility bond yields are still down.

How does this affect the return on equity calculation? It is basic finance that there is a greater risk associated with equity than debt. Because debt is paid before dividends and because debt has a higher priority in a bankruptcy proceeding, equity holders require a premium to the return spelled out for debt holders. This is the basis of the risk premium model. Therefore, if the return on utility bonds decreases, the return for utility equity holders, the return on equity also decreases.

Since the time of the AmerenUE decision, utility bond yields are down 25 basis points. Therefore, all else being equal, a return on equity that was once 10.1 percent now becomes 9.85 percent.

Looking quickly at KCP&L's requested return on equity, KCP&L presents the testimony of Mr. Hadaway. In his testimony, Mr. Hadaway relies largely on various DCF analysis. As was pointed out at page 9 of Mr. Gorman's rebuttal testimony, the

specific methodology used by Mr. Hadaway has been routinely rejected by numerous state utility commissions. That's page 9 of Mr. Gorman's rebuttal.

In his constant growth DCF methodology, Mr. Hadaway postulates that utilities will grow at one rate over the short term, but then will grow at another rate in the long term. In theory, this seems logical. In his analysis, however, Mr. Hadaway asserts that utilities will grow at a long-term rate of 6.0 percent. This is his claimed growth of the gross domestic product.

Now, as Mr. Zobrist and Mr. Dearmont mentioned, growth rates are the key to the differences in the DCF calculation. The problem with this analysis is that Mr. Hadaway's claimed GDP growth rate is well in excess of any rate recognized by any economist -- by any other recognized economist GDP growth rate. As the record indicates, Mr. Hadaway's GDP growth rate is self-created. It is not published for use by anyone investing in the market. It is not relied upon by any market participants. It is simply his recommendation.

In -- in the recent AmerenUE decision, the Commission considered this type of problem. The Commission criticized Staff's witness for utilizing

the return on equity calculations maintained by the Missouri State Employees Retirement System. As the Commission held there, quote, Murray's reliance on analyst reports to support his recommendation is misplaced. Most investors do not have access to the specific analyst reports that Murray examined and, thus, they cannot rely on them in deciding where to invest their money, unquote. So the Commission criticized him for using data that's unavailable to actual market investors.

Certainly the same logic is applicable to Mr. Hadaway's analysis. Investors do not have access to Mr. Hadaway's self-created GDP growth rates. As such, they cannot actually be relied upon by any entities when they invest their money. Just as the Commission did in the AmerenUE case, it should summarily reject Mr. Hadaway's analysis. There are many other things wrong with Mr. Hadaway's analysis. Again, I invite you to discuss these flaws with Mr. Gorman.

As Mr. Coffman mentioned in his opening statement last week, regulatory commissions are quick to raise equity returns in response to changing economic conditions. In fact, such a scenario was obviously the basis for this Commission granting KCPL

the highest return on equity in the nation when it granted a return of 11.25 percent in 2006. Ratepayers are still suffering. Ratepayers are suffering from this decision in the form of increased AFUDC and the cost of Iatan 2. When economic conditions change, however, regulatory commissions appear hesitant to make the necessary adjustments.

All of this is my way of asking you not to be hindered by the notion of a single-digit return on equity. Recently other commissions have broken the double digit barrier. For instance, the Maryland and Idaho Commissions recently granted returns of 9.86 and 9.90 percent. I believe that you will once again find that Mr. Gorman's testimony is persuasive. Based on that testimony, you will then grant a return on equity of 9.65 percent. Thank you.

JUDGE PRIDGIN: Mr. Woodsmall, thank you. Are we ready for Dr. Hadaway? Before he takes the stand, could I trouble whoever -- if somebody could rotate that table back just so it's pointed. Give me just a moment. I want to be sure Commissioner Kenney can see the witness stand. That would be great. Thank you very much.

CHAIRMAN CLAYTON: Commissioner Kenney can hear us now.

JUDGE PRIDGIN: Commissioner Kenney, you can hear us, sir; is that correct?

COMMISSIONER KENNEY: Every word. Sorry for -- sorry for my interruption earlier.

JUDGE PRIDGIN: Very good. Thank you, sir. Not a problem.

All right. Dr. Hadaway, if you'll come forward to be sworn, please, sir. If you'll raise your right hand to be sworn, please, sir.

(Witness sworn.)

JUDGE PRIDGIN: Thank you very much, sir. Please have a seat. Mr. Zobrist, when you're ready, sir.

MR. ZOBRIST: Thank you, Judge.

(KCP&L Exhibit Nos. 27-NP, 27-HC, 28 and 29 were marked for identification.)

(GMO Exhibit Nos. 15-NP, 15-HC, 16 and 17 were marked for identification.)

SAMUEL HADAWAY, having been sworn, testified as follows:

DIRECT EXAMINATION BY MR. ZOBRIST:

Q. Please state your name.

A. Samuel C. Hadaway.

Q. And by whom are you employed, Dr. Hadaway?

A. By FINANCO, Inc.

Q. And did you cause to be prepared in both the Kansas City Power and Light Company ER 2010-0355 and the KCPL Greater Missouri Operations company case ER-2010-0356 testimony?

A. Yes, I did.

Q. And let me go through this since we have three sets of testimony in both cases. Do you have before you both non-proprietary and highly confidential versions of your direct testimony in the KCPL case?

A. I have reviewed those. I only have I believe just my copies of them here.

Q. All right. All right. And did you prepare rebuttal in the KCP&L rate case?

A. Yes.

Q. And did you prepare surrebuttal in the KCP&L rate case?

A. Yes.

Q. And those rebuttal and surrebuttals testimonies were not highly confidential; is that correct?

A. That is correct.

MR. ZOBRIST: Okay. And, Judge, I have those pre-marked as Exhibits 27, 28 and 29 in the

KCP&L case and I would offer them at this time or at least at the conclusion of the witness's testimony

JUDGE PRIDGIN: Let me see -- if they're being offered, let me see if there's any objection at this time? Hearing none KCP&L 27-NP and HC, KCPL 28, KCPL 29 are admitted.

(KCP&L Exhibit Nos. 27-NP, 27-HC, 28 and 29 were received into evidence.)

BY MR. ZOBRIST:

Q. Dr. Hadaway, in the GMO case, did you also prepare highly confidential and non-proprietary versions of direct testimony?

A. Yes, sir, I did.

Q. And did you prepare public versions of the rebuttal and surrebuttal testimony in the GMO case?

A. Yes, sir.

Q. And there was no highly confidential rebuttal and surrebuttal in the GMO case?

A. No.

MR. ZOBRIST: Judge, they been pre-marked as Exhibits GMO 15, 16 and 17 and I offer them at this time.

JUDGE PRIDGIN: Any objection? GMO 15, 16 and 17 -- these are all public, Mr. Zobrist?

MR. ZOBRIST: The direct has HC and NP.

JUDGE PRIDGIN: Excuse me. NP and HC on 15. They're all admitted.

(GMO Exhibit Nos. 15-NP, 15-HC, 16 and 17 were received into evidence.)

BY MR. ZOBRIST:

Q. I should have asked you are there any corrections to any of the testimony at this point?

A. No, sir.

MR. ZOBRIST: Okay. Your Honor, I tender the witness for cross-examination.

JUDGE PRIDGIN: Mr. Zobrist, thank you. Mr. Woodsmall?

MR. WOODSMALL: Yes. Just one question.

CROSS-EXAMINATION BY MR. WOODSMALL:

Q. Good morning. In your -- you performed three different DCF analyses; is that correct?

A. Yes, sir.

Q. And in two of those you use a GDP growth rate; is that correct?

A. Yes.

Q. And that growth rate was created by you; is that correct?

A. It's an estimate that I did, yes.

Q. Okay. Is that published anywhere, your

GDP growth rate?

A. Only in my testimony.

MR. WOODSMALL: Okay. No further questions. Thank you.

JUDGE PRIDGIN: Thank you. Mr. Mills?

MR. MILLS: No questions.

JUDGE PRIDGIN: Mr. Dearmont, when you're ready, sir.

MR. DEARMONT: I have a few questions. Thank you.

CROSS-EXAMINATION BY MR. DEARMONT:

Q. Morning, Dr. Hadaway. How are you?

A. Good morning, Mr. Dearmont. I'm fine. Thank you.

Q. Good. Would you agree that it's unusual for a regulated utility to issue equity units or other types of convertible debt?

A. They certainly do it over time. Certain ones of them have.

Q. Frequently?

A. No.

Q. And you recommend the unadjusted embedded cost of those equity units. Correct?

A. Mr. Cline will respond to questions about those if we might.

Q. But you, yourself, make no adjustment to those?

A. No.

Q. What is GPE's unsecured credit rating?

A. It's unsecured rating is triple B.

Q. And that's S&P?

A. Yes.

Q. What about KCPL's?

A. I believe it's the same.

Q. You were deposed by Staff in a 2005 case involving Aquila, Incorporated. Correct?

A. I don't remember a deposition. Perhaps there was one. I may have forgotten.

MR. DEARMONT: Okay. May I approach the witness?

JUDGE PRIDGIN: You may.

BY MR. DEARMONT:

Q. Here you are, sir.

A. Thank you.

Q. Okay. You were deposed by Staff in a 2005 case involving Aquila, Incorporated?

A. It appears that I was, yes.

Q. Okay. Investors' required rates of return on common equity are correlated with the level of interest rates?

A. Yes.
Q. So generally when interest rates go up, it's clear that the cost of equity moves up some?
A. About half the amount of the change in interest rates in our state.
Q. So when cost -- excuse me. When interest rates go down, the cost of equity also moves down?
A. About half as much, yes.
Q. Thank you. Now, do you believe that allowing a utility the opportunity to earn its cost of common equity balances the interests of the ratepayers and the investors?
A. All other things equal, yes.
Q. Understood. And you think it's important to set ROEs as correctly as possible; in other words, not too high, not too low?
A. That's what we try to do.
Q. In estimating a utility's cost of common equity, you think that the judgment of the financial analyst is as important by the -- as the results produced by -- by any of these models?
A. I think it depends on which analyst's estimate you're talking about.
Q. But in general, generically judgment is important?

A. Well, the five-year earnings forecast that analysts do are the most widely followed data with respect to stock values.

Q. Sure. And I'm not even talking about those analysts. I mean yourself, for example. I mean, do you value your judgment?

A. Yes.

Q. And other experts value their judgment?

A. I suppose so, yes.

Q. So to the extent that we're all experts or that we have experts involved in these cases, the judgment of those experts is an important factor?

A. Well, we all present our best efforts.

Q. Sure. At least to them? At least to them?

A. Yes.

Q. Okay. And you agree that if an allowed return on equity is based on a utility's cost of common equity, then this will assist the utility in raising capital and maintaining its financial integrity?

A. Again, all things equal, that's the case. It depends on the circumstances obviously.

Q. Understood. Now, you also testified in the recent KCPL case in the state of Kansas, didn't

you?

A. Yes.

Q. And in that case the most significant area of disagreement between yourself and the KCC witness was regarding the approximate growth rate to apply in a DCF model?

A. That was important. And also their reliance on the capital asset pricing model. Those two things.

Q. Okay. Now, the perpetual growth rate in the DCF, that's G. That's what I keep referring to as G. Right?

A. Yes.

Q. Now, that dispute involving -- involving G, that dispute carries over to this case, does it not?

A. It's typically the focal point of ROE debates.

Q. So between yourself and Mr. Murray and Mr. Gorman, that's a significant area of disagreement?

A. Yes.

Q. In one of your Kansas DCF models, you used a constant growth rate of about 6 percent. Correct?

A. Exactly 6 percent.

Q. And you deemed that as -- you term that as the long-term GDP growth expectation?
A. Yes. It's exactly the same as the one in this case.
Q. That was my next question. Thank you. And you calculated that growth rate?
A. Yes.
Q. The Kansas version of OPC is called the Citizens Utility Ratepayers Board, CURB. Right?
A. I believe so.
Q. And in the Kansas case, CURB sponsored a witness by the name of Mrs. Crane?
A. I believe that's right, yes.
Q. And Ms. Crane used government estimates of long-term GDP growth as an estimate of G, long-term growth?
A. Are you asking me if that's the case?
Q. Yes, sir.
A. I don't recall, but I -- she probably did.
Q. Okay. Now, to the best of your knowledge, did she use information used by CBO, Congressional Budget Office?
A. As I say, I don't remember, but that's typically what -- what --

Q. Are you familiar --
A. -- one of the factors that would be used.
Q. I apologize for interrupting you. Are you familiar with CBO's current estimates?
A. Yes.
Q. Okay. Would you agree that they're about 4.5 percent?
A. No. They came out yesterday or the day before and they're higher than that now.
Q. How much?
A. Their real growth without inflation is now over 3 percent and their inflation rate is about 2 percent depending on the time period, I believe. So their forecast now is over 5 percent.
Q. And you say that these new CBO projections came out -- was it just yesterday?
A. I'm not sure. Just in -- in -- very recently.
Q. Very recently. And do you know how far in the future CBO generally predicts growth?
A. I actually looked at the document that you have in your hand this morning. I think they go out to 2016, but I don't have it here in front of me.
Q. How about '21 -- 2021?
A. Perhaps.

Q. Okay. And they give forecasts that look to be shorter term forecasts and they also give forecasts that look to be longer in scope. Will you agree with that statement?

A. Yes.

Q. Okay. And the percentages estimated by CBO are different depending on the time frame at which they are looking?

A. Yes. That's right.

Q. So would you agree that in the longer term, in other words, closer to that 2021 date that is the end period of their projection, that those -- that those growth rates are about 2.0 percent, in the 2's?

A. I don't think so.

Q. No?

A. They're closer to 3 percent for the real growth rate. And there's a part of that time period where they're 3.4 percent.

Q. I apologize. I only have one document here so I'm going to try and -- what is nominal GDP?

A. It's typically real GDP plus the expected inflation rate.

Q. Okay. Will you agree with me that as -- as projected by CBO, that from the years 2017 to 2021 nominal GDP is approximately 4.4 percent?

A. I'll be happy to look at the document.
Q. Sure.
A. I don't have it.
Q. I apologize. I only have one copy of it. It's the one I circled there for you.
A. I see that one. I'm afraid though, Mr. Dearmont, we have to look at the whole document. And it's 5.1 for the earlier period.
Q. Okay.
A. So it depends on which period.
Q. Well, I didn't ask about the earlier period. I'm talking about the later one.
A. You have 4.4 percent.
Q. 4.4. Okay.
A. That's one of the numbers they have on here.
Q. Thank you. Now, I understand crystal clear that you disagree with the use of CBO data, but hypothetically had you incorporated that growth rate into your G, the long-term expected growth rate of your DCF models, those models would have produced results that were significantly lower. Correct?
A. Yes. If you use lower growth rates in the DCF model, you get lower ROEs.
Q. You haven't always used your own

calculation of historical GDP for G, have you?

A. I have for the last seven or eight years.

Q. Not always?

A. Prior to -- I can't remember the date we didn't use GDP as the growth rate, but the FERC has used it for some time.

Q. What do you mean by "we"?

A. Typically regulatory economists. When I first came here and offered to use it, I was severely criticized for using it at all. Now the Commission has adopted it and so have Mr. Gorman and so has Mr. Murray. People have recognized that GDP is a more stable estimate of long-term growth.

Q. Okay.

A. And it depends on the time period.

Q. And it depends on your measure of GDP?

A. Well, the data for GDP are what they are but --

Q. Thank you very much.

A. -- it depends on the time period you're --

Q. Understood. Back to my original question though. You haven't always done it this way?

A. I haven't always used GDP, but I have always made my estimate --

Q. Okay.
A. -- if I did use it.
Q. As a general matter, you believe it's appropriate to test theories against practice, don't you?
A. That's typically what people do.
Q. But in this case you've provided no examples other than your own of any independent investment analyst that uses a 6 percent GDP growth to discount cash flows?
A. I haven't, but it exists. It's in the EBITs and valuation books and they get about 6 percent as well.
Q. I want to move onto a few miscellaneous items with you. You would agree that other states sometimes consider things other than the cost of common equity in setting allowed returns?
A. Yes.
Q. For example, construction programs, would that be a good example?
A. That's one of the examples.
Q. Okay. Now, let's look at RRA data. Not all of the ROEs authorized by other State Commissions are the result of litigation. Correct?
A. No. Some of them are settlements.

Q. Stipulated?
A. Right.
Q. Would you agree with me that as a generic principal, the results of settled cases don't always reflect the results that would have been produced through the litigation process?
A. It would be pure speculation for me to say that. I don't know.
Q. If you conducted an ROE analysis and the results of that analysis indicated that your recommended ROE was more than 100 basis points above or below the RRA national average, would you manipulate the results to get within 100 basis points?
A. No.
Q. Do you think that investors rely upon financial statements filed with the SEC?
A. Yes.
Q. And it's important for the financial statement then to be true and accurate. Correct?
A. I believe that's a requirement.
Q. And reliable?
A. I suppose so.
Q. Okay. Is the information reported in financial statements based upon theory or practice?
A. Going beyond what I know.

MR. DEARMONT: Thank you. I have no further questions.

JUDGE PRIDGIN: Mr. Dearmont, thank you. Do we have any bench questions, Mr. Chairman?

CHAIRMAN CLAYTON: No questions. Thank you.

JUDGE PRIDGIN: I have no questions. Commissioner Kenney?

COMMISSIONER KENNEY: No. No, thank you. Thank you, Dr. Hadaway.

JUDGE PRIDGIN: Any redirect?

MR. ZOBRIST: Yes, Judge. Just a couple of questions.

REDIRECT EXAMINATION BY MR. ZOBRIST:

Q. Dr. Hadaway, both Mr. Woodsmall and Mr. Dearmont talked to you about your self-created 6 percent growth rate. How did you create or arrive upon the 6 percent growth rate?

A. We collected the data from the St. Louis Federal Reserve Bank, which they provide each year that shows what the growth rate is and what the level of GDP is each year. We took those data and we did ten-year segments for the past 60 years so that we had six ten-year averages. We then averaged in the most recent ten years effectively six times, the most

recent twenty years five times and so forth. So we gave more weight to more recent outcomes.

This caused the estimate from the experience that investors have actually had over the past 60 years that I used to be 6 percent instead of the actual average for that 60-year period at 6.9 percent. So my forecast is based on historical data, but all forecasts are. All econometric forecasts are.

So I've used those historical data to represent what investors might expect based on the experience that they've actually had. The real difference in my forecast and those that we've been debating today is that the ones that are out there today use an inflation rate of 2 percent, including the CBO response that have just come up. That number is not consistent with any ten-year period that has occurred in United States economy in the past 60 years. Even the most recent ten years inflation rates have been about 2.3 percent on average. Over the entire 60-year time period, the average has been 3.5 percent to 4 percent.

Inflation is 5 percent in China right now. McDonald's announced day before yesterday that they're about to start raising prices. And the

2 percent inflation rates in the CBO and other estimates of GDP growth are simply not consistent with the experience in this economy. That's why my forecast is different than theirs.

Q. Let me ask you another question. Mr. Dearmont asked you about the judgment of financial analysts and organizations that provide analytical opinions as regard to returns on equity. What is your opinion with regard to utilizing the opinions of investment bankers and those types of financial analysts in this type of a situation where you're estimating return on equity for a regulated public utility?

A. If, as is sometimes done, we look only at valuation analyses, those things are called fairness opinions as Mr. Murray has talked about. And they are done for that specific reason. They're often done in confidentiality, sometimes the numbers are released later.

But if you look at a growth rate in the DCF model that Mr. Dearmont said in his opening statement is in the 1 to 2 percent range, that's far less than anybody's estimate of inflation. It makes no sense that in terms of an investor's required rate of return, the investor would be willing to accept an

investment that didn't even kind up with inflation. Those numbers are there for a different purpose entirely. They have basically nothing to do with the cost of equity capital in a proceeding like this.

Q. And finally, Dr. Hadaway, in response to the questions that Mr. Dearmont asked about the Kansas Corporation decision on return on equity growth rates versus the capital asset pricing model, why didn't you do a CAPM or that kind of a model in this case?

A. Well, we -- we heard the opening statements. And I'm not sure exactly how to say this, but we went through a trough in interest rates that we saw. And you heard Mr. Woodsmall say that interest rates are still higher -- or still lower than they were at the time of the Commission's decision in the AmerenUE case.

If I'm correct, that was determined in May of this year. At that time in May, the average triple B interest rate was 5.97 percent. In December, it was 6.04 percent. And as of yesterday, it was 6.0 percent. So it is not correct -- it may have been a month or so again -- that interest rates are still lower than they were when the AmerenUE case was decided.

Interest rates went through a trough, it

was not appropriate to use the CAPM based on those data. The entire record that we've seen and the testimony filed in this case, including my rebuttal, only had those data that were the lowest interest rates, as was said, in 40 years. We have now seen the economy begin to gain traction and interest rates are coming up very rapidly from there.

So it's not appropriate, in my opinion, to base ROEs on numbers that are at the very bottom of a 40-year trough. It should be balanced and looked at relative to where interest rates are now.

MR. ZOBRIST: No further questions, Judge.

JUDGE PRIDGIN: All right. Mr. Zobrist, thank you. Dr. Hadaway, thank you very much. You may step down.

THE WITNESS: Thank you, Judge.

JUDGE PRIDGIN: As we left it last night, we interrupted Mr. Elliott's cross-examination because of the hour. And I understood when Dr. Hadaway was done, we would go back and pick up where we left off with Mr. Elliott. Is that the parties' understanding? All right. Do the parties need just a few minutes to get things --

MR. THOMPSON: Yes, Judge.

JUDGE PRIDGIN: Roughly ten minutes or so?

MR. THOMPSON: We have to get special teams back in.

JUDGE PRIDGIN: I understand. Let's stand in recess until roughly 9:40. Thank you. We're off the record.

(A recess was taken.)

JUDGE PRIDGIN: All right. Good morning. We are back on the record. We are back to cross-examination of Mr. Elliott by KCP&L. And just to make sure those listening are with what I understand to be the schedule, when Mr. Elliott is done, the next scheduled witness is Mr. Majors and then Mr. Hyneman, Mr. Schallenberg and those would be the -- that would be the end of the Iatan witnesses.

Is there anything further from counsel before Mr. Fischer resumes his cross? All right. If there's nothing further, Mr. Elliott, you're still under oath, sir. Mr. Fischer, when you're ready.

DAVID ELLIOTT, having been previously sworn, testified as follows:

CROSS-EXAMINATION BY MR. FISCHER:

Q. Thank you very much. Welcome back Mr. Elliott. We were -- late night last night. I

hope you got a good night's sleep.

A. Yes.

Q. I have been able to get better organized and I think I can reduce the remaining part of my cross.

MR. FISCHER: To begin with, I'd like to have another exhibit marked.

JUDGE PRIDGIN: My notes show this would be KCPL 93.

MR. FISCHER: And this one's not highly confidential.

JUDGE PRIDGIN: Thank you.

(KCP&L Exhibit No. 93 was marked for identification.)

BY MR. FISCHER:

Q. Mr. Elliott, I've placed in front of you what's been marked as Exhibit 93. And this was also Exhibit 5 in the deposition that we've been talking about. Do you recognize this as the surrebuttal testimony of David W. Elliott in the Empire case that was marked Case No. ER-2004-0570?

A. Yes.

Q. Was this your testimony in that case?

A. Yes.

Q. I'd like to refer you to page 2 of that

testimony at lines 16 through 22.

A. Yes.

Q. There you say, I use the term, in quotation marks "cost overrun" unquote, to describe the cost due to change orders that were above the original contract costs or costs that ran over the contract amount. I agree with Empire witness Beecher that these cost overruns were due to changes in the scope of the project. I did not use the term "cost overrun" to imply that these costs should not be allowed. In fact, after an examination of the contract change order costs due to changes in scope, the Staff allowed these costs.

Is that correct?

A. Yes.

Q. Now, sometimes a cost overrun is defined as a cost that exceeds a budget estimate or a definitive estimate; is that -- is that true?

A. That's my understanding.

Q. And in the past the Staff has allowed cost increases that exceeded a budget estimate to be included in rates as -- as was evidenced in this Empire case?

A. Yes.

Q. Would it be correct to conclude from your

testimony in that Empire case that just because there's a cost overrun that exceeds a budget estimate, it does not necessarily imply that those costs should be not allowed in rates?

A. In this case, yes.

Q. And that would be your expert opinion?

A. That would be my opinion, yes.

Q. In fact, you testified in that Empire case that the Staff allowed the cost overruns after an examination of change orders; isn't that true?

A. That's correct.

Q. You reviewed the change orders in those cases and found no engineering issues; is that right?

A. That's correct.

Q. And in the Empire case, the cost overruns at the Empire Energy Center were included in rates. Is that your understanding?

A. I -- I believe the cost overruns were allowed, but I believe there was another issue that there was an adjustment made by Staff.

MR. FISCHER: Okay. That's all I have, Judge. Thank you very much. I'd move for the admission of 93.

JUDGE PRIDGIN: Mr. Fischer, thank you. KCP&L 93 has been offered. Any objection? Hearing

none, it's admitted.

(KCP&L Exhibit No. 93 was received into evidence.)

JUDGE PRIDGIN: Commissioner Kenney, any questions, sir?

COMMISSIONER KENNEY: No, thank you.

JUDGE PRIDGIN: All right. Thank you. I have no questions. Redirect?

MS. KLIETHERMES: Thank you, Judge.

REDIRECT EXAMINATION BY MS. KLIETHERMES:

Q. Morning, Mr. Elliott.

A. Good morning.

Q. Did you affirmatively recommend that any plant be recommended -- I'm sorry, that any plant be included in this case?

A. I'm sorry?

Q. Did you affirmatively recommend that any plant be included in cost of service in this case?

A. I didn't specifically make that recommendation. I said there was no engineering issues that I found that would make any adjustment to the cost.

Q. Did you hear the testimony yesterday that major contracts like Kissick's were let out for $1 or so and all payouts over that $1 required change

orders?

A. I believe I heard that, yes.

Q. So did virtually everything Kissick did show up as a change order?

A. I do not believe so.

Q. What kind of work did Kissick do?

A. Kissick did a lot of foundation work. I believe they also did some -- some earth moving work. That's what I recall.

Q. Would things like foundations have been included in the initial budget?

A. There would have been foundations in the original budget, yes.

Q. So was paying Kissick for doing that kind of work really an overrun?

A. Again, it would have been a change order, but there would have been a budget amount for their work. If it fell within the budget, it wouldn't have necessarily been what would I say a cost overrun.

Q. So --

A. But it might have been a change order because the purchase order was not fully developed.

Q. So something that you might -- something might be colloquially referred to as an overrun that isn't an overrun necessarily from an accounting

perspective?

A. I can only tell you what I believe a cost overrun is. And, yes, you could have a cost -- you know, cost overrun, as I stated just earlier here, that I viewed it as something over the budget amount or the original cost of the -- of the plant.

Q. So with that clarification, let me re-ask you a question that Mr. Fischer asked you last night and I hope I get it nearly verbatim. I think he asked you did you review change orders that accounted for over 90 percent of the cost overruns. Do you remember that?

A. Yes.

Q. So in light of the discussion we've just had, would you like to clarify whether or not you did review change orders that accounted for over 90 percent of the cost overruns?

A. As I think I mentioned perhaps last night, is I don't know if all those dollars were taken out of the contingency amount or whether they were part of the budget amount. I -- at this point I don't know.

Q. You couldn't even hazard a gas as to what percentage of cost overruns you reviewed, could you?

A. Not based on my definition, no.

Q. Your review -- I'm sorry. Was your assignment to determine the identification and explanation for cost overruns?

A. No. My assignment was to look at the change orders based on -- I'm sorry. Do a review of the change orders from an engineer's perspective.

Q. Is there some discussion in your surrebuttal that goes to whether or not you explained and identified the cost overruns if a -- if the Commissioners want some further explanations?

A. Yes. I believe my surrebuttal testimony addresses two statements in a KCPL's witnesses rebuttal that -- that I specifically did not look at cost.

Q. So you didn't look at the total value of all of the change orders?

A. Not -- obviously there were -- there were dollars on the change orders, but I did not specifically look at whether those dollars were the correct dollars or not.

Q. And that would only be on the change orders you looked at. There were a lot of change orders you didn't even look at, weren't there?

A. I looked at -- I believe that there were -- I think it was in testimony there was over

2,700 change orders total and I only got 647 and I looked at -- deeply looked at 222.

Q. And so you never compared change orders you looked at, much less the ones you didn't to the contingency in the CBE budget?

A. No, I did not.

Q. Mr. Fischer also asked you about your request for change orders based on specific dollar values. Do you remember that?

A. Yes.

Q. Why did you frame your request that way?

A. Going into this project not -- I knew there was going to be change orders. I had no idea how many there would be. To put a limit on the number of change orders, I selected 50,000 as the threshold to receive change orders. I assume there might be some change orders for like 25 bucks or 100 bucks. And with my time available, I made the decision to -- to put a threshold on the amount.

Q. So even though you used cost as a screening tool, you weren't looking at cost for the purpose of cost analysis?

A. That's correct.

Q. Is there any particular relevance to your engineering review of what quantity of costs were

associated with each of your six types of change orders? Do you remember Mr. Fischer asking you about what percent of costs went with type one change orders or type four change orders or different things like that?

A. I think he asked me how many were in each category. I'm sorry.

Q. Did that matter for what you were looking at?

A. No. The one of -- the categories was just a way to sort them into -- into things. And I don't believe I identified perhaps -- not identified in my report any dollar totals for each type of change order. My work papers may show that only because I sorted them and there were dollars associated with it, but my testimony is that this shows the number in each category.

Q. What do you mean by "number"?

A. I'm sorry. The -- the number of change orders that were type one and the number of change orders that were type two, so forth. On page 31 of my November 3rd Staff filing.

Q. In terms of hours or days, about how much time did you spend reviewing the change order cover sheet documents?

A. This came up in my deposition and I had a hard time putting a number on it. It was a lot of hours. And I didn't specifically -- this was not my only specific job and I had a lot of other issues going on. You know, I think I said 15, 20 days totally looking at change orders and that's my best guess.

Q. That's change orders and supporting documentation and all of that?

A. Yes. Correct. I'm sorry, yes.

Q. So if you had to guess how much -- I'm sorry, about how much time did you spend looking at the physical cover sheet of the change order that has the cost included on it?

A. Well, obviously I spent some time reading it. You know, 20 minutes -- 20 minutes to 30 minutes reading it and -- and absorbing what it was and what it said.

Q. But the bulk --

A. For each -- for each change order.

Q. So the bulk of your analysis would have been focused on the supporting documentation and -- and the engineering work behind the change order, not on -- one particular box on one line of the cover sheet. Correct?

A. That -- that was my intent was to -- to -- to -- to -- obviously you get the change order, you read the change order, it has a brief description on the front. It also has a dollar amount on the front. And then there's some documentation attached to that. And it could be a lot of documentation, it could be several pages of documentation. Then the 222 that I -- that I selected that went to the site and talked to KCP&L in more detail about, you know, more information that perhaps was not in the documentation or discussion of understanding the documentation.

Q. And about how much time did you spend reviewing or analyzing costs?

A. I did not review costs.

Q. Did you provide the change orders that you reviewed to the auditors for their use?

A. I -- I believe that I supplied the auditors a list of my change orders and I believe the auditors made a copy of the change orders that I had.

Q. Do you know whether Mr. Schallenberg reviewed them?

A. I -- I can only assume that -- I can only say I assume so. I do not know.

Q. That's fine. Mr. Fischer asked you about

your review of change orders to determine what should be allowed in rates. Is that the purpose of your engineering review?

A. My purpose of my engineering review is to determine if there's anything that -- that I would question or have an issue with that something wasn't what I believe to be proper or correct. And then I may or may not make a recommendation on an adjustment to the cost of the project.

Q. So do you consider there to be a difference between not recommending a disallowance and affirmatively recommending inclusion in rates?

A. That's the way I would look at it, yes.

Q. And to clarify, which did you do?

A. I looked at it to determine if there should be a -- a adjustment made.

Q. For -- for what basis would you be looking at whether an adjustment should be made?

A. Again, I would look at it from an engineering perspective. If I thought that -- that, you know, they -- they did something wrong or they did something too much or they did it twice and -- and whatever -- whatever the criteria of that particular change order. And I -- and I believe that it was -- in my judgment, not the thing to do or not what -- the

way they should have done it, I may have filed testimony saying that there should have been adjustment on this cost of this change order.

Q. And just to clarify a little point that came up last night, in the work papers that you provided, did you provide those in electronic form or in paper form?

A. I provided them in electronic form at my -- at my deposition to the company.

Q. Okay. So if there were any printing glitches, you have no reason to believe that the complete work papers weren't provided to the company?

A. As far as I know, the spreadsheets were full when I copied them onto the disc and hand-- and gave them to KCP&L, yes, that's my belief.

Q. Okay. Mr. Fischer was asking you about your work with Commission auditors. Can you personally complete a construction audit in its entirety without auditors?

A. I can do what I do, the engineering review. At some point the auditors either do their review and we meet at the end or the auditors do their review and we both get to the end. It -- I -- I -- the way I view it is that the auditors get -- look at it from a different perspective than I do, so I cannot

do what I do and -- and have the thing not be a construction audit.

Q. So to use Mr. Fischer's phrase from last night, you have the opportunity -- or do you have the opportunity to make substantive input if you have found a reason for disallowance?

A. Yes. I -- I believe that if I find something that I have an issue with, I can bring it forward and put it in testimony, bring it the honors' attention. If they agree and make an adjustment, that may be how it works, yes.

Q. Mr. Fischer brought out a lot of old testimony last night, didn't he?

A. Several, yes.

Q. Do you have a copy of Exhibit 90?

A. Yes, I do.

Q. Did he have you read part -- or did he read into the record part of a quote on page 4?

A. Yes. Down -- I believe the -- from the bottom of the page -- bottom of the page.

Q. And that was talking about cost overruns in general, wasn't it?

A. It's talking about --

Q. Or project complexity, I'm sorry. I hadn't flipped the page.

A. Yeah. I believe I was talking about the fact that my belief is that, you know, there are always -- there are always changes. And the more complex the project is, the more likely it is they have more -- more unforeseen situations which then present more -- possibly more changes.

Q. And that's what Mr. Fischer had you read last night. Could you finish reading that paragraph?

A. I don't remember where -- where we stopped off. Sorry.

Q. If you look on page 4, it looks like line 22. He had you stop at the end of that sentence.

A. Okay.

Q. So if you could start with, This project?

A. Okay. This project also was a retrofit type of project where new equipment was retrofitted to existing equipment. When retrofit projects are done, sometimes the amount of work increases in order to make the new equipment fit properly to the existing equipment. Also, additional design work may be necessary based on what conditions are found as the project moves forward.

Q. Thank you. Just wanted to clarify what context your earlier statement was in.

Did you perform any cost reviews -- and

Exhibit 90 is referring to the La Cygne audit, isn't it? Or do I have my exhibits confused again?

A. It has the La Cygne SCR project, yes.

Q. And did your scope in that -- did your scope in that case include performing a cost review?

A. No.

Q. What was the extent of your work in that case?

A. Again, my -- I did an engineering review of the change orders on the project which I put in that my Schedule 3 has got the -- the listing of the most -- most of the change orders and identify which type they were and found no engineering issues.

Q. And if you remember, did KCP&L do a reforecast for La Cygne?

A. I'm sorry, I don't remember.

Q. Would whether they had or not been a part of your engineering review of La Cygne?

A. It might have resulted in some change orders, it might not. I don't -- don't believe it would have changed.

Q. All right. Mr. Fischer asked you if in prior cases you were ever given a single document to identify all cost increases. Do you remember that?

A. Yes.

Q. On any of those prior cases you've worked, do you ever recall if the company was contractually obligated to identify all cost increases?

A. Not to my knowledge, no.

MS. KLIETHERMES: Can I approach?

JUDGE PRIDGIN: You may.

BY MS. KLIETHERMES:

Q. I was going to have you read paragraph Q there.

MS. KLIETHERMES: Judge, I've just handed Mr. Elliott the regulatory plan, stipulation and agreement.

BY MS. KLIETHERMES:

Q. Mr. Elliott, could you just read aloud paragraph Q for the reference of page 28?

A. Page 28, paragraph Q, Cost control process for construction expenditures. KCP&L must develop and have a cost control system in place that identifies and explains any cost overruns above the definitive estimate during the construction period of the Iatan 2 project, the wind generating projects and the environmental investments.

Q. Thank you. On some of those -- some of Mr. Fischer's questions last night had to do with kind

of a specific listing of the plants you've worked on. I'm going to read through a list of them here. Osawatomie, West Gardner, Hawthorn 6, 7 and 8 combustion turbines, Hawthorn 9 combined cycle, Hawthorn 5 rebuild, Asbury, Empire Energy Center, Jeffrey Energy Center, AmerenUE's Meramec combustion turbine, State Line combined cycle, Riverton -- sorry, Riverton 12 combustion turbine. Were any of those part of the KCPL regulatory plan?

A. No.

Q. Did you conduct your engineering review of Iatan any different than your previous engineering reviews of construction projects because of paragraph Q of the regulatory plan, stipulation and agreement?

A. No.

Q. Do you know why paragraph Q is part of the KCPL regulatory plan, stipulation and agreement?

A. Only based on what I've heard in this case so far.

Q. Have you ever participated in work on a construction audit or prudence review that wasn't done in conjunction with Staff auditors?

A. I'm -- I'm sorry. Could you repeat the question?

Q. I'm sorry. Have you ever participated in work on a construction audit or prudence review that there weren't also Staff auditors involved on that construction audit or prudence review?

A. At some level or not, auditors were always involved, yes.

Q. On those prior audits, did Staff auditors always look at construction costs and make adjustments if any adjustments were to be made?

A. I believe so, yes.

Q. You weren't a Commission employee at the time of Wolf Creek and Callaway, were you?

A. No, I was not.

Q. Not been here quite that long?

A. Not quite that long.

Q. Almost.

A. Feels like it.

Q. Were you at any time in your work on these audits in any way prevented from conducting any scope of the audit of Iatan that you wanted to perform?

A. No.

Q. Can you tell us just very briefly about Ms. Roberta Grissom's -- I think at the time she may have been Ms. Roberta McKiddy -- her proposed

adjustments in the context of a construction or prudence audit that you participated in?

A. There was the Empire Electric -- Empire District Electric Energy Center 3 and 4 project. She was the -- the auditor that was working on that construction audit and I was -- with me. And there was an issue with the contractor on that project. If my recollection is correct, I think he went bankrupt and there was some additional cost due to that.

And I remember working with her coming up with what amount of an adjustment might be made. And I believe it's in her testimony that there's an adjustment made because of that issue.

Q. Are you aware of any effort to preclude you from including a section in the report that was filed on December 31st, 2009 in Case Nos. ER-2009-0089 and ER-2009-0090?

A. No.

Q. In the course of your participation in this or any prior audit, have you ever found something -- I'm sorry. Never mind. I asked that one already.

MS. KLIETHERMES: Judge, quite a bit of testimony from prior cases was included in the record in this last night. Just in an effort to balance the

record and bas-- I'll -- I am happy to go through and introduce each of these pieces of testimony and lay the foundation for each of them. If there's not going to be a foundational objection, I would just as soon not waste the time to establish what these are if that's a proper way to ask for that.

JUDGE PRIDGIN: I think it's proper if you can just check with counsel.

MS. KLIETHERMES: Featherstone's in the 2006-0314 and then McKiddy's. I won't use the HC part. And I guess I should say can I reserve on -- I'll offer Cary Featherstone's direct testimony in Case No. ER-2006-0314.

JUDGE PRIDGIN: Get you an exhibit number. My notes show it would be 281.

MS. KLIETHERMES: And then pending verification from Empire of what version of testimony we can utilize, can I reserve the offer of some form of Roberta Grissom -- can I make but reserve --

JUDGE PRIDGIN: You can always label something and not offer it or change it later. Did you want Ms. Grissom's as 282?

MS. KLIETHERMES: Yes. Her surrebuttal in ER-2004-0570. And I'm sorry. What number did you say for that? 282?

JUDGE PRIDGIN: Correct.

MS. KLIETHERMES: And her -- at this time she was Roberta McKiddy and her direct also in ER-2004-0570.

JUDGE PRIDGIN: That would be 283.

MS. KLIETHERMES: And the concern is that the -- the individuals who were HC on the Empire docket are not the individuals who are HC on this docket -- the parties, I'm sorry. So I think we're trying to verify with Empire what -- what version, whether or not we can include the HC at this point. Is this something I can bring down later in the day to provide copies of? We'll provide copies to counsel.

JUDGE PRIDGIN: Absolutely.

MS. CARTER: At this point, Judge, we could only agree to admission of the NP versions, but there will be folks from Empire here later in the day to see if we could let a little bit more in.

JUDGE PRIDGIN: All right. Thank you, Ms. Carter.

JUDGE PRIDGIN: When you're ready.

MS. KLIETHERMES: I believe I had offered those or I hoped I had offered those.

JUDGE PRIDGIN: If you did, I missed it. And that's entirely possible so --

MS. KLIETHERMES: In that case, I offer those.

JUDGE PRIDGIN: Thank you. KCP&L 281, 282 and 283 have been offered. Any objections?

MR. FISCHER: Judge, I don't have a copy of the Empire ones, but subject to getting a copy, we have no problem giving more context and would not object.

JUDGE PRIDGIN: All right. Those exhibits are admitted.

MS. CARTER: And, Judge, just to clarify, we would not be objecting to the admission of the NP versions of those two pieces of testimony.

JUDGE PRIDGIN: The NP. And I'm assuming we can later clarify.

MS. CARTER: Yes.

JUDGE PRIDGIN: Okay. That's fine. Thank you.

BY MS. KLIETHERMES:

Q. Have you ever sponsored a dollar adjustment as part of an engineering review that you have performed?

A. Specifically I -- I have not made a dollar adjustment. I have perhaps provided numbers to the auditors who have made an adjustment but I have

not made one on my own, no.

Q. Have you ever sponsored a dollar adjustment as part of a construction audit you have performed?

A. Again, no. Not specifically in my testimony.

Q. What specifically do you look for when you participate in a construction audit, a prudence audit, a prudence review or an engineering review? And please distinguish if they differ in any way.

A. I don't know if I would distinguish them any -- in my case between any of those. An engineering review is what I do in any of those that I'm part of. Again, basically it's been reviewing the change orders. If there's -- as in the Empire case, if it's an issue with the contract or contractor, I may be involved based on my experience. I -- I look at, you know, what was done, how it was done, make decisions on whether that was the right thing to do to get it built or not get it built and try to understand what was done.

JUDGE PRIDGIN: I hate to interrupt. I do need to fix exhibit numbers. I'm afraid I'll forget if I don't do it now. I apologize. All the exhibit numbers I just admitted and gave you need to

be increased by one. I already admitted a 281 earlier. So what I had previously called 281 should be 282, et cetera. My apologizes. Had a 282 last night. Featherstone would be 282 and the two Grissoms would be 283 and 284. I'm very sorry.

(KCP&L Exhibit Nos. 282, 283 and 284 were marked for identification.)

(KCP&L Exhibit Nos. 282, 283 and 284 were received into evidence.)

BY MS. KLIETHERMES:

Q. Were you done, Dave?

A. Yes. Yes. I'm sorry.

Q. And for you, your role in all of those activities, whatever the name is for another purpose is the same. Correct?

A. Yes.

Q. Is that what you did in this case?

A. Yes.

MS. KLIETHERMES: Thank you. That's all I have.

JUDGE PRIDGIN: All right. Thank you very much. You may step down.

And this looks to be a convenient time to break. We would be going on to Mr. Majors next; is that correct? All right. I'm showing 10:20 here on

the clock in the hearing room. Is there anything further from counsel before we go on break? All right. In that case, let's re-adjourn [sic] at 10:35, please. Thank you. We're off the record.

(A recess was taken.)

JUDGE PRIDGIN: All right. We're back on the record. Anything from counsel before I administer the oath to Mr. Majors and -- all right. Mr. Majors, if you'll raise your right hand to be sworn, please, sir.

(Witness sworn.)

JUDGE PRIDGIN: Thank you very much, sir. Ms. Ott, anything before he stands cross?

MS. OTT: No. Well, yes.

KEITH MAJORS, having been sworn, testified as follows:

DIRECT EXAMINATION BY MS. OTT:

Q. Can you please state your name for the record.

A. Keith A. Majors.

Q. Mr. Majors, who are you employed, in what capacity?

A. The Missouri -- the Missouri Public Service Commission. I am a regulatory -- utility regulatory auditor.

Q. And are you the same Keith Majors that

has participated in Staff's November 3rd, 2010 report on the Construction Audit and Prudence Review that has been previously marked for identification as KCP&L 205-HC?

A. Yes.

Q. Are you also the same Keith Majors that has participated in Staff's revenue requirement cost of service report previously marked for identification as KCP&L 210-HC?

A. Yes.

Q. And are you the same Keith Majors that has filed rebuttal testimony that's been pre-marked KCPL 230?

A. Yes.

Q. As well as surrebuttal testimony that has been marked KCPL 231-HC and 231-NP?

A. Yes.

Q. With respect to your rebuttal and surrebuttal testimony, was that prepared by you or under direct supervision?

A. Yes.

Q. Do you have any corrections to make to your rebuttal or surrebuttal testimony at this time?

A. No.

Q. And if I were to ask you the same or

similar questions contained in that testimony, would the answers today be substantially the same?

A. Yes.

Q. Would they be true and accurate to the best of your information, knowledge and belief?

A. Yes.

Q. Do you have any corrections to make to Staff's cost of service report?

A. No.

Q. And do you have any corrections to make to Staff's November 3rd, 2010 Staff report?

A. No.

Q. Is the information contained therein true and accurate to your best knowledge and belief?

A. Yes.

MS. OTT: With that, I'd like to meet Staff -- or KCPL 205-HC, KCPL 210-HC and NP and KCPL 230 and KCPL 231-HC and NP.

MR. HATFIELD: Judge, I'm sorry. Are you ready for --

JUDGE PRIDGIN: Whenever you're ready.

MR. HATFIELD: We're going to object to the admission of the audit report at this stage. The audit report was sponsored by the testimony of witness Hyneman. And I think I do have some objections to

raise then. So I guess subject to that objection, I don't know -- I didn't realize we were going to do it with this witness and actually I don't think it's appropriate to do with this witness. The Commission requires that Staff members identify it by section which sections they sponsored and he didn't sponsor even the majority of those sections.

I think Mr. Fischer also needs to make a comment about the testimony itself.

MR. FISCHER: I may be incorrect, but I think Mr. Majors may have some rate case adjustments that he addresses in his testimony. And if you're continuing to reserve admission until after all the issues have been heard, we would ask that you continue that on this one.

JUDGE PRIDGIN: Okay. So let me -- so in that case, Mr. Fischer, you would -- on that ground alone at least for now, prefer the pre-filed not to be admitted on the grounds that he has other topics to discuss?

MR. FISCHER: That's my understanding. Unless they settle out or something.

MR. HATFIELD: And those are 230 and 231 as I understand it, Judge. My concern is with -- I think it was with 205, which was sponsored by

Mr. Hyneman in his testimony and --

JUDGE PRIDGIN: So I will -- I will sustain those objections with the understanding Ms. Ott, that you are free to offer those later, that these are more timeliness objections at least for now and there may be substantive objections later. So I'm not -- I'm not saying they can't be re-offered later. I'm just saying I think it was counsel's understanding that the testimony wouldn't be offered until the witness was up for the last portion of their testimony.

MS. OTT: And I wasn't in here for that section so I apologize, but there are parts of these reports in which Mr. Majors has sponsored testimony and if he was going to be questioned on them, just put it in now.

JUDGE PRIDGIN: No, I understand. I don't blame you at all. It's just kind of awkward when you have several witnesses sponsoring the same exhibit so it's one way we decided to do it. So I heard no objection to 210-NC -- pardon me, NP and HC.

MR. HATFIELD: Which one is 210? I'm sorry.

MS. OTT: The cost of service report.

MR. FISCHER: That would be the rate case

piece that I think has several witnesses addressing various rate case issues.

MS. OTT: That's correct. Are we waiting to the very last witness to put that entire piece in? Okay.

JUDGE PRIDGIN: And same ruling on that. That's sustained with the understanding that that can certainly be offered later and the Commission would reconsider its ruling later.

MS. OTT: Well, with that, I will tender Mr. Majors for cross-examination.

JUDGE PRIDGIN: All right. Thank you. Mr. Mills?

MR. MILLS: No questions.

JUDGE PRIDGIN: Mr. Schwarz?

MR. SCHWARZ: No questions.

JUDGE PRIDGIN: Mr. Hatfield, Mr. Fischer?

MR. HATFIELD: Yes, your Honor. Thank you. I'm just going to stay right here if that's all right.

JUDGE PRIDGIN: All right.

CROSS-EXAMINATION BY MR. HATFIELD:

Q. Good morning, Mr. Majors.

A. Good morning.

Q. We've met before so -- is that right?
A. We have.
Q. Now, you just heard the discussion about various documents that have been marked. Do you have testimony in front of you that you filed?
A. Which -- which testimony are you referring to?
Q. I was referring to all of it actually?
A. I believe I have substantially most of it. I have surrebuttal.
Q. Okay.
A. And the cost of service reports.
Q. Well, let's do it this way. You have your surrebuttal there?
A. I do.
Q. And you have a copy of Staff's Construction Audit and Prudence Review there?
A. Dated November 3rd, yes.
Q. Yes, sir. For the period ended June 30th of 2010?
A. That's correct.
Q. All right. In your testimony the -- the adjustments in Staff's Construction Audit and Prudence Review that you sponsored were sole AFUDC adjustments; is that right?

A. There were -- there was a property tax adjustment --

Q. Okay.

A. -- as well.

Q. Absolutely. So property tax and AFUDC. Anything else?

A. I -- I believe that's it.

MR. HATFIELD: And let me do one other thing. I don't remember the exhibit number, Judge. Beginning -- during the openings, Mr. Dottheim handed out an exhibit that contained Staff's disallowances. So I'm just saying for the record that's what I'm going to give him. I didn't write down the exhibit number. Mr. Mills?

JUDGE PRIDGIN: That's for the assistance of -- I'll try to find it.

MR. HATFIELD: Do you know the number on that, Steve?

MR. DOTTHEIM: I did not mark it as an exhibit. That -- I don't recall.

MS. OTT: It's not in here.

MR. DOTTHEIM: It was a page that was attached to the Staff's reconciliation. It's the last page. It is also Schedule 1 to the Staff's November 3 report. It is Schedule 1-1 and Schedule 1-2. And it

is separately bound in Staff's Schedules 1-8. It appears as two pages. The first two pages in Staff's schedules volume Staff Schedules 1 to 8, 8.5-by-11 sheets of paper, Schedule 1-1 and 1-2.

And when it was attached to the Staff's reconciliation that was filed, it was attached as a -- or produced as a legal size document and Schedule 1-1 and 1-2 was on one sheet of paper. The numbers are the same on both documents. The numbers did not change.

BY MR. HATFIELD:

Q. So Mr. Majors, you have that document in front of you now?

A. I do.

Q. By the way, I found it to be a very helpful exhibit so I thought I would refer to it. And so I just want to make sure before we begin, that you've had an opportunity to look at adjustments and AFUDC, property tax credit, property tax adjustment. Any others you sponsored?

A. No.

Q. Okay. So you did not sponsor any adjustments related to unidentified and unexplained cost overruns?

A. Other than the AFUDC related to it.

Q. Fair point. Okay. Do you have an understanding of how you were selected to participate in the audit?

A. Not a -- not a complete understanding. I was -- I was told to participate.

Q. That would be an understanding. I understand. Prior to being told to participate, you had never performed a construction audit; is that right?

A. That's correct.

Q. You'd never performed a prudence audit?

A. In -- in rate cases there are particular -- particular items that require a prudence -- to evaluate prudence, but not a prudence audit of a construction project.

Q. Gotcha. You'd never audited a construction project?

A. That's correct.

Q. You didn't have any experience with the construction industry?

A. That's correct.

Q. Had you ever audited contingency logs before?

A. No.

Q. You'd never worked on any construction

projects?

A. No.

Q. And you've never had any training on how to perform a construction audit?

A. Other than the -- the general training I received as a utility regulatory auditor during my tenure as a utility regulatory auditor, no.

Q. All right. I think -- okay. I think we talked about this once before. You did not have any specific training in that tenure on how to conduct a construction audit, did you?

A. What specific period are you referring to?

Q. The period you referred to. Your tenure. You've been at the PSC ever since you got out of college. Right?

A. Since June 2007, that's correct.

Q. So that period, did you ever have any specific training on how to conduct a construction audit?

A. I -- attended some training with Mr. Hyneman, Mr. Schallenberg on -- it had to do with construction -- construction management. It was over in the Truman Building. I'm sure you're familiar with the Truman Building. And I -- I attended and I'm not

quite sure how long it was. It was for an afternoon. It was an instructional seminar.

Q. And when was that?

A. Late last year.

Q. Late in 2010?

A. That's correct.

Q. Okay. So that would have been after the Construction Audit and Prudence Reviews had been filed with the Commission. Right?

A. I -- I believe so.

Q. And did you find that training to be helpful in understanding how to conduct a construction audit and prudence review?

A. Generally.

Q. Did it inform you of anything that you had -- did not know before attending that training?

A. Not that I can recall.

Q. In the course of your involvement with the Construction Audit and Prudence Review, you did not have any discussions with engineering Staff at the PSC about the Construction Audit and Prudence Review. Right?

A. I was -- I was present in -- in a room where -- where our adjustments were discussed. Not -- not specifically the adjustments, but the filing of

the Construction Audit and Prudence Review was discussed with -- with some engineers, yes.

Q. In reaching your conclusion, you did not consult -- your conclusions in the Construction Audit and Prudence Reviews, you did not consult with any engineers?

A. That's correct.

Q. And in reaching the conclusions and the testimony that you filed in this case, you did not consult with any engineers?

A. That's correct.

Q. Okay. Let me just ask about your surrebuttal testimony. I think that will be the easiest thing to do. Let's just start right at the beginning there on page 1, line 9, first question. It says, Are you the same Keith Majors who filed direct and rebuttal testimony on these issues?

Now, your direct and rebuttal testimony had to do with things other than the Construction Audit and Prudence Review. Right?

A. There was a portion of my direct that referred to the Construction Audit and Prudence Review specifically an adjustment that was in the -- that report.

Q. For AFUDC?

A. That's correct.
Q. You didn't file any direct or rebuttal testimony concerning the cost control system. Correct?
A. That's correct.
Q. And that's because when the audit started, Mr. Schallenberg was in charge of the cost control system of the audit. Right?
A. I don't know -- I don't know -- what do you mean by "in charge of"?
Q. Well, if you -- if you don't know or if he wasn't, that's okay. My understanding is Mr. Schallenberg was responsible for the cost control portion of the audit; is that correct?
A. I -- I don't know.
Q. All right. At some point Mr. Hyneman sponsored adjustments relating to unidentified and unexplained cost overruns; is that right?
A. I -- I believe he sponsored the adjustment, yes.
Q. And your only involvement in those, I think you've told me, was to calculate the AFUDC related to those adjustments?
A. That's right.
Q. Now, how did it come to be that you filed

surrebuttal to respond to Mr. Meyer and Mr. Archibald's comments about budget and cost control?

A. At the time that we filed the surrebuttal, no one was addressing the testimony. I don't believe anybody was addressing the testimony of those two witnesses.

Q. You mean no one on Staff was addressing it?

A. No one that I was aware of.

Q. So how did it come to be that you drew the short straw on that?

A. I read through Mr. Meyer and Mr. Archibald's testimony and responded to certain sections thereof.

Q. Okay. And those sections had to do with the budget and cost control system that you had not sponsored an adjustment on. Right?

A. That's correct.

Q. And you just made that decision on your own without any direction from Mr. Hyneman or Mr. Schallenberg?

A. I was --

MS. OTT: I'm going to object to attorney/client privilege and going into strategy to

file testimony.

MR. HATFIELD: I --

JUDGE PRIDGIN: Mr. Hatfield?

MR. HATFIELD: I didn't mean to ask him for advice from an attorney and I'd be happy to have the witness instructed that if I'm asking him something that would require attorney/client -- or a conversation he had with an attorney, he should let us know that. I wouldn't want him to do that.

JUDGE PRIDGIN: I'll overrule. I didn't hear anything about counsel.

MR. HATFIELD: I don't know what my question was. Is there any way the court reporter could read it back.

THE COURT REPORTER: "Question: And you just made that decision on your own without any direction from Mr. Hyneman or Mr. Schallenberg?"

BY MR. HATFIELD:

Q. Is that right?

A. Can you repeat the question?

Q. It's the same question she just gave you. You made that decision to file the testimony on your own without any direction from Mr. Schallenberg or Mr. Hyneman; is that right?

A. Well, I consulted with an attorney.

Q. Okay.
A. With Mr. Schallenberg and Mr. Hyneman.
Q. All right. And after consulting with the attorney, without telling me what the attorney said, did you make the decision to file the testimony or were you directed by Mr. Schallenberg or Mr. Hyneman to file the testimony?
A. I would say I was -- I -- I -- I made the decision to sign the affidavit and sponsor the testimony.
Q. Let's look at page 21 of your surrebuttal testimony. You -- you've been in the courtroom for some portions of the testimony, I take it?
A. Some, yes.
Q. I said courtroom. Hearing room. And I'm trying to remember. Were you sitting here next to -- at counsel table for the questioning of Mr. Archibald?
A. I don't think I was here at the time. I --
Q. Well, we had some discussion about the definition of a cost overrun. And I notice at page 21, line 6 you say that, Cost overruns occur when the sum of all negative, paren, increased costs, closed paren, budget variances exceed the sum of all positive, paren, decreased cost, closed paren, budget

variances, plus the contingency level, plus the baseline budget.

Did I read that correctly?

A. Yes.

Q. Where did you get that definition?

A. It's -- it's -- it's just the definition of a cost overrun. I -- I don't know that I got it anywhere specifically. Through my -- through my experience as an accountant and auditor.

Q. Do you agree there might be other definitions of a cost overrun?

A. I -- I don't know.

Q. So it's possible there are? I guess -- no, let me withdraw that. You didn't go out and try to find a definition of a cost overrun in any authoritative literature in order to reach this conclusion?

A. I consulted -- we have several handbooks that I consulted.

Q. Excellent. Which one did you consult for this definition?

A. The -- well, I didn't particularly consult a specific handbook. I --

Q. I'm sorry.

A. -- I had some knowledge of the handbook,

but we had -- I -- someone had ordered some handbooks from the Project Management Institute which had various definitions in them.

Q. All right. I must have misunderstood. I'm sorry. Let me know which construction handbook I would look at to find a definition of a cost overrun.

A. You want to know which specific one?

Q. If you can.

A. I don't -- I don't have the title of the -- of the book for -- that you would find a definition of that.

Q. Okay. But did you get this definition -- I'm just trying to make sure I understand. Did you get this from a book or did you just -- you know about these books and so you kind of paraphrased what you think your -- the definition is?

A. It would be a paraphrasing of the definition.

Q. All right. I understand. And then the next sentence says -- I'm on line 8, Since KCPL refused to provide the information that supports the contingency levels contained in the Iatan 1 AQCS and Iatan 2 control budget estimate CBE or definitive estimate as specified in the KCPL regulatory plan, comma, no one aside from KCPL can identify which

budget variances were provided for in the contingency versus the budget variances that were not considered.

Is that your testimony?

A. That's correct.

Q. First question, so you're saying that the control budget estimate is also known as the definitive estimate as specified in the regulatory plan?

A. That's -- that's my understanding of it, yes.

Q. Okay. They're the same thing?

A. If you ask me, they're the same thing. To me, yes, they're the same thing.

Q. All right. And -- and when you've heard Staff discuss the control budget estimate the phrase "control budget estimate," "definitive estimate" are used as synonyms. Correct?

A. Yes.

Q. And I think you discuss this, but let me just make sure I understand. When you say KCPL refused to provide the information that supports the contingency levels, can you tell me when they refused to provide that?

A. It would be when they responded to Data Request 490 and 491.

Q. All right. We've marked Exhibit 256 already and I believe it's been admitted, Data Request 490.

MR. HATFIELD: Judge, can I approach because I've only got one left?

JUDGE PRIDGIN: You may.

BY MR. HATFIELD:

Q. So your testimony is in Data Request 490 KCPL refused to provide information on the contingency logs; is that right?

A. We -- we asked the question and the response was not supportive of an answer to the question.

Q. Okay. Well, let's look at -- I want to make sure I understand this. On page 22, line 6 you quote the DRs and then you said, The only response that was not privileged was Schedule 3 attached to this testimony.

Is that right?

A. That -- that's correct.

Q. And -- and did you write that testimony that -- the testimony we're looking at here in your surrebuttal?

A. Did.

Q. And did you look at DR No. 490 and the

response thereto when you wrote that testimony?

A. I did.

Q. Let me hand you Exhibit 256. I've got some handwriting on there, but I don't think it's significant. And ask you if you recognize that as DR Request No. 490?

A. Yes.

Q. That's from Mr. Schallenberg to Mr. Reynolds; is that right?

A. It was from Mr. Schallenberg to KCPL. I -- it wasn't specifically to Mr. Reynolds.

Q. My bad. Fair enough. That DR request contains a case number at the top. Right?

A. That's correct.

Q. And what is that number?

A. ER-2009-0089.

Q. So that's a DR that was submitted in the Iatan 1 rate case. Right?

A. I -- I don't know what you mean by "Iatan 1 rate case."

Q. That's okay. So this is the DR that you're saying KCPL refused to provide an answer to? Yes?

A. I'm saying it's one of the DRs.

Q. All right. Would you read the response

from KCPL, please?

A. Under the line, Response?

Q. Yes, sir.

A. The current control budget estimate for Iatan 1 is $484 million. Due to their confidential nature, all of the documentation supporting the development review, analysis and approval of the contingency and executive contingency included in the current control budget estimate for environmental upgrades at Iatan 1 are available by contacting Tim Rush, 816.556.2344 or Lois Liechti --

Q. Okay.

A. -- 816.556.2612 to make arrangements to view these documents. Response provided by Iatan construction project, project controls. This information was provided for onsite viewing to the Commission Staff in early 2008 as part of its investigation in Case No. EM-2007-0374.

Q. Thank you. Now, the other DR you talk about there is Data Request 491; is that right?

A. That's correct.

Q. And you're saying that KCPL refused to provide the information in response to 491 as well. Right?

A. That's correct.

Q. All right. Let me show you what's been marked as Exhibit 257. Do you recognize that as the Data Request No. 491?

A. I do.

Q. And that's also in the 0089 rate case; is that right?

A. It is.

Q. And can you read the response to Data Request 491?

A. KCPL objects to this data request to the extent it calls for information pertaining to Iatan 2 and, therefore, seeks discovery of information which is irrelevant, immaterial and inadmissible and whose discovery is not reasonably calculated to lead to the production of relevant and admissible evidence.

Q. And -- now, what's the date on that response up at the top?

A. February 3rd, 2009.

Q. All right. Now, let me hand you what's been marked as Exhibit 258 and already admitted in this case. And ask you if you recognize that as a data request response?

A. It is.

Q. And what's the number on that?

A. Which -- which number?

Q. Data request number. Or there's a response number.

A. There's a question number that says 0491 S.

Q. And what does an "S" mean in the data response world?

A. I think it means supplemental.

Q. Okay. And is the -- is the question repeated there in Data Response 491 S the same as the question that was in Data Response 490?

A. You said 490.

Q. 491. My bad. Thank you. 491. I'm comparing 491 to 491 S.

A. You're making that comparison?

Q. I am. And asking you to as well.

A. It looks to be the same text. The text is the same for both questions.

Q. All right. And then 491 S, what's the date on that response?

A. 4/17/2009.

Q. Would you read the response of Kansas City Power and Light in that supplemental response?

A. Please see MPSC Data Request 0490 in Case No. ER-2009-0089.

Q. And 490 is the one we just read a minute

ago that says please call Tim Rush and these were made available for onsite viewing. Right? Exhibit 256. Did I take it?

A. That's correct. I don't have that in front me, but --

Q. Can I get those back from you? Thank you.

Do you know whether any disputes concerning KCPL's responses to Data Request 490 and 491 were submitted to an RLJ for review?

A. I -- I think they were.

Q. Okay. Let me turn to your surrebuttal testimony, page 26. You got it?

A. I do.

Q. On line 20 there's a question, Does Staff have a position on the decision to lease the rail cars versus buying them?

And you say, Not at this time.

What -- what's -- what's the purpose of telling us that Staff has no position? Why is that in here?

A. Because I -- I didn't evaluate the -- the position on the decision to lease versus buy the rail cars. I --

Q. Is -- do you -- is it your

understanding -- the answer is, Not at this time. And, you know, the lawyer in me makes me ask. Is that an implication that you intend to have a position on buying or leasing the rail cars at a later time?

A. I don't know.

Q. Okay. And then let me just make sure I understand your testimony then on the next -- next line, page 23. You're quoting Mr. Meyer now, but I just want to ask you. Mr. Meyer apparently made the statement that, Leasing the rail cars will result in savings to KCPL's customers in this case.

And you're agreeing that it will, in fact, save the customers money?

A. In the immediate time period in this case.

Q. Gotcha. I just want to make sure I understood. All right. Now, on page 29, line 9, question, Did Kansas Corporation Commission take any issue with the KCPL's level of rate case expense?

Do you agree with the opening statement of Mr. Schwarz that the decisions of KCC are a red herring in this case?

A. Well, is that -- was that part of his opening statement?

Q. I'm telling you it was.

A. I -- I don't think I have an opinion on that statement.

Q. So you think that what KC-- I mean you've included in your testimony here what KCC found about the rate case. So was that -- is your testimony that you've included here relevant to this case?

A. I believe so, yes.

Q. Okay. So what KCC said is relevant to this case?

A. Just in terms -- all I'm saying is in terms of rate case expense.

Q. Okay. So only in terms of rate case expense should we consider what KCC said?

A. No. I'm not making an evaluation of what the KCC said on other items.

Q. Okay. But you did do that for rate case expense?

A. Just for rate case expense.

Q. Okay. Why did you not do that for any other items?

A. I don't know.

Q. Okay. So there's a discussion of rate case expense and then on page 30, there's -- at line 19 there's another question, Has Staff made any conclusions concerning rate case expense?

You see that?

A. I'm sorry. What line?

Q. Page 30, line 19.

A. Oh, okay.

Q. Has Staff made any conclusions concerning rate case expense?

I'm wondering if it should say any other conclusions, first of all?

A. I'm sorry. Is that a question?

Q. Yes.

MS. OTT: Judge, I just want for clarification, are -- rate case expense is an issue later on and if we're -- in which Mr. Majors is a witness. I'm just not sure if this is relevant to the Iatan issue right now. So I'm going to object to any further questioning on rate case expense.

MR. SCHWARZ: I would join that as well.

MR. HATFIELD: I wasn't planning to question him on rate case expense. I was questioning a moment ago on the relevance of KCC opinions to this case generally and I'm getting ready to question him about some testimony he has that is related to a section of the audit that he sponsors where he says that the Kansas City Power and Light Company has withheld a significant amount of materials from the

auditors in this case.

JUDGE PRIDGIN: And that's why I'll sustain. If you can try to move away from rate case expense.

MR. HATFIELD: So may I ask him about -- if you sustain, may I ask him about the question on page 30, line 19?

JUDGE PRIDGIN: If you're asking about something he said in his testimony and you're side-stepping rate case expense, that's certainly fine.

MR. HATFIELD: Okay.

MS. OTT: Judge, I will say the line of questioning is coming directly under the subheading Rate Case Expense in Mr. Majors' surrebuttal testimony so --

MR. HATFIELD: You know what? I'm not going to make a great point with the question anyway so I withdraw it and I have nothing further for this witness, Judge.

JUDGE PRIDGIN: Thank you. Bench questions, Commissioner Jarrett?

COMMISSIONER JARRETT: I don't have any questions. Thank you.

JUDGE PRIDGIN: Commissioner Kenney?

COMMISSIONER KENNEY: No, thank you.

JUDGE PRIDGIN: All right. Redirect?

REDIRECT EXAMINATION BY MS. OTT:

Q. Mr. Majors, is AFUDC an engineering issue?

A. No.

Q. And is property tax generally evaluated by an engineer or an auditor?

A. Property tax?

Q. Yes.

A. I -- I think it's usually evaluated by an auditor.

Q. Now, there was some discussions about cost overruns and whether or not you sponsored that testimony. Were you aware that there was testimony within the Staff report and which addressed cost overruns?

A. I believe so, yes.

Q. There was some discussion regarding this DR 490 and 491 and it said to make arrangements with Mr. Rush or Ms. Liechti. Do you know if Staff attempted to make those arrangements to review the material?

A. I personally don't -- I don't know. I typically didn't -- wasn't the one calling to make

arrangements.

Q. Do you know if -- if anybody met to have arrangements regarding DR 490 and 491?

A. I -- I don't know.

Q. Have you reviewed privilege logs in this matter related to data requests?

A. I have.

Q. Do you know if there's a privilege log for 490 or 491?

A. There is.

Q. Going back to the AFUDC issue and property tax, is -- are those issues you would generally talk with an engineer when making your determination --

A. No.

Q. -- or your opinion?

Now, with discussion on the rail cars, will the rail cars cost move in the future because of leasing versus buying?

A. Could you repeat that?

Q. In regards to the rail car, will the costs fluctuate in the future because of leasing versus buying?

A. Yes.

MS. OTT: I have nothing further. Thank

you.

JUDGE PRIDGIN: All right. Thank you. Mr. Majors, thank you very much. You may step down.

We're ready for Mr. Hyneman.

MS. OTT: Can we just have a moment to switch out?

JUDGE PRIDGIN: Certainly. We'll take about five minutes. We'll be off the record.

(A recess was taken.)

JUDGE PRIDGIN: All right. We're back on the record. Mr. Hyneman has taken the stand. Is there anything from counsel before I administer the oath? All right. Mr. Hyneman, if you'll raise your right hand to be sworn, please, sir.

(Witness sworn.)

JUDGE PRIDGIN: Thank you very much, sir. Please have a seat. Ms. Ott, when you're ready.

CHARLES HYNEMAN, having been sworn, testified as follows:

DIRECT EXAMINATION BY MS. OTT:

Q. Please state your name for the record.

A. It's Charles R. Hyneman.

Q. And whom are you employed, in what capacity?

A. I am a regulatory auditor with the

Missouri Public Service Commission.

Q. And have you sponsored part of Staff's November 3rd, 2010 report on Construction Audit and Prudence Review?

A. Yes.

Q. Have you also filed direct testimony that's been pre-marked Exhibit 244?

A. Yes.

Q. And rebuttal testimony 225?

A. Yes.

Q. And surrebuttal 226?

A. Yes.

MS. OTT: Since we're not offering the exhibits at this time, I will tender him for cross-examination.

MR. HATFIELD: And, Judge, just to clarify, I'll do it however you want. The -- I have some specific objections to the Construction Audit and Prudence Review related to particular pages, but I think it would be appropriate if Ms. Ott desires, that this would be the witness to sponsor the Staff report. It needs to come in at some point. We're in the prudence section. So whatever you'd like to do, Ms. Ott.

MS. OTT: It was my understanding we'd do

it with the last witness and that's Mr. Schallenberg so --

MR. HATFIELD: Well, I'm going to object to Mr. Schallenberg sponsoring the audit. Mr. Hyneman's direct testimony is the sponsor of the audit. Mr. Schallenberg filed no direct or actually filed no testimony in this case.

MS. OTT: He did file sections of the Staff report which was filed for the construction audit in this case, but if we want to offer it now --

JUDGE PRIDGIN: Can I get an exhibit number, please?

MS. OTT: 205-HC.

JUDGE PRIDGIN: 205-HC

MS. OTT: Well, it's just HC.

JUDGE PRIDGIN: So 205-HC is being offered.

MR. HATFIELD: So, Judge, generally we have -- KCPL has no objection to the exhibit being offered at this time. However, we do have specific objections to portions of the Staff audit report.

And if you'll give me just a moment, specifically on pages 13 and 14 of the Staff audit report, there is a lengthy quote from an Associated Press article about the Kansas Corporation Commission

proceedings I believe. And on page 21 there are lengthy quotes from various reports of individuals who are not here and available for questioning, specifically page 21, lines 20 through page 24, line 33. I believe those are LogOn reports.

To the extent they're being offered for the truth of the matter asserted, they're hearsay that should not be admitted into this proceeding. And if counsel wants to clarify that, of course.

And if I could -- if you'd like me to, I could stop there because that's my only hearsay objection. I have another one after that or would you like me to give them both and then let Ms. Ott respond?

JUDGE PRIDGIN: If you could give all your objections, that would be great. Thank you.

MR. HATFIELD: Okay. Great. Second objection is that on pages 8 through 11 there is a section entitled Prudence. It's labeled as Roman Numeral III, which is pure legal conclusion. This section was sponsored by -- or has a name on it that is Mr. Steve Dottheim. It quotes at length from case law and purports to give legal conclusions about what the case law shows. And we would object to the admission of Section 3. It's very nice briefing, by

the way, that is appropriate to be put into a brief but it's not appropriate to be admitted as testimony.

And finally, under the Supreme Court's holding in the McDonagh case that says that administrative agencies are -- must make a finding that expert testimony that's being offered, that the expert is an expert in the area in which they're offering an opinion and their analysis that says that that rule of evidence does apply to administrative proceedings, it is not a technical rule of evidence, we would object to page 24, lines 34, through page 25, line 20, where the Staff offers opinions concerning decisions of construction projects to fast track a project.

We would object to pages 43, line 3 and following concerning campus relocation. Specifically, Judge, at page 44, lines 26 through 27 Staff says that the reason for the disallowance is due to a design error. But the Staff person sponsoring that disallowance is not qualified to offer an opinion and the Commission may not accept that opinion from that particular Staff witness.

On page 47 there's a section entitled Construction Resurfacing. The witness who sponsors that opinion is not qualified to give an opinion on

that issue and the Commission may not accept his opinion on that issue. Specifically that section claims that the resurfacing which was done for safety reasons was a cause for a delay. And that would require an engineer or a safety manager to opine on whether it was prudent to do the resurfacing.

Next, on page 54 there's a discussion of an Alstom settlement. And the witness who sponsored that is not qualified to render an opinion on the prudence of a legal settlement and the Commission is not authorized to accept his opinion on the prudence of a legal settlement because he is not an expert in risk management or in legal principles associated with settlements.

On page 63, similar problem occurs with the Alstom unit 2 settlement. And we would object to any opinions on the prudence, reasonableness, appropriateness or any other opinions on the Alstom unit 2 settlement for the same reason.

And finally on page 78 et seq, there's a section entitled Schiff Adjustments. And the witness who sponsors --

MR. SCHWARZ: What page?

MR. HATFIELD: -- those opinions -- 78 and following. The witness who offers those

opinions is not qualified to render an opinion on the market rates or the reasonableness of fees charged by attorneys in any particular market nor on the reasonableness of fees charged for project oversight. I know that was long and I appreciate your Honor's patience.

JUDGE PRIDGIN: Mr. Hatfield, thank you. And before I have Ms. Ott respond, do you have a cite, Mr. Hatfield?

MR. HATFIELD: On McDonagh? I knew you were going to ask me that. I can get that to you still today.

JUDGE PRIDGIN: All right. Thank you. Ms. Ott?

MS. OTT: In terms of under the McDonagh standards, I believe Mister -- those were all in Mr. Hyneman's section. He's offering an auditing perspective. The Commission can weigh the credibility of Mr. Hyneman and determine whether or not his testimony is appropriate or not and the weight of the evidence. I don't think at any point we have gone through and determined specifically who's been an expert on what issues in this lengthy proceeding.

In terms of the -- and I'm trying to keep all of his objections straight. The Associated Press,

that is Associated Press's news article and which can be out and verified. Again, the Commission can weigh the credibility of that article and the quotations within.

I'm trying to -- and I don't remember the second one that he was citing, KCC. I think the Commission --

MR. HATFIELD: AP article and then the other one was page 21, quoting from LogOn reports, I believe.

MS. OTT: I believe there has been several people questioned about LogOn throughout this construction and prudence review. And the -- again, I think the Commission can weigh the credibility of Staff's report in making its determination in this case.

JUDGE PRIDGIN: I'm going to overrule the objections with the understanding that when I'm provided the cite and when I have time, I'll review McDonagh. And the Commission may change its mind and sustain those objections. But for the time being, I'm going to overrule and admit 205-HC into evidence.

(KCP&L Exhibit No. 205-HC was received into evidence.)

JUDGE PRIDGIN: Anything further before

Mr. Hyneman stands cross? Mr. Mills?

MR. MILLS: No questions.

JUDGE PRIDGIN: Mr. Schwarz?

MR. SCHWARZ: No questions.

JUDGE PRIDGIN: Mr. Hatfield?

MR. HATFIELD: Yes. Thank you, Judge. Just a few.

CROSS-EXAMINATION BY MR. HATFIELD:

Q. Morning, Mr. Hyneman.

A. Good morning.

Q. You became involved in reviewing the Iatan 1 and 2 project for prudence sometime after the conclusions of Cases 2009-0089 and 2009-0090; is that right?

A. I believe it was approximately during the negotiations -- negotiation discussions that led to the settlement of that case. I was involved in a Construction Audit and Prudence Review at the very beginning stages.

Q. Gotcha. So earlier when I was -- were you here when I was examining Mr. Majors?

A. Yes.

Q. I referred to the Iatan 1 cases or rate case. If I -- if I use that term to refer to 0089 and 0090, are we okay? No?

A. Well, I don't agree with the --
Q. All right.
A. I mean, the Iatan 1 audit was agreed to by KCPL to be tried in this current rate case. So this is the Iatan 1 case --
Q. Gotcha.
A. -- and the Iatan 2 case.
Q. We're doing both Iatan 1 and Iatan 2 here.
A. Yes.
Q. All right. Are you aware of whether the Commission -- or whether the Staff was ordered to complete an audit of Iatan 1 during 0089 and 0090?
A. There was a stipulation and agreement reached --
Q. Right now I just need to know if you're aware?
A. Okay. Could you repeat the question?
Q. Sure. Are you aware of whether the Staff was ordered to complete an audit of Iatan 1 during the 0089 and 0090 cases?
A. My recollection is that in a discussion of the stipulation and agreement, that the Commission in that time period ordered Staff to -- a period within a few months, I think it was August, to

complete the Iatan 1 construction audit, yes.

Q. Okay. And then at some point are you -- is it correct to say that the Staff was ordered to create -- commit -- complete -- you still with me or did I screw you up?

A. I'm with you.

Q. Let me start again. Is it your understanding that at some point the Staff was ordered to complete a preliminary audit of Iatan 1 by December 31st of 2009?

A. Yes.

Q. And were you involved in that preliminary audit?

A. Yes.

Q. And the way you got involved in that was solely based on the fact that you volunteered to be involved in it. Correct?

A. I think we discussed this in my deposition.

Q. We did indeed.

A. And my answer I believe at that time was that the primary reason I was involved because there was a significant need for me to be involved.

Q. All right.

A. And it was a case that I volunteered for.

Q. All right. Did you tell me in your deposition that the reason you became involved was because you volunteered?

A. I think that was a reason, but not -- I think there were two reasons, I believe.

Q. Okay. All right. But you were not selected based on any previous experience you had. Correct?

A. I believe I was.

Q. Do you have any -- well, okay. Good. You don't have any previous experience with construction auditing. Right?

A. Contract administration on construction projects, yes. But actually auditing a construction project, no.

Q. Okay. So when I asked you if you had any experience in working in construction and you said no, you're saying that wasn't right?

A. Working in construction, I've never worked in construction.

Q. Okay. You weren't selected based on any special training you had regarding construction?

A. I don't know that.

Q. All right. At the time you had not -- at the time you were selected to work on the preliminary

audit, you had not received any training on construction auditing. Correct?

A. Correct.

Q. You had not received any training on constructing -- construction project management. Correct?

A. Correct.

Q. Now, after you were selected to work on the preliminary audit, you realized you needed some training, didn't you?

A. I believe Mr. Schallenberg realized that I should be getting up to speed on the terms of project management. And he -- he ordered that I complete project management training.

Q. And you did that by going to St. Louis to take a two- to three-day training course in project management. Correct?

A. Well, initially I took an online course in project management and completed that.

Q. And when was that?

A. That would be -- again, it's approximate. I'm thinking it's in the summer or fall of 2009.

Q. Okay. So then in addition to the online training course, you took a -- you went to St. Louis and took a two-day training course in project

management?

A. Correct.

Q. Related to construction?

A. Yes.

Q. And that was in September of 2010?

A. Yes.

Q. Okay. And up -- and then so that preliminary audit that we talked about was about the Iatan 1 section of the Iatan construction projects. Right?

A. Are you talking about the August 6th report or the December report?

Q. Talking about the December 31st -- I thought we defined that. I'm sorry. December 31st, 2009 report.

A. Yes.

Q. Do you have a copy of that? You got a lot of stuff. I bet you do.

A. I do have a lot of stuff.

Q. Let's take a minute and let you find it because I do have a couple questions about the preliminary audit report. I'm looking at the Staff Report of the Construction Audit, slash, Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant in Case No. ER-2009 and I'm looking at

the 0090 version.

A. Yes, I have a copy.

Q. And just to make our record clear, as I understand it, there were -- there were -- they were filed in both cases. Right?

A. Yes.

Q. The findings are, fair to say, substantively the same?

A. Yes.

Q. Maybe some minor differences?

A. In amounts.

Q. In amounts. Right?

A. Yes.

Q. Okay. Now, in preparing the -- and let me make sure I understand now. The Staff report of the construction audit of Iatan 1 filed on December 31st, 2009 was related to Iatan 1 only. Right?

A. Iatan 1 and common plant.

Q. Okay. And when you did this report, you had a significant number of documents in order to prepare this report?

A. What are you referring to?

Q. Well, had you done a significant amount of work in preparing the December 31st, 2009 report?

A. Yes.
Q. All right. You followed the Commission's directive, right, to work on that expeditiously and immediately?
A. I don't know if that's the terms they used.
Q. I'm paraphrasing.
A. I don't know if that is -- that they referred to any terms to work on it expeditiously. But in any way, we did work on it expeditiously, but I don't believe the Commission order said that.
Q. When the Commission ordered the Staff to prepare a preliminary audit, did you delay in any way in starting to work on the preliminary audit?
A. No. Absolutely not.
Q. All right. And were you, in fact, able to produce a preliminary audit on December 31st, 2009?
A. Yes.
Q. And was that audit in compliance with the Generally Accepted Accounting Standards?
A. Again, as a CPA, if I'm working on an audit, I comply with Generally Accepted Auditing Standards.
Q. And you did that --
A. Yes.

Q. -- in preparing this audit?

A. This one and the current one, yes.

Q. Gotcha. So this audit contains sufficient evidentiary support within the meaning of GAAS for all of the findings in the preliminary audit. Right?

A. It would contain sufficient evidence for the findings consistent with being a -- how you termed a preliminary audit and consistent with the amount of documents and evidence that Staff was able to obtain and make a decision on. Now, with that caveat, we were not provided with the documents that we needed to decide the identification of and the amount of any cost overrun over the definitive estimate. We did not have that documentation.

Q. Gotcha. So when the Generally Accepted Auditing Standards discuss audit findings -- and I'm paraphrasing so feel free to correct me if I'm wrong -- they say that an auditor shall provide evidentiary support for his findings. Correct? Is that generally right?

A. Yes.

Q. And -- and they say that if you cannot reach conclusions, you should disclose that you could not reach a conclusion and why; is that right?

A. And I believe we did that.
Q. Okay. That was my next question. So thank you very much. Well, let's take a look at -- since you've got the preliminary audit there, you've got the 0090 version. Right?
A. Yes. And I have -- maybe not an official copy so it may not be exactly lined up with your copy.
Q. I bet we can make it work.
A. Okay.
Q. Let's -- and this may be the issue. Let's turn to page 6 and tell me if you see a list of disallowances there.
A. Yes, I do.
Q. And if you need to refer back to page 5, please do. But as I understand it, these are a list of the disallowances that were included and proposed by Staff in the preliminary audit report filed December 31st, 2009. Right?
A. Yes.
Q. And Mr. Hyneman, if we can, I'd like to do it without referring to specific dollar amounts so we don't have to go HC, but if we have to refer to dollar amounts, you let me know and we'll alert the judge. All right?
There is no disallowance in the

preliminary audit for cost overruns in excess of the control budget estimate, is there?

A. Not on this page.

Q. Where else is it? Show me which page it's on.

A. I think -- and again, I don't know where the page is, but I think there was a description that Staff was unable to find the information and it wasn't I think making adjustment at this time. Because we were going to continue and hopefully we could reach some resolution with KCPL about the regulatory plan stipulation and that it would provide the documents in accordance with that stipulation and agreement. And KCPL never provided that documentation.

So at this time we were hopeful that we would resolve that issue so we did not make a specific adjustment in this report.

Q. Okay. We're going to get to the documents thing in a minute. Let me make sure I understand your last answer because it might save me a couple questions. In the December 31st, 2009 report, you did not recommend any disallowance because of unidentified or unexplained cost overruns above the definitive estimate; is that right?

A. Again, in the preliminary nature of the

report, we did not assign a dollar value. The Staff was hoping that this issue about KCPL complying and providing documents that identify and describe any cost overrun of over the definitive estimate, that we would get that information.

Q. Sure.

A. So we decided at that time not to make the specific dollar adjustment. And that was -- only came when we were forced to in the November report that we just -- we had to make the adjustment.

Q. Who forced you?

A. Well, nobody forced -- it was --

Q. I'm sorry. I thought you said somebody forced you.

A. I'm sorry. It was a bad term. We were forced into the situation by KCPL.

Q. I see.

A. Yes.

Q. All right. Well, we're going to get to that a little later. Right now I just want to talk about what happened December 31st, 2009. I think you said a minute ago you weren't able to identify a specific number for the cost overruns?

A. I didn't say that.

Q. You didn't? Well, the record will be

what it will be.

All right. Let's go back to page 5 for a minute in the preliminary report. And let's look at line 3. It says, At this time Staff is proposing that approximately $60 million --

THE COURT REPORTER: I'm sorry; 60 or 16?

MR. HATFIELD: Sixty. I know it's a big number, isn't it?

BY MR. HATFIELD:

Q. Six-zero million dollars of the cost overruns be examined in conjunction with the Staff's audit of Iatan 2 overruns.

Did I read that correctly?

A. Yes.

Q. And that was Staff's position in the preliminary audit?

A. Yes.

Q. So you were able to identify that there were $60 million of cost overruns as of your filing December 31st, 2009. Right?

A. Well, with the caveat that we -- we could not identify whether any of those overruns were charged to the contingency reserve, but on the assumption that they were not in the contingency and they were cost overruns, that is the dollar amount

that we --

Q. I missed that in the report. You'll have to help me. Tell me where it talks about the contingency reserves in the preliminary audit report.

A. I can't at this time identify the location.

Q. But you believe it's in there somewhere?

A. Yes. I mean the contingency reserve has been exceeded so -- so the dollar amount above the definitive estimate, which includes the contingency reserve, is a certain dollar amount.

Now, our Staff adjustments that we made based on imprudence, inappropriate costs, unreasonable costs were made. I don't believe we can identify if each -- if any of those costs or a portion of those costs were charged to reserve contingency. But they -- they in and of themselves were determined to be inappropriate, unreasonable or imprudent.

Q. Okay. I'm just talking about the preliminary audit right now.

A. Yes.

Q. Is that what you just meant? The answer you just gave, did that relate to the preliminary audit, December 31st, 2009?

A. That's what my memory is, yes.

Q. So somewhere in here there's a discussion of the contingency and the charges to the contingency? Somewhere in the preliminary audit report. That's what you're telling the Commission?

A. I didn't make that statement.

Q. Okay.

A. You asked me if -- I said all of these adjustments listed on page 6.

Q. Yes, sir.

A. Now were any of those costs charged to the contingency? I -- I can't say if it was or was not.

Q. You'd have to see contingency logs to know that?

A. I would have to see documents that -- that -- that state whether appropriate charges should be charged to the contingency and if, in fact, they were charged to the contingency.

Q. Gotcha.

A. And if the document listed a cost overrun, you know, to show that those costs were above the definitive estimate including the contingency, then I will know that those charges were not in the contingency. That documentation was not available.

Q. I understand. Now, let's stay on page 5

for just a minute. The line 4 in the December 31st, 2009 report says, While Staff is not proposing a disallowance of the Iatan 1 AQCS cost overruns not identified or explained by the change management system, Staff cannot recommend inclusion of these amounts without justification -- without identification and corresponding examination.

Did I read that correctly?

A. Yes.

Q. So when Staff completed the audit in December 31st, 2009 -- preliminary audit, Staff was not proposing a disallowance for the cost overruns?

A. Let me reread the statement.

Q. Please do.

A. Yes. And I believe this section of the report was drafted by Mr. Schallenberg.

Q. I believe you're correct.

A. Okay. So I think he would be a better witness to address this, but I can tell what it means to me.

Q. If I need to know that, I'll let you know. Thank you very much for offering.

So Staff made a decision that it was not appropriate to recommend a disallowance in this preliminary audit report. Correct?

A. I don't see the word "not appropriate" in there.

Q. I don't either. I'm asking you.

A. No. I -- I'm not sure it would not be appropriate. We decided -- in my understanding of the adjustment, we could have made an adjustment at this time. However we, by this report alerted the KCPL and subsequent other times that we could not identify and had no description of any cost overrun above the definitive estimate. And this report notified them clearly.

And we decided that we still had time on the audit to get the documentation, to satisfy ourselves whether these costs were reasonable, prudent or excessive and then in our final audit make a determination. We weren't ready to close the door or make a dollar adjustment at this time because, as you noted, this was a preliminary audit.

Q. This is the one that was supposed to be completed December 31st. Right?

A. I -- I can't recall if this one was -- if the Commission allowed us to continue in this rate case. I can't recall at this time.

Q. All right. Okay. Let's go to page 6 now and take a look at the disallowances that were

recommended in the December 31st, 2009 report. There is a -- now, I think we're going to need to compare it to Exhibit 205-HC, which is the current -- what I call the current Staff construction audit. Exhibit 205-HC Ms. Ott has handed you up there and it's the Construction Audit and Prudence Review for the Iatan construction project for costs reported as of June 30th, 2010. Do you have that document?

A. Did she -- did she hand me a document?

Q. Well, she marked it. I don't know if she handed it to you. I'm sorry. I wasn't watching.

A. Is this the document that's in the November 3rd report?

Q. Yes. That's it. And we also handed out a little earlier -- I don't know if it's still up there. Mr. Dottheim prepared a very helpful demonstrative exhibit in the opening. It's a legal sheet like this that has disallowances.

A. Yes. And I have that document somewhere in this report.

Q. You know, that's the easiest thing to do. What I want to do is I want to compare the disallowances in the preliminary audit to the disallowances in the November 3rd audit. So if you can get the charts that we need to do that, that would

be great.

A. To the November report, do you have a reference on what page that's on?

Q. Be Schedule 1-1 and 1-2 are probably the easiest ones to refer to.

A. Okay. I have those.

Q. Okay. Cool.

MS. OTT: Your Schedule 1 is Mr. Schallenberg's case history.

BY MR. HATFIELD:

Q. Do you have a list of the proposed disallowances for the Construction Audit and Prudence Review that was filed by the Staff on November 3rd, 2010?

A. Yes.

Q. Okay. So in the preliminary audit, we talked about the unidentified/unexplained. I'm just going to tell you the second largest one after that in the final audit is the Alstom settlements. Would you agree?

A. For unit 1?

Q. Yes, sir, for unit 1 only.

A. Yes.

Q. All right. So on the Alstom settlements, where are those in the preliminary audit report that

was filed December 31?

A. Would be number six.

Q. Number six. And there's a number there on number six. Correct?

A. Yes.

Q. And again, I don't want to say the numbers so we can stay out of HC. In the November 3rd report, that number doubles, doesn't it?

A. Well, it's a separate adjustment. The number does not double.

Q. Okay.

A. It's a completely separate adjustment in the November report.

Q. Good clarification. So number six in the preliminary audit report matches which one on the November 3rd report?

A. The document I have doesn't have a number, but it's referred to as KCPL's July 18th, 2008 Alstom settlement, unit 1.

Q. All right. And on Mr. Dottheim's exhibit, that's labeled as Issue 41, I believe. He's got --

A. I don't have that exhibit with me.

Q. All right. So that one is on the preliminary report and it's on the final report.

Right?

A. Yes.

Q. And it went up $2 million from December 31st until now?

A. The reason --

Q. How did that happen?

A. -- for that change and -- I think it changed by 10 percent change. I don't know exactly sitting here what the reason for that change was, yes. But it did go up $2 million.

Q. That Alstom settlement adjustment, that's one you're responsible for in the report. Right?

A. Yes.

Q. Okay. Then there's another one for Alstom entitled Alstom Settlement, Forgone Liquidated Damages --

A. Yes.

Q. -- in the November 3rd report. Correct?

A. Correct.

Q. And on December 31st, 2009, you did not make a recommendation to disallow that item, did you?

A. In the preliminary report, correct.

Q. Why not?

A. Well, it's -- the decision to make that adjustment was not arrived at at that time. Further

evidence, further discussion that continued on during the audit led Staff to conclude that that would be an appropriate adjustment.

Q. Okay. So that -- that's a settlement that occurred on July 18th of 2008. Right?

A. Yes.

Q. And you looked at that settlement in your December 31st, 2009 preliminary audit. Correct?

A. Yes.

Q. You had all the settlement documents you needed to make an adjustment related to the settlement?

A. No, we did not.

Q. Okay. So in the December 31st, 2009 report when you recommended to this Commission they disallow a number, you did not have sufficient documents to make that recommendation?

A. Well, we had sufficient documents to make the recommendation to the Commission. We did not have sufficient documents to -- to understand each and every component of why KCPL arrived at that settlement. And Mr. Roberts sat here and explained to the Commission the reasons and the communication with Jonathan Marks, the mediator, all these reasons why it entered into the settlement.

And the Staff in its -- in its attempt to obtain that information was told it could not under the privilege of mediator/client privilege. So we -- we sought access on numerous occasions to get documents to describe the reasons for the settlement and to get an understanding of it. We were prohibited from that. Yet Mr. Roberts in this hearing was able to go on and on about that evidence that Staff never had access to.

So did we have all the evidence we wanted to gain an understanding of the adjustment? No. Did we have the evidence that we determined were appropriate to make the adjustment? Yes.

Q. Okay. You had enough evidence to say disallow some of it at the time?

A. I think that was a total settlement, was that number?

Q. So did you obtain -- I think you're saying you did not obtain any additional evidence after that. Is that what you're saying? KCPL wouldn't give you any additional evidence about it?

A. KCPL refused to give us any documentation related to how that settlement number was arrived at between KCPL and Alstom.

Q. Okay.

A. Yes.
Q. So did you obtain additional evidence after December 31st, 2009 related to the Alstom settlement?
A. Are you -- are you talking about the Alstom settlement adjustment or the liquidated damages?
Q. I'm -- are there two different settlements?
A. There are two different adjustments.
Q. I know there are two different adjustments.
A. Which adjustment are you referring to?
Q. All right. Let's try it this way. Since you brought up the refusal, are you aware of whether Judge Stearley has reviewed -- well, let me ask this way: You asked for documents communicating with Mr. Marks. Correct?
A. Correct.
Q. And you asked for those about three weeks ago; is that fair?
A. I -- I think we've asked on two or three occasions going back a period of months and were refused that data each and every time.
Q. Okay. That's fair. And was that dispute

taken to Judge Stearley?

A. I don't recall.

Q. Okay. So it's not important for you to know that?

A. No, it's very important.

Q. Okay.

A. However, we had numerous disputes with KCPL on data and I didn't have time to track down and follow through on each -- I had to conduct the audit. And the discovery issues were handled by our general counsel's office. I know it was referred to, it was a significant problem, having data not available to make an audit conclusion. All the information available.

Our general counsel's office handled that issue and KCPL and Judge Stearley. And -- and -- and I can't recall if that determination has been made yet. But I do know that Mr. Roberts had no reservations about discussing that information to the Commission in this case.

Q. All right. I agree with you wholeheartedly. Thanks for volunteering that for us.

Okay. So you said there were significant problems related to production of documents and we talked about that in your deposition. Right?

A. I don't recall if we did.

Q. Well, those are all related to attorney/client privilege assertions, aren't they?
A. I think they're related to attorney/client, mediation and even auditor/client.
Q. Privilege?
A. Yes.
Q. All right. And you are aware that at least some of those issues are being dealt with or have been dealt with in a process where Judge Stearley is serving as a special master; is that right?
A. Yes.
Q. And you're aware that Judge Stearley has upheld the privilege in the vast majority of those cases, hasn't he?
A. Do you want my opinion on that?
Q. I want you to know -- whether you're aware that he's upheld the privilege?
A. I believe he has upheld the privilege on a substantial number of documents.
Q. And -- and I guess you're getting ready to offer me an opinion on whether you think that was the right thing for him to do? Is that what you're getting ready to do?
A. I'm going to say I think Judge Stearley acted properly --

Q. Oh, good.

A. -- when he was referring to a document between an attorney and a client. The problem is, a lot of that documents were from Schiff Hardin. Technically he -- Mr. Roberts is an attorney, but he was very involved in the development of contingency, the project controls, a lot of the information that Staff needed to perform the audit. And it was very difficult because he's an attorney he could use the privilege.

And -- and Judge Stearley and I'm not -- I'm not an attorney, don't want to even get into the area, but he -- he acted on that -- that information. Was Mr. Roberts an attorney? Was this a communication between KCPL and Mr. Roberts? I believe that's how Judge Stearley approached it.

Q. You're not an attorney?

A. No, I'm not.

Q. All right. You're not offering an opinion on whether the invocation of attorney/client privilege was proper?

A. No.

Q. All right. You're not offering an opinion on whether the invocation of mediator privilege was proper?

A. No.

Q. All right. Okay. I'm trying to remember where we were. So at any rate, the December 31st, 2009 audit of Iatan 1 did not include a disallowance related to foregone liquidated damages on Alstom. Right?

A. Correct.

Q. The -- there are some adjustments related to Schiff Hardin which you've just mentioned. Correct?

A. Correct.

Q. And between December 31st, 2009 and the final audit report, those dollar amounts went down, didn't they?

A. Let's see. One adjustment, number four, was slightly down --

Q. Okay.

A. -- on the work scope adjustment. The expense adjustment was increased. So I would say --

Q. Wait. Stop at work scope adjustment for a minute. What did you say about that one? Actually I don't see that.

A. No, that --

Q. So you recommended a work scope adjustment in December of 2009, but you're not

recommending that any longer?

A. I believe in the updated report it didn't have a specific work scope adjustment.

Q. Okay. So no work scope adjustment now?

A. In this current case, yes.

Q. Okay. In December 31st you thought there should be a work scope adjustment of approximately $400,000, but you've changed your mind?

A. I didn't change my mind.

Q. Okay.

A. When you're approaching an audit and this --

Q. That's okay. Let's move on to the other one. So what's the next one then? The -- there's a -- I only see -- oh, out-of-pocket expense adjustment, number three?

A. For expense adjustment, correct. That one increased.

Q. That one increased. So is that because there were expenses charged to Iatan 1 after the period when you completed the audit? Is that what happened?

A. I would assume that's correct, yes.

Q. Okay. What else?

A. Do you have a question?

Q. Well, was there a legal services rate adjustment in the December 31st, 2001 --

A. I think the terminology --

Q. -- or 2009?

A. -- used in the November report was different than the terminology used -- and I've got to go back to December '09. The December '09 report may be more -- adjustment was comprehensive, and they were broken out separately in the November report. I think that is what it indicates.

Q. Gotcha. All right. So the November -- I'm sorry. The December 31st, 2009 audit of Iatan 1 had no adjustment for Pullman, P-u-l-l-m-a-n. Correct?

A. Correct.

Q. Had no adjustment related to Cushman. Correct?

A. I don't see a Cushman adjustment.

Q. Had no adjustment related to KCC Staff audits. Correct?

A. I don't see that on this page.

Q. Okay. So from December 31st, 2009 until this current audit that was filed November 3rd, the Staff adjustments have, fair to say, doubled? Disallowance have doubled for Iatan 1 in total?

A. I -- are you including the disallowance for the unexplained unidentified costs?

Q. Well, I'm just looking at your total. I'm on page 6 of the preliminary audit report. Total proposed adjustments and there's a number there. Do you see it? Please don't say it out loud.

A. On page 6, yes.

Q. And I'm suggesting that when you compare that to the current proposed adjustments for Iatan 1, the current proposed adjustments are double the amount found for Iatan 1 in the December 31st, 2009 audit?

A. Yes. And I think substantially all of that increase was related to two adjustments.

Q. And those two adjustments are the unidentified and unexplained cost overruns?

A. Correct.

Q. And the Alstom foregone liquidated damages?

A. Correct.

Q. Okay. Between December 31st, 2009 when Staff filed its preliminary audit, Kansas City -- and now, Kansas City Power and Light has not changed its cost control system, has it?

A. I do not know.

Q. Okay. You're not testifying that any --

so that's -- that's good. That helps us. That saves some questions. You're not here to tell the Commission that after you did the audit that you filed December 31st, 2009, they changed the way they were tracking costs?

A. I know they did not change their cost control document.

Q. That's what I'm asking.

A. Yes. I don't believe there are any changes to that.

Q. Okay. Now, let me just ask you a couple of questions about the -- the Alstom disallowance in the preliminary audit. It's -- it's a round number. Right?

A. Yes.

Q. And that's not the exact amount that was paid to Alstom, is it?

A. No, it is not.

Q. Okay. Okay. Let's talk just a little bit about your involvement with this audit then that we're talking about in this particular case. Now, prior to becoming involved, as we discussed, in auditing the construction on this project, you had never read other construction audits, had you?

A. I believe I have.

Q. Did you tell me in your deposition that you'd never read another construction audit before you became involved?

A. I've read testimony of Mr. Elliott and Mr. Featherstone that includes sections related to I think the Hawthorn 5 review, maybe an Empire review.

Q. I might have asked a bad question. I'm saying prior to becoming involved in this. Before you became involved in this case, had you ever read construction audits?

A. I really can't recall if I have prior or not.

Q. All right. Did you tell me before that you had not read an audit?

A. I may have. And I can't recall so maybe that's --

Q. Okay. But you're not aware of any national guidance on how to conduct a construction audit. Right?

A. I don't believe there exists such a document.

Q. And so similarly when I asked you if there were any authoritative sources on how to conduct a construction audit, you said you weren't aware of any. Right?

A. Yes. And I've researched the topic and I think there do not exist any nationally accepted authoritative standards on construction audits.

Q. Okay. So you don't know if the construction audit that you were involved in and you sponsor is conducted in a way similar to the way others conduct construction audits. Right?

A. Yes.

Q. Yes, you -- I asked a double negative. I hate when I do that. So do you know whether the way you conducted your construction audit is the same way others conduct construction audits?

A. It's the same way others conduct audits. I haven't seen an audit report of another construction audit that -- and matched that up with ours to see if it's similar.

Q. I'm sorry. I don't mean to be difficult. If you haven't seen any others, how do you know it's the same way others do it?

A. I didn't say I've never seen any others.

Q. Okay. You don't know if you rely on the same things other experts rely on in reaching the conclusions in a construction audit report. Right?

A. Could you be more specific?

Q. I don't think I can.

A. Can you repeat the question?
Q. You don't know whether you relied on the same evidence that other experts rely on when they reach their conclusions in construction audits?
MS. OTT: Objection, speculation.
JUDGE PRIDGIN: Overrule. I'll let him answer if he knows. If he doesn't know, he can say so.
THE WITNESS: I believe I do. I mean we try to get as much evidence as we can to formulate our opinions. And we -- we've gotten evidence we believe form the basis of our conclusions.
BY MR. HATFIELD:
Q. Have you previously told me that you don't know whether you rely on the same evidence that others rely on when they conduct construction audits?
A. I don't know specifically if I do, but I believe in general terms, I would.
Q. So don't know if you -- specifically if you do rely on the same things?
A. Right.
Q. All right. Similarly on a -- on a -- similarly on a prudence review, you don't know what other experts rely on when they do a prudence review, do you?

A. I have read the testimony of Dr. Nielsen and I understand what he relies on.

Q. And does he rely on the same data and evidence you rely on?

A. No.

Q. And is that the only -- the only other prudence review you've looked at?

A. Yes.

Q. So other than Dr. Nielsen, you don't know whether, in reaching your conclusions on prudence, you're relying on the same data and evidence that other experts would rely upon in reaching their conclusions on prudence?

A. Specifically, no. In general terms, I believe I would, but specifically, no.

Q. Okay. Gotcha. Now, I think we -- I think you may have covered this just a minute ago, but just to be clear, you're not aware of any -- any authoritative sources on how to conduct a construction audit. Right?

A. I do not believe they exist.

Q. All right. So then why in the construction audit did you cite to -- does the Staff cite to a source on construction audits?

A. Can you refer to -- me to that cite?

Q. I can and I will. On page 12, the bottom -- the bottom of the page if our pagination is the same in the --

A. And I believe I don't have a copy of that specific report. I have the schedule -- you're talking about the November?

Q. Yes, sir. The November 3rd.

MR. HATFIELD: Could we just give him that?

THE WITNESS: Yes.

BY MR. HATFIELD:

Q. So now in the audit that you've sponsored with your testimony, there's a reference to The Construction Audit Guide: Overview Monitoring Auditing by Denise Cicchella; is that correct?

A. Yes.

Q. And so that's not an authoritative source on how to conduct a construction audit, is it?

A. This section on risk assessment is sponsored by Mr. Schallenberg.

Q. I know.

A. And I believe he could address that further, but I don't believe this is an authoritative source --

Q. Gotcha.

A. -- on how to do a construction audit.
Q. Gotcha.
A. And when I speak of authoritative source, I mean like some generally accepted principles or guidelines.
Q. Now, did you quote from this book at all in your testimony --
A. I don't believe --
Q. -- in your sections?
A. I don't believe I did.
Q. Okay. Let me ask you about that source that's quoted in the -- in the testimony.
MR. HATFIELD: Can I approach the witness, Judge?
JUDGE PRIDGIN: You may.
BY MR. HATFIELD:
Q. I'm handing you a book that says Construction Audit Guide: Overview Monitoring and Auditing, Denise Cicchella, CIA, CFE. Have you seen that before?
A. Yes.
Q. And where have you seen it?
A. I obtained a review of that. Mr. Schallenberg owns a copy of this book.
Q. So you've seen this one before. Correct?

A. Yes. Yes.

Q. Did you review the qualifications of the author of this book?

A. I may have. I can't recall.

Q. Can you just READ the About the Author section from that book for the record?

A. Yes. Denise --

MR. HATFIELD: It's not terribly long, Judge.

THE WITNESS: All three paragraphs?

BY MR. HATFIELD:

Q. If you don't mind. Thank you.

A. Okay. About the Author: Denise Cicchella, CIA, CFE, NESD securities representative, is a senior auditor for MetLife and has responsibilities for audits and investigations related to mergers and acquisitions, records management, facilities and services and construction.

She has been employed by MetLife for over five years in the field of -- in the field investigation unit of auditing. Denise has worked in the financial services industry for over 15 years. She has experience in commercial and residential lending, REIT portfolios and syndicated loans, among others. She has friends and families who have been

involved with construction and her early exposure and experience helped her develop the knowledge she shares in this handbook.

Please note that names, amounts, locations and other specifics given in this handbook may have been altered to protect the confidentiality of the companies' vendors and other interested parties.

Q. Thank you.

MR. HATFIELD: Judge, I'm getting ready to move to a slightly different line of questioning. Just alert you to that in light of the time.

JUDGE PRIDGIN: I understand. I'm assuming you still have quite a bit of --

MR. HATFIELD: I do, sir.

JUDGE PRIDGIN: All right. This looks to be then a pretty convenient time to break for lunch and let me --

COMMISSIONER KENNEY: Can I ask a quick question?

JUDGE PRIDGIN: Commissioner Kenney, yes, sir.

COMMISSIONER KENNEY: The document Mr. Hatfield was just having the witness read, what -- what is that?

MR. HATFIELD: I'll let you do it, Judge, since you've got a mic.

JUDGE PRIDGIN: Commissioner Kenney, it is a booklet entitled Construction Audit Guide: Overview Monitoring and Auditing.

COMMISSIONER KENNEY: Is it evidence?

JUDGE PRIDGIN: It has not been offered. Not yet.

COMMISSIONER KENNEY: Okay. All right. Thank you.

JUDGE PRIDGIN: You're welcome. All right. I do want to continue to work with the parties on scheduling to make sure that we've got witnesses coming and going and we can keep going. So can we do that off the record?

MS. OTT: Yes.

JUDGE PRIDGIN: All right. If there's nothing else from counsel, we will adjourn for lunch. We will resume at 1:15. We're off the record.

(A recess was taken.)

JUDGE PRIDGIN: All right. We are back on the record. I believe Mr. Hyneman was still undergoing cross-examination from Kansas City Power and Light. Is there anything from counsel before he resumes?

MR. STEINER: Judge, you had indicated about next witnesses.

JUDGE PRIDGIN: Yes. Is it -- I'm sorry. Go ahead.

MR. STEINER: We had been anticipating having a short break to talk about some settlement offers that were floating around. And I think if we get done with this issue today, that might be a good time to stop and have that meeting with the parties.

JUDGE PRIDGIN: So what I'm hearing is assuming we get done with Mr. Hyneman and Mr. Schallenberg today, that would be a good time for you to talk?

MR. STEINER: That's what I'm proposing, that's correct.

JUDGE PRIDGIN: And I think Mr. Mills had mentioned earlier about maybe you -- parties meeting some time in the morning. And while I was thinking, I thought the same thing you proposed, Mr. Steiner. If we get done today, is today as good or better time to do that?

MR. MILLS: Yes.

JUDGE PRIDGIN: So perhaps with the understanding that that would be time well spent -- and I don't know how long examination will take, but

how about if Mister -- if Mr. Hyneman and Schallenberg are finished today, we'll talk, but I mean, I see no problem, especially if the parties consent that, you know, knocking off for the day and giving you time to talk. And if you need additional time in the morning, I'd listen to that as well.

MR. STEINER: Right. I think Mr. Gorman has to go up so we probably would start him at 8:30 tomorrow on the ROE issue. But we could certainly talk after that as well.

JUDGE PRIDGIN: Certainly. Then let's just leave it with the understanding that more than likely if we finish Mr. Schallenberg, Mr. Hyneman today, that that would be the end of evidence today.

MR. STEINER: That's fine.

JUDGE PRIDGIN: Anything further before Mr. Hatfield continues? All right. Mr. Hyneman, you are still under oath, sir.

THE WITNESS: Yes.

JUDGE PRIDGIN: Mr. Hatfield, when you're ready, sir.

MR. HATFIELD: Thank you, Judge.

BY MR. HATFIELD:

Q. Mr. Hyneman, when we started this proceeding it seems like a long time ago now, I think

Mr. Featherstone was one of the first to join us. And I believe he said, kind of paraphrasing, that sometimes when you do a construction audit, you don't even know what the budget is. Do you agree with that?

A. No. I have no reason to agree with that.

Q. Okay. So is the budget important when you're doing a construction audit?

A. Yes.

Q. And so when Mr. Drabinski said that he doesn't think the definitive estimate or the control budget estimate should be a starting point for any deductions, do you agree with that?

A. I would say the starting point for deduction is the actual cost incurred. That's the -- that's what you start and then you compare the budget. And then you determine cost overruns. And once you determine cost overruns, then you make evaluations whether the costs were appropriate.

Q. And are you saying that's generally how you should conduct a construction audit?

A. Simplified, you look at everything. You look at all costs, whether costs to -- charged to the direct cost of construction, procurement, indirects. You look at costs charged to contingencies and you look at cost overruns.

Q. Okay.
A. But the budget is critical in determining cost overruns.
Q. So then is the budget critical information in order for an auditor to perform a construction audit?
A. It's critical for an audit -- auditor to determine cost overruns over a budget, yes.
Q. Right. I mean you can't have an overrun unless you know what it's an overrun to --
A. Correct.
Q. -- that's what you're saying?
A. Yes.
Q. So if you're trying to determine what's an overrun, you got to have a budget?
A. Yes.
Q. You got to know which budget you're working from?
A. Yes.
Q. Do you agree that construction projects -- a given construction project could sometimes have more than one budget?
A. I know that KCPL has several updates to their budget.
Q. And I think you told me that it is not

your opinion that reforecasting the budget was imprudent. Right?

A. That's correct.

Q. Okay. Nothing inherently wrong with setting a different budget?

A. No.

Q. All right. Now, when Mr. Drabinski said he doesn't believe there is a relationship between cost estimates and budgets as to whether the costs were prudently incurred, do you agree with that?

A. I don't know what he was referring to as far as cost estimates.

Q. All right. Well, let me just ask it this way: Do you agree that a cost could be imprudently incurred even though it was within the budget?

A. Yes.

Q. And do you agree that a cost could be prudently incurred even though it exceeds a budget?

A. Yes.

Q. All right. Just a couple more questions about Mr. Drabinski. Now, as I understand it, you attended Kansas Corporation Commission hearings; is that correct?

A. Yes.

Q. And Mr. Dottheim attended as well?

A. Yes.
Q. And you met Mr. Drabinski there in Topeka, Kansas; is that correct?
A. Yes.
Q. Had you met him before that?
A. No.
Q. And you went to lunch with him during those hearings a couple of times at the Cracker Barrel; is that right?
A. My recollection is one. Mr. Dottheim's recollection is two. So I would defer to his and say it is likely there were two.
Q. He has a good memory.
A. Yes, he does.
Q. I will admit that. How many days were you in Topeka, Kansas?
A. I believe it was six.
Q. Didn't go to lunch with Kansas City Power and Light Staff. Right?
A. Was not invited.
Q. Were you invited by Mr. Drabinski?
A. I think so.
Q. So Mr. Drabinski approached you; is that right?
A. We talked in the hearing room and we were

talking one day and it could have been he that suggested we eat or me to go out for lunch. There's a restaurant right near the Commission building and we were both going to go there so we said, Let's go to lunch.

Q. Okay. Let me ask you a different way then now that you've clarified that. Did you suggest to any of the Kansas City Power and Light personnel that they go to lunch with you?

A. No.

Q. Did you go to lunch with Mr. Nielsen?

A. I don't -- I had a brief discussion with Mr. Nielsen later on in the week, but no.

Q. Okay. Did anybody -- did either you or Dr. Nielsen suggest that you should go to lunch?

A. No.

Q. Did you have lunch with anybody on the KCC Staff?

A. No.

Q. Did either you or KCC Staff suggest that you have lunch?

A. I don't know if the attorney for Mr. Drabinski was present when we discussed lunch, if he was there and he couldn't make it. That could have happened. I just don't recall.

Q. And the -- so you -- when you had lunch with Mr. Drabinski, the point of that was -- I'm sorry, not the point. One of the things that was discussed at that lunch was whether the Missouri Staff would like to hire Mr. Drabinski. Correct?

A. Not that I recall.

Q. Did you tell me in your deposition that that was one of the topics of discussion?

A. I don't believe so.

Q. We'll come back to that in a minute. After you left Topeka, Mr. Drabinski sent you an e-mail. Correct?

A. Yes.

Q. And that was because he was interested in having the Staff of the Missouri PSC hire him. Correct?

A. I think he asked if there were any discussions about whether the Commission was going to retain him or not. I think that's my recollection of the e-mail.

Q. Did he -- did he e-mail you directly then?

A. Yes.

Q. And in that e-mail he said, Has a decision been made on my testifying in Missouri.

Correct? That's what he said?

A. To that effect. I trust that's correct reading of it, yes.

Q. Would it refresh your recollection if I were to show you a document that contains his e-mail?

A. That -- I believe that's what he said.

Q. Okay. And did he also say, What is your time frame for testimony and hearings?

A. Again, I'm going to have to look at the e-mail to refresh my memory of that.

Q. Yeah, that's fine. Why don't you just go ahead and read what he said. It's very short. Just read what Mr. Drabinski wrote to you in that e-mail.

MR. SCHWARZ: I'm going to object. I don't understand either the relevance nor the materiality of this line of questions which may just reflect a limitation on my understanding, but I'd still like it explained.

JUDGE PRIDGIN: Mr. Hatfield?

MR. HATFIELD: I think it goes to the credibility of Mr. Drabinski's testimony, among other things, but it also goes to the issue of expert testimony. The Staff has actually recommended disallowances based, in part, on Mr. Drabinski's testimony and it's on the disallowance list.

JUDGE PRIDGIN: I'll overrule.

BY MR. HATFIELD:

Q. Just read for us what Mr. Drabinski e-mailed to you. Can you give us the date, just --

A. Yes. The date was Tuesday, September 7th, 2010. It says, Chuck, it was great meeting you at the Kansas hearing. I was glad to be off the stand to get home after two-plus weeks in Topeka. Has a decision been made on my testifying in Missouri? What is your time frame for testimony in hearings? I have to take some vacation this winter and need to set dates soon. Feel free to call. Walt Drabinski.

Q. And you responded to that e-mail; is that correct?

A. Yes.

Q. And on what date did you respond?

A. The following day, September 8th.

Q. And what was your response, please?

A. Says, Walt, it was great to meet you in Topeka. I thought you did a great job. Have you not -- have not heard any discussions and do not think any consideration has been made of going out -- going outside on Iatan 2. It is still a possibility though and I will let you know if and when I find something

out. Good luck on your current and future engagements and I hope we meet again.

Q. Thank you. Let me get that back from you.

Now, in the Construction Audit and Prudence Review that you sponsor in this case, the November 3rd Construction Audit and Prudence Review, you don't draw a distinction between the portion of the document that is the construction audit and the portion that's the prudence review -- prudence review, do you?

A. No.

Q. And you've said that it's really not possible to separate out what was construction audit and what was prudence review?

A. Yes.

Q. And do you agree with Mr. Drabinski that a prudence review is not a performance audit within the meaning of Generally Accepted Accounting Standards?

A. Yes.

Q. Do you agree that what Dr. Nielsen conducted was a prudence review?

A. No.

Q. Did you in your deposition agree that

what Dr. Nielsen conducted was a prudence review?

A. I may have. And subsequently, I've read more closely the GAGAS standards and where he certified that he performed his audit under GAGAS which doesn't have the word "prudence" in the whole GAGAS statement. So there is no prudence statement under GAGAS so I don't know how he could have completed one under GAGAS.

Q. Let me ask you about that then. So you agree that you told me in your deposition that you thought what he did was a prudence review?

A. Yes.

Q. And so you're saying that after you told me that like December of this year -- or last year --

A. Yes.

Q. -- December of '10, after you told me that, you went and looked at the GAGAS standards?

A. It was -- yes, sometime recently I took the time to look over GAGAS. And I think maybe in a review of Dr. Nielsen's testimony --

Q. Okay.

A. -- just to see some points. And came to the conclusion that GAGAS doesn't address prudence audits.

Q. Okay. And GAGAS again is the

government --

A. Generally Accepted Government --

Q. -- Generally Accepted Government --

A. I believe the title is Governmental Auditing Standards.

Q. Auditing Standards?

A. Yes.

Q. Generally Accepted Government Auditing Standards?

A. I believe that's correct.

Q. And you had not looked at those before the deposition in December of 2009 [sic]. Right?

A. Not very closely, no.

Q. Didn't -- didn't think it was important to look at GAGAS standards as to what they said about prudence reviews?

A. First of all, GAGAS statements apply only to government entities, which KCPL is not, or entities that are receiving government funds, which KCPL does not. So GAGAS technically doesn't apply to an audit of KCPL. And if you can -- I think there's another part of that.

Q. Actually that -- that's more than I asked.

A. Okay.

Q. So thank you very much. Okay. All right. Let me ask you about now -- when we started the proceeding, there were some opening statements. And Mr. Schwarz I think told the Commission that there were some red herrings in this case. Did you happen to hear Mr. Schwarz's opening statement?

A. No.

Q. All right. Let me just put -- let me ask you this way then. Do you agree that the issue of fast tracking is a red herring in this case?

A. Define "red herring."

Q. Oh, good. Yeah. I was going to do that. Why don't you tell me? When somebody says the word "red herring," what do you think that means?

A. That it's something to distract, not important. Just a distraction, something that's not substantive.

Q. Yeah, I agree. That's the way I meant to use the term. Thank you.

A. Okay.

Q. So do you agree the issue of fast tracking is something that's meant to distract and is not important?

A. No.

Q. Okay. So you think it is, in fact,

important?

A. Yes.

Q. So in your -- the audit that you sponsor, do you discuss the issue of fast tracking?

A. I believe Mr. Schallenberg does, yes.

Q. You don't discuss the issue of fast tracking?

A. I may have. I don't recall sitting here right now.

Q. All right. Well, let's look at page -- I have 38, but that's wrong. Hold on. If you find it before I do, let me know.

MS. OTT: What document are you in?

MR. HATFIELD: The Construction Audit and Prudence Review of November 3rd.

BY MR. HATFIELD:

Q. Let's look at page 24 --

A. Okay.

Q. -- line 26.

A. Starting with, Thus, by --

Q. Yes, sir.

A. Yes.

Q. So the audit report says, Thus, by November 1st, 2006, all the conditions were in place for the Iatan project to experience cost overruns as

by this date, the Iatan project was being fast tracked, end quotes, to meet KCPL's experimental alternative regulatory plan Iatan project completion date of June 1st, 2010. Right?

A. Yes.

Q. Tell me which disallowance is as a result of the decision to fast track.

A. I think it -- it's -- provides part of the evidence for several adjustments. And it could be part of the basis, the supporting evidence for the Alstom settlements. And I'd have to go through the list, but the fast track decision -- I think Ernst & Young --

Q. Well, let's do it because that's my question.

A. Okay.

Q. Which ones are -- which disallowances do you recommend as a result of fast tracking?

A. And I could start -- part of the unidentified/unexplained disallowance, it could be a substantial portion of that.

Q. And I'm not interested in could be. I'm interested in from you as the sponsor of the audit, which disallowances are you making because Kansas City Power and Light made the decision to fast track?

A. Okay. But I want to be clear. The unidentified/unexplained disallowances reflect overruns that are not identified or explained. The fast tracking decision that KCPL made with an inexperienced project management team could have caused substantial cost overruns that are embedded in that adjustment.

Q. Let's stop with that one because I do want to let you finish your answer and list them all for me. But could have caused those overruns. Right?

A. Yes.

Q. Is that what you -- you don't know whether they did or not? Whether fast tracking caused those overruns or not?

A. I think that's the point of the adjustment. KCPL did not provide the data to -- for the Staff to make that assessment.

Q. Yes, sir. I'm just trying to pin down whether it's your opinion that fast tracking caused the unidentified and unexplained cost overruns. Did fast tracking cause them?

A. Fast tracking was a decision KCPL made.

Q. Yes.

A. The results of which were -- fast -- KCPL was advised by Ernst & Young that if they're going to

fast track, they need to have a highly experienced project management team in place. It is the Staff's position that KCPL did not and we provide evidence in this hearing to that effect.

Now, when you fast track a project with engineering going --following the procurement, there are a lot of problems that come up with that and cost based on a design -- an engineering design that is not at a definitive estimate level. And those costs that are incurred based on fast tracking cause -- led to cost overruns and -- and other adjustments in the Staff's filing.

Q. Okay. I'm going to try it one more time and then I'll ask the judge to ask you -- order you to answer the question one way or another.

A. Okay.

Q. Do you have an opinion that the decision to fast track is what caused the cost overruns that are listed as unidentified and unexplained?

A. My opinion is it is very likely that at least a portion of that was caused in part by fast tracking.

MR. HATFIELD: I'm sorry to do this, Judge. Can I ask the court reporter just to read it back what he answered? Is that all right?

JUDGE PRIDGIN: Certainly.

MR. HATFIELD: Thank you.

THE COURT REPORTER: "Answer: My opinion is it is very likely that at least a portion of that was caused in part by fast tracking."

BY MR. HATFIELD:

Q. Is that your only opinion related to whether fast tracking led to unidentified and unexplained cost overruns?

A. Fast tracking in part is likely a cause of a portion of those amounts.

Q. And is that your only opinion?

MS. OTT: Objection, asked and answered.

JUDGE PRIDGIN: I'll overrule.

MR. HATFIELD: Actually, Judge, I guess I'd ask you to order him -- or direct him please to answer my question as to whether he has already given us his only opinion.

JUDGE PRIDGIN: I think what he's trying to get at, Mr. Hyneman, is do you think -- well, I don't want to ask the question for him. Can you -- can you ask your question again, Mr. Hatfield?

MR. HATFIELD: Well, the question --

JUDGE PRIDGIN: I think I know the point you're trying to make. I just don't want ask your

question for you.

BY MR. HATFIELD:

Q. Yeah. The question I'm on right now, Mr. Hyneman, I just want to make sure you've had an opportunity -- if you have opinions that fast tracking had an effect on these cost overruns that you've said in your report are unidentified and unexplained, I want to give you an opportunity to share with the Commission all of your opinions about whether fast tracking led to those unidentified and unexplained cost overruns. I thought you had, but then you offered a little more so I just wanted to make sure.

A. My opinion is that it is likely that they did.

Q. Okay. Now, did you tell me in your deposition that the Staff was not recommending any disallowances as a result of the decision to fast track?

A. No adjustments were proposed solely based on KCPL's decision to fast track the construction project, the procurement. That is not a sole basis for any adjustment that I'm aware of.

Q. Okay. And you used the past tense so I just want to make sure I understand today. You're not proposing any disallowances based solely on the

decision to fast track?

A. That's correct.

Q. All right. Now, I want to make sure I let you answer the question because we took a little bit of a detour. I asked you to list for us all of the disallowances that are the result of the decision to fast track. And I think we got hung up a little on unexplained cost overruns because I interrupted you.

So are there other disallowances that you would like to identify that were the result of the decision to fast track?

A. Okay. In my answer I'll say that they -- they were not direct cause that I'm aware of. They're a part of the reasons. Whenever you have construction activity and procurements commence without design being in a definitive estimate level, which is roughly 75 to 80 percent, the fast tracking decision was made I believe based on a 25 percent engineering level. And by definition, the project wasn't designed at a high level when the procurement and the construction was taking place. So that is a part of some of the reasons that -- that could have led to the adjustments.

For example --

Q. I don't want for example. I'd like you

to list, please, the disallowances that are a result -- are made as a result of the decision to fast track.

A. Okay. In part, the Alstom settlement. Because of the design --

Q. Wait. Just go ahead and list them and then we'll come back and we can explain them.

A. The Alstom settlement for Iatan 1 and Iatan 2.

Q. Okay. The Alstom settlement for Iatan 1 is disallowed as a result of the decision to fast track?

A. I said the fast track decision --

Q. For Iatan 1?

A. -- with an inexperienced project management team is, in part, some basis of the adjustment.

Q. Okay. What else?

A. Iatan 2 settlement.

Q. Okay. And what else?

A. It could be the campus relocation for the unit 2 turbine build.

Q. Again, I'm not looking for could be.

A. Again, the fast track decision was not a direct cause. We're not directly relating that to a

specific adjustment.

Q. Gotcha.

A. The fast track decision with an inexperienced project management team caused problems with contractor performance down the line based on doing work with specifications and design that wasn't fully complete. And --

Q. And?

A. And that's -- you know, it's a part of a basis. When I made the adjustment, I didn't say I'm making this adjustment and -- because a decision was fast tracked. It was a decision by KCPL to fast track the project without an experienced project management team.

That was an underlying decision which indicates problems could be -- additional costs could be incurred down the line. And I think that's one of the accepted facts with fast tracking is you could have potential costs incurred down the line because the design is not at a level where it -- it -- the project is substantially complete before costs are incurred.

Q. You just hit it on the head, so let's go to that for just a minute. So in the disallowances, you didn't specifically list in each one that you've

identified, Alstom, you didn't say it's partially as a result of fast tracking --

A. No.

Q. -- did you?

A. No.

Q. So when the Commission ordered you to specifically identify the rationale for each and every disallowance, you followed that order. Right?

A. Yes.

Q. Okay. So in your audit report if there's not -- in the disallowance for Alstom if you didn't say we did it because of fast tracking, then that wasn't one of your reasons, was it?

A. Well, I think the section on fast tracking was written by Mr. Schallenberg and he would be more of a witness to talk about that issue. I'm saying I am aware that under fast tracking, that one of the potential risks with fast tracking a project, especially one the size of Iatan construction project, is that you have a risk of higher costs being incurred because the design is not at a level where it is -- it is substantially complete. I think that's commonly accepted.

Now, KCPL fast tracked the project to meet its June 1st date. It did not have an

experienced project management team in place and it did incur significant costs that the Staff believes were related, in part, from the decision to fast track. Now, it did not tie a specific adjustment to the fast tracking decision.

Q. I think I understand. Thank you. Now, you talked about the decision to fast track. You still got page 24 there?

A. Yes.

Q. And I think you made some reference to it. Well, you see -- you said Mr. Schallenberg wrote this section. So do you not sponsor this portion of -- are you not sponsoring the whole audit?

A. I don't know what you mean by "sponsoring the whole audit."

Q. Well, I thought your testimony filed in this case said that you were the Staff's sponsor of this audit report.

A. I am sponsoring the adjustments to KCPL's cost of service.

Q. Okay. So you're not sponsoring this section on page 24?

A. This section was written by Mr. Schallenberg. I think he could testify to the -- to the accuracy of this section.

Q. I see that. I -- identifies it by name. I guess I'm just wondering if you're sponsoring this part of the report or not?

A. This part of the report is sponsored by Mr. Schallenberg.

Q. And in what testimony filed with this Commission did Mr. Schallenberg sponsor this?

A. Well, we -- we sponsor Staff's work in reports now. Like in the Staff's rate case, we filed a report. We don't file testimony. Similar to here, we filed a report, not testimony, in our direct filing. So it's -- we made a change from filing direct testimony sponsoring adjustments to filing reports and that's what Mr. Schallenberg is sponsoring in this section in the report.

Q. Okay. I apologize for my confusion on that. Now, on line 33 there, let me just ask you about the report. Line 33 generally -- well, can you read line 33 where it says -- beginning with, Generally.

A. Through.

Q. And -- yeah, just -- just there.

A. How far?

Q. Just starting with -- just read that first sentence there starting with, Generally.

A. Generally with fast tracking, the construction project term is shorter. The ultimate goal is to complete to a tight deadline and budget issues tend to be secondary.

Q. And do you agree with that?

A. Yes.

Q. And how do you know that?

A. Well, for one example, the Hawthorn 5 construction project.

Q. No. Just --

A. That's how I know it.

Q. You know it from Hawthorn 5?

A. That's part of the reason.

Q. Okay. Great.

A. Hawthorn 5 was a fast --

Q. Let me -- let me ask you on -- we showed you before the Construction Audit Guide: Overview Monitoring and Auditing?

A. Yes.

Q. Would you just read from the sentence beginning, Generally?

MS. OTT: What page are you on?

BY MR. HATFIELD:

Q. Go ahead and let her know what page you're looking at.

A. Page 49.

Q. Would you just read sentence that begins, Generally?

A. Generally the construction project term is shorter. The ultimate goal is to complete a tight deadline and budget issues tend to be secondary.

Q. Thank you. Now, would you read here the primary benefits in the section I've highlighted down to the -- where it says, Made.

A. The primary benefits of fast tracking are reducing planning lead times and allowing parallel execution of tasks. Fast track projects are harder to monitor and plan and may result in errors when incorrect assumptions are made.

Q. Now, would you turn to the Staff report, page 24, line 35 and pick up the sentence that begins, The primary benefits of fast tracking and read that, please.

A. Can I read that for just a second?

Q. No.

A. I want to get a understanding of this sentence. Is that --

Q. Right now I just need you to read from the audit. Then we'll go back and read another sentence.

A. Okay.
Q. Read from the audit report, please, page 24, line 35, The primary benefits.
A. The primary benefits of fast tracking are; one, reduce planning lead times; and two, parallel execution of tasks.
Q. Okay. So you'll agree that the wording in this book is identical to the wording in Staff's report. Correct?
A. No.
Q. Okay.
A. They're not identical.
Q. All right. Thank you. Yeah. Can you go ahead and just keep reading where -- in the Staff report there, Fast tracked projects. Keep reading.
A. Fast track projects are harder to oversee and plan and may result in errors when incorrect assumptions about engineering design are made.
Q. Now, will you read this sentence that begins, Fast track projects.
A. Fast track projects are harder to monitor and plan and may result in errors when incorrect assumptions are made.
Q. All right. So is it fair to say that that discussion of fast tracking and the benefits,

et cetera come from the construction and audit guide that we referred to earlier?

A. Well, the audit says that fast track projects are harder to oversee and that says monitor. They're -- I mean overseeing and monitoring I don't think are synonomous.

Q. Completely different words.

A. I don't think they're completely different, but they're not synonomous.

Q. All right. Would you agree that the concept there comes pretty closely from the construction audit guide that we read earlier?

A. The concept, yes.

Q. And at least major phrases out of that are identical to what appear in this book?

A. I would say so, yes.

Q. All right. Now, you said a couple of times in discussing the fast track decision that Kansas City Power and Light made the decision to fast track without an experienced management team. Correct?

A. Experienced project management team, correct.

Q. And you did not ask Mr. Elliott, the Staff engineer, for an opinion on whether this was an

experienced management team, did you?

A. Staff relied on the expertise of KCPL's auditor, Ernst & Young, in part, to make that decision and did its own discovery in that matter.

Q. So does that mean you did talk to the Staff's own engineer about whether the project management team was experienced?

A. I did not.

Q. Okay. In fact, you didn't talk to Mr. Elliott about this audit at all, did you?

A. Oh, yes, I did.

Q. Okay. We'll come back to that. You also made a judgment that there was not an experienced engineering team, didn't you?

A. No.

Q. Do you have your deposition in front of you?

A. I have it available.

Q. Great. Would you turn to page 227, please.

A. I'm there.

Q. Now, you were deposed in this matter on December the 9th of 2010; is that right?

A. Yes.

Q. And at that time you answered questions

for me under oath; is that right?

A. Yes.

Q. And you understood that that deposition might be used in this proceeding; is that correct?

A. Yes.

Q. And would you turn to -- I'm sorry, it's page 229.

A. I'm there.

Q. Lines 16 did I ask you, And you also say -- or you say also fast tracking demands very high quality work from the owner's engineer. Now, do you have an opinion on the quality of the engineer's work?

Did I ask you that?

A. Yes.

Q. And what was your answer?

A. The answer was yes.

Q. Okay. And your opinion on the quality of the expert of the owner's engineer was based on the findings from Ernst & Young; is that correct?

A. Supported by the finding of Alstom Power, Inc. and their issues with Burns and McDonnell, yes.

Q. Okay. When I followed up with the question and I said, I thought you told me you weren't an expert on engineering, what was your response?

A. I am not -- my response was -- you said,

Okay. So it's not -- you're not offering an expert --

Q. Before that, please, line 22.

A. My opinion is based on the findings from documents I reviewed from Ernst & Young.

Q. Okay. So let's go ahead if you think this is important. I said, Okay. So it's not -- you're not offering an expert opinion?

You said?

A. No, I didn't.

Q. And I said, On that issue. Right?

A. Yes.

Q. And you said?

A. Look at the design and say that this design is poor.

Q. Yes.

A. KCPL hired experts in construction to do that, to analyze the quality of work provided by Burns and Mac. The Burns and Mac contract audit performed by KCPL, GP internal services and Ernst & Young found major problems with the quality of work by Burns and Mac. I have no reason to disagree with that. That's evidential support.

Q. All right. Did you ask Mr. Elliott to give any input on the quality of work of the owner's engineer when you prepared this audit and made your

conclusions about fast tracking?

A. No.

Q. Why not?

A. I don't know that -- that Mr. Elliott looked at the quality of work from Burns and McDonnell.

Q. Is that the only reason you didn't ask him for input on the quality of work from the owner's engineer?

A. That -- that is my answer sitting here today.

Q. Okay.

A. If I knew he did an evaluation of the quality of work of Burns and McDonnell, I would have asked his opinion.

Q. Okay. Now, a few moments ago I was asking you about unidentified cost overruns and the comparing that to the budget. And you mentioned a definitive estimate --

A. Yes.

Q. -- do you recall that?

And I think you gave us some understanding of what a definitive estimate is. Right?

A. Yes.

Q. Now, you told me in your deposition that you consider yourself an expert on interpreting contract terms. Right?

A. Yes.

Q. All right. So when you're trying to figure out from a contract what the intent of the parties to the contract is, what's the first step you would take to figure out what words mean?

A. I would look at documentation supporting the entering into the contract.

Q. Okay. As an expert on the meaning of contract terms, as you told me in your deposition, would you look at the plain and ordinary meaning of the language in the contract?

A. Yes.

Q. And in this case in arriving at your opinions concerning whether costs exceeded the definitive estimate, did you look up the dictionary definition of the word "definitive"?

A. I may have.

Q. What did you find?

A. I can't recall.

Q. Did you look up the dictionary definition of the word "estimate"?

A. I don't think so.

Q. Okay. Would you agree that generally the ordinary meaning of the word "definitive" is containing some level -- sorry, containing a high level of precision?

A. Yes.

Q. And would you agree that one ordinary meaning of the word "estimate" is a rough guess?

A. No.

Q. Okay. Is guess synonomous with estimate?

A. I don't believe it is.

Q. All right. Why don't you give us your understanding of the plain and ordinary meaning of the word "estimate"?

A. When you're making an estimate, for example, of a budget, that estimate is based on knowledge of the components of it. You're estimating all these things and -- for a budget based on your knowledge of the cost of the work. You're estimating that the budget will be this amount.

Q. Okay.

A. Not a guess.

Q. When you estimate my weight, be fair to say you're guessing my weight, wouldn't it?

A. Well, based on observations, yes, but I --

Q. So would you agree with me that the phrase "definitive estimate" is an oxymoron? You can't have a definitive estimate?

A. No. Definitive is a qualifier to the estimate. Definitive estimate in my understanding is the highest estimate that you can have for a construction project.

Q. Okay.

A. I haven't seen anything -- definitive estimate -- I think Mr. Roberts said it's like 75 percent of the engineering complete he -- and he advised KCPL that they should not call their budget a definitive estimate. So I would say it's the highest level of a budget estimate that you could have.

Q. All right. Regardless of what the meaning is, for purposes of the regulatory plan, Staff has agreed to allow Kansas City Power and Light to substitute the control budget estimate for the definitive estimate. Correct?

A. When you say allowed to substitute --

Q. Yes.

A. -- I don't know what that means.

Q. You don't?

A. No.

Q. That's a vague and ambiguous term to you?

A. I don't know that Staff took a position that they notified KCPL we are allowing you to substitute -- and first of all, this is a regulatory plan agreement that the Staff can't arbitrarily allow KCPL. I mean it's a document I believe that's a contract among several parties. And I don't -- I'm not a lawyer, but I don't believe Staff can arbitrarily say, Okay, we'll accept your CBE as a substitute for definitive estimate. I don't believe they can do that. And I don't think that they have done that.

Q. Okay. So you don't think that Staff has allowed KCPL to substitute its control budget estimate for a definitive estimate within the meaning of the regulatory plan?

A. Well, I do know that on August 1st, 2006, that the budget was -- should have been completed. And I know it wasn't completed until substantially later than that, six months. And I know that KCPL is saying that Staff's to blame for that. But during that period of time when a definitive estimate was due and the time it was done, Staff would be of the opinion that that estimate would be a very high quality.

Q. And you can speak for Staff on that?

A. Yes.
Q. All right. Did Kansas City Power and Light ever send you any data requests?
A. Yes.
Q. How many?
A. Twenty-six.
Q. All right. Let me show you -- I don't think we need to mark it, but is this a copy of a data request that you answered in response to one of Kansas City Power and Light's 26 data requests?
A. Yes.
Q. And when did you answer this data request generally? Sometime last month maybe?
A. Yes.
Q. All right. Would you section -- and you answered this data request; is that right?
A. It was reviewed by general counsel's office and I believe Mr. Schallenberg, but I wrote the answers, yes.
Q. And these are your answers? That's all I'm trying to understand.
A. Yes.
Q. All right. Would you read -- there's a small B there sort of about a third of the way down beginning with, Identify the specific paragraph.

A. Yes.

Q. Would you read that question for us, please?

A. Identify the specific paragraph, section and verbiage that Staff relies upon in the regulatory plan that states KCPL must provide Staff with such a list.

Q. And would you read your response, please?

A. When KCPL says such a list, quote/unquote, I am making the assumption that is referring to, quote, list with an adjoining explanation of such overruns on the same sheet of paper or consecutive sheets of paper, unquote.

The regulatory plan, page 28, requires KCPL to identify and explain any cost overrun above the definitive estimate. The Staff agrees with Schiff Hardin assessment that KCPL did not create a definitive estimate. However, the Staff has agreed to rely KCPL to substitute this control budget estimate for definitive estimate for the purpose of this requirement.

Q. Okay. So when you said in this DR response, The Staff has agreed to allow KCPL to substitute its control budget estimate for a definitive estimate for the purposes of this

requirement, the "this requirement" was the regulatory plan. Right?

A. No. For the requirement to -- the Staff is calculating cost overruns. We're not saying it's a substitute for the requirement to create a definitive estimate, but we're saying that's all we have as a budget to calculate cost overruns. So we used the 1.685 number, the control budget estimate number, as the basis to calculate the Staff's unidentified and explained [sic] cost overrun adjustment.

Q. All right. Gotcha. Well, we read in the exact answer. You read it in correctly. Right?

A. I believe I did.

Q. All right. And just to make sure I understand what -- what you said a minute ago, that answer that you provided there was reviewed by Mr. Schallenberg. Correct?

A. Yes.

Q. Was reviewed by Staff counsel's office. Correct?

A. Correct.

Q. Before it was sent out --

A. Yes.

Q. -- to Kansas City Power and Light? Thank you.

Well, let's -- let just stay on that one for a minute because that was -- I had a couple of questions about that. I think we already covered this, but in response to question 3, I believe you indicated, I have not performed a construction prudence audit prior to the Iatan 1 construction prudence review and construction audit.

And that's correct, isn't it?

A. That's correct.

Q. All right. Would you turn to question 6, please.

A. Yes.

Q. Question 6 reads on page 87 of, quote, Staff's Construction Audit and Prudence Review of Iatan construction project for costs reported as of June 30th, 2010, end quote. Staff states that, quote, Staff first looked at the legal fees and para-- paralegal fees charged by two Kansas City area law firms hired by KCPL to perform legal work related to the Iatan construction projects, end quotes.

Please provide any work papers related to this statement and please identify which two firms are referenced and the type of legal work they were performing for the Iatan construction projects. Right?

A. Correct.

Q. And you did not provide any response to explain the type of legal work that the two firms were conducting for the Iatan construction projects, did you?

A. No.

Q. Some-- sometimes when a DR response comes, it just doesn't get thoroughly answered. Right?

A. Correct.

Q. And -- and in this case you did that. In good faith though you were answering the question, weren't you?

A. Yes.

Q. All right. And there were no work papers related to that review?

A. No. The invoices were work papers.

Q. You have no work papers related to your review of the Sonnenschein, Nath and Rosenthal legal fees or the Farley Law Office legal fees. Right?

A. Right.

Q. All right. Let's just stay with this document. I'm jumping around topics a little bit, but I think this will move things a little quicker.

In question 8 we had some questions about

your Schiff Hardin adjustments generally. And let me just ask you -- and if we need to, we can look at the DR responses because I want to make sure we understand where the Schiff Hardin adjustments are. You're not suggesting -- or are you, that Schiff Hardin worked too many hours on the project?

A. Yes, I am.

Q. Okay. Which disallowance is that?

A. Well, if you see in the Staff's December of 2009 report, Staff made a work -- work adjustment hours.

Q. Uh-huh.

A. In the -- in the November report, the Staff updated its adjustment, it reviewed the data and it -- I decided -- I didn't have the time and effort to go back and substantiate and bring forward that adjustment. So I made a decision that my adjustment will be restricted to legal fees, construction management fees and expense disallowances. I didn't bring forward the excess work hours adjustment.

Q. I understand. Actually that's helpful. Thank you. So today sitting here in this hearing, you have no proposal for disallowances related to the amount of time worked?

A. That's correct.

Q. Don't have any opinion on whether the amount of time Schiff Hardin spent was appropriate or not?

A. No, I do have opinion on that.

Q. Well, are all your opinions that you have to offer the Commission included in your Construction Audit and Prudence Review as the Commission ordered you to do or not?

A. It is in the December report.

Q. Yes.

A. And -- and the Staff listed adjustments sheets where Schiff Hardin was getting involved with stuff like reviewing KCPL internal audits. They were spending a lot of time reviewing Missouri law and Kansas law, which I think may be more appropriately done by a Missouri firm who has a -- probably a better understanding of Missouri law and -- or Kansas law than -- than an Illinois firm.

They -- a lot of time on documentation with a lot of work by both attorneys and paralegals and a lot of documentation and paperwork stuff that could possibly be done a lot cheaper by KCPL internal counsel staff or paralegals in the Kansas City area that charge a lot less than Schiff Hardin was charging.

So yeah, I do have substantial opinions on whether they had excess work on the project. And I don't believe that KCPL provided any oversight on the amount of work that Schiff Hardin was performing on a day-to-day basis. I think Schiff Hardin determined on their own how much work they wanted to do, what work they wanted to do and they did it and KCPL exercised no control over that work.

Q. Okay. I just want the Commission to understand this. Which one of your adjustments reduces the number of hours for which Schiff should have been paid?

A. I explained in the December report, the Staff made an adjustment. With the time constraints and the amount of work the Staff had to do, I made the decision in the November report not to make a specific adjustment based on the work hours that Schiff performed.

Q. So does that mean none of them?

A. Yes.

Q. Okay. So you do consider yourself an expert on legal fees. Correct?

A. Yes.

Q. And you do consider yourself an expert on the quality of legal work. Correct?

A. No.

Q. Okay. So you're not -- when you were talking a minute ago about how somebody else could have done the work maybe in Kansas City, same work, you weren't offering an opinion on the quality of Schiff's product?

A. No.

Q. All right. And in your Construction Audit and Prudence Review you included a rate study known as the Laffey matrix; is that right?

A. I provided the Laffey matrix as kind of a high end ceiling on what kind of legal fees would be allowed.

Q. It's a high end ceiling, $170 an hour seriously?

A. I don't know what you're referring to. I know it's the legal rates charged by attorneys in the Washington, DC area.

Q. For employment cases?

A. Well, for -- I don't know if it's restricted to employment cases or not.

Q. All right. Anyway, in your Construction Audit and Prudence Review you didn't provide any data about Missouri rates. Right?

A. Yes. In fact, when you refer to the

rates that I used on Sonnenschein and Farley Law Offices, they perform work on the Iatan 2 project. And I reviewed their invoices to see what an approximate range for legal fees for Missouri lawyers.

Q. And is that approximate range of legal fees for Missouri firms included in the Construction Audit and Prudence Review that you filed with the Commission?

A. It's embedded in the rate adjustment that I -- I -- I calculated for Schiff Hardin.

Q. Show me what page it's on.

A. It's a judgment number that's included. And I'd have to go back to the work papers, but it's a judgment number using Laffey as a high end and using local Missouri firms. I had to come up with what I believed was a reasonable rate per hour for Schiff Hardin to use considering the fact that KCPL made no attempt to get a volume discount and KCPL made no attempt that I've seen to justify the rates that Schiff Hardin was charging.

Q. Okay. I'm almost off this, I promise you, but let's go back to your DR response on page 6 -- I'm sorry, on page 2, question 6. I thought you told us that there were no work papers created from the review of legal fees charged in the Kansas

City area.

A. Well, when you refer to work papers, I'm assuming like an Excel spreadsheet, a calculation of a work paper. I provided KCPL my work papers for the Schiff Hardin calculation. They've had that for, you know, months and months. I've never heard anything that they had kind of an issue with the calculations.

Q. Okay. So when you --

A. Work papers -- I guess the invoices that I reviewed would be the work papers.

Q. All right. So when you said in response to our data request, No work papers were created from this review, you didn't quite understand "work papers" the same way I do?

A. I think I should have probably referenced the invoices as the work papers, but I was -- I thought the question was going to did I do any calculation of -- of those rates.

Q. And you did not?

A. They were used as a judgment in the calculation of the Schiff Hardin legal rates that I provided KCPL's work papers in the -- for the November report.

Q. All right. All right. Let me just talk about the way you approached the audit. In your work

on the Construction Audit and Prudence Review, you didn't talk with Mr. Elliott other than a couple of times; is that correct?

A. I don't know if it was a couple, three, five, six over a period of time. I don't have the number.

Q. Did you tell me in your deposition that you talked to Mr. Elliott, quote, a couple of times?

A. And a couple if -- I think the strict definition is two, but that could be a number; two, three, four. I'm not sure the exact number of times.

Q. Fair to say that any conversations with Mr. Elliott and now including Mr. Lange were less than a handful. Correct?

A. Now, they attended several meetings that we had. Whether I had specific discussions with them, I've had e-mails back and forth. But I think specific discussions on the project, it may be two or three that I can recall.

Q. Now, when I asked you if you had conversations with Mr. Elliott and Mr. Lange, did you respond, Less than a handful?

A. I believe that's true, yes.

Q. All right. And you didn't obtain any input from Mr. Elliott concerning your proposed

disallowances for the balance of plant work, did you?

A. I did not have a disallowance for the balance of plant work.

Q. Well, that makes sense then. So you didn't have any conversations with him because you didn't have any disallowances?

A. Correct.

Q. All right. Now, we talked a little bit earlier about the definitive estimate and you were talking about the level of engineering?

A. Yes.

Q. Did you -- you did not have any conversations with Mr. Elliott about what level of engineering was complete when the definitive estimate was arrived at, did you?

A. He may have mentioned it in a meeting that I attended to, discussed it. I don't recall specifically asking him about it.

Q. When I asked you, Did you ever ask Mr. Elliott about the level of engineering, did you answer no?

A. I think that's true, yes.

Q. All right. And we already said you did not ask Mr. Elliott to give any input on the quality of work of the owner's engineer when you prepared this

audit. Right?

A. Yes. I don't believe he did an evaluation of the quality of work of Burns and McDonnell.

Q. Now, if -- let's just make sure I understand how auditing and engineering were interaction -- interacting -- sorry, interacting. Mr. Elliott sponsored some portions of the construction audit prudence review. Right?

A. Yes.

Q. And your understanding was that if Mr. Elliott had found a decision that he would -- he believed was imprudent, he would have to bring that to you. Right?

A. If he found an engineering design issue that he thought was imprudent, I would assume it involved cost, he would bring that to either me or Mr. Schallenberg.

Q. And then you would look at it and you would make the decision as to whether the costs were prudent or not. Correct?

A. I believe he would based on -- if it's an engineering issue, I am not an engineer. I don't believe I would have testified to the prudence of an engineering decision, but I would have probably

sponsored the cost of that decision that -- that would be incurred because of the imprudent engineering decision.

Q. So if Mr. Elliott found that a decision was imprudent, you might still allow the costs even though he said they were imprudent?

A. No. That's not what I said.

Q. Is that true or not?

A. That's not true.

Q. All right. In your deposition, did I ask you, So you might still allow costs even though Mr. Elliott said the decision to relocate them was imprudent?

And was your answer, If Mr. Elliott came to me and said this movement of this building was imprudent -- I'm not looking at cost -- I would take his input, I would get the data, review it, discuss it and find out if these costs were prudently incurred.

A. Yes. That's true.

Q. All right. That's the way you approached it. Right?

A. Yes. Mister -- Mr. Elliott would have an opinion on whether the -- the movement -- the engineering, movement of the building was prudent. And I would do the investigation as it relates to the

cost of that movement.

Q. Now, related to -- there's a disallowance for campus relocation. Correct?

A. Yes.

Q. And Staff found that the reason for the cost for campus relocation appears to be a significant design error. Right?

A. I don't recall that testimony.

Q. Page 44, line 26 of Staff's audit. Would you read the first two sentences there beginning with, Staff finds?

A. On page 44, line 26?

Q. Yes, sir.

A. Staff finds that the allocation of any cost of the campus relocation to the Iatan project is inappropriate. The reason for the cost appears to be a significant design error.

Q. All right. And so it is your opinion that there was a significant design error?

A. It -- it appears. And I believe in my testimony I said that the -- that the reason for -- and I would have to reference that -- is either that they had to move the campus -- was that it was a design or a drawing issue with the engineers or somehow they thought that by moving the campus, it

would be a cost savings.

And I think Mr. Gould -- Mr. Gould of Schiff indicated that there was a cost savings related to it. I asked him for any documentation to support that and he -- later on I was advised that he had none. So it was either an engineering or drawing, a problem with it or they did it for another reason, to save money.

Q. So it's your opinion that there was a significant design error. Right?

A. No.

Q. All right. Turn to your deposition, please.

A. I think that says appears.

Q. Turn to your deposition, please, page -- shoot.

MR. HATFIELD: Judge, can I have just one minute? I've got to get some stuff out.

JUDGE PRIDGIN: Certainly.

MR. HATFIELD: Judge, can we have just a quick break while I find --

JUDGE PRIDGIN: Okay. We'll go off the record here for about five minutes.

MR. HATFIELD: Thank you.

(A recess was taken.)

JUDGE PRIDGIN: Good afternoon. We're back on the record. Mr. Hatfield, did you have an opportunity to find what you're looking for?

MR. HATFIELD: I did, Judge. I appreciate your indulgence.

JUDGE PRIDGIN: My pleasure. Whenever you're ready, sir.

BY MR. HATFIELD:

Q. Mr. Hyneman, would you turn to page 237 of the deposition you gave on December 9th, 2010?

A. I'm there.

Q. And in that deposition did I ask you, So your opinion, Mr. Hyneman, is that there was a significant design error. Right?

And did you answer, Yes?

A. Yes.

Q. All right. And you did not consult with Mr. Elliott on whether there was a design error, did you?

A. No. That information was based on data responses from KCPL.

Q. And -- and there's -- and somewhere in your report there's an explanation that there's -- that KCPL in a data response told you there was a design error?

A. Well --

Q. Is that right or not? That I'm going to find that in the report?

A. Did they use those specific words? No.

Q. Thank you.

A. But I think as I explained on page 43 of the Staff report, that the reason to move the campus to a new area was -- was for two reasons; one, there's a problem with the design, the drawings, the sketches that were made on -- where the campus should be set up; or for some reason, KCPL decided to incur the -- the -- I don't know if it's HC or not, but the dollar amount for that which is, you know, substantial amount of money because the project could incur cost savings that would offset those costs.

So those would be the two plausible reasons. I solicited from KCPL in a discussion with Mr. Gould were there any cost savings? He said he thought there were, he'd have to --

MR. HATFIELD: Judge, can I ask you to instruct the witness? This isn't responsive. And let me move on to the next question.

JUDGE PRIDGIN: That's fine. If he's answered your question, that's fine. We'll move on.

MR. HATFIELD: Thank you.

BY MR. HATFIELD:

Q. Now, Mr. Hyneman, did you ever review Mr. Elliott's work papers?

A. No. I don't know that he had any work papers.

Q. You never asked Mr. Elliott if he had any work papers then?

A. Mr. Elliott, as far as I know, is not proposing any adjustments whatsoever in the case and the total body of his work is located in a paragraph in the Staff report. That's my knowledge.

Q. You're saying that Mr. Elliott's report is one paragraph in Staff's report?

A. One or two paragraphs, whatever it is.

Q. You don't consider it a significant amount of Staff's report?

A. For engineering, it -- it's all of the engineering analysis.

Q. All right. But in your head, it's a couple paragraphs in your report?

A. I'm just going to the size of his -- his section of the report, not to the quality or anything -- or its impact. I'm just going to the size of it. That's the body of my knowledge to the work that he produced. I don't know if he had any work

papers.

Q. And all I just wanted to make sure I understood was you never asked Mr. Elliott if he had any work papers. Right?

A. No. But I recall providing work papers to the company and I think I would have seen them in my review of the Staff work papers. I don't recall seeing Mr. Elliott have any.

Q. Okay. What about Mister -- is it Lange?

A. Lange, yes.

Q. Lange. Did you ask Mr. Lange if he had any work papers?

A. No.

Q. Okay. Now, let me ask you a couple more questions about how you approached the audit. And then I just want to walk through it. So I think the easiest thing to do would probably be just to go to your testimony. Do you have that in front of you?

A. My testimony -- direct testimony?

Q. Yes, sir.

A. Yes.

Q. Oh, I almost forgot. What disallowance does Staff have for failing to tear down the second chimney?

A. None.

Q. Okay. In your direct testimony, page 2, line 11 -- well, let me do it this way. In analyzing the costs incurred for Iatan 1 and Iatan 2, the Staff employed different standards of review; isn't that correct?

MS. OTT: What page are you on?

MR. HATFIELD: I'm not yet.

THE WITNESS: I don't believe they employed different standards for review. I don't know what you're referring to on that.

BY MR. HATFIELD:

Q. Well, let me ask you this -- we'll do it that way. On line 11 of your -- your testimony, page 2 you say, The purpose of this testimony is to introduce and sponsor the adjustments to Iatan unit 1 AQCS construction costs that Staff has found to be imprudently incurred. Right?

A. Well, it goes on, but yes, it did say that.

Q. And then if we go down to line 21, you say, In this direct testimony I am almost introducing Staff's list of adjustments associated with the construction of Iatan unit 2. Correct? Based on investment and costs incurred through June 30th, 200--

A. Right. Introducing. Correct.

Q. All right. And it says, This list of adjustments reflects expenditures KCPL made and charged to the Iatan unit 2 segment that Staff found to be imprudent, comma, unreasonable, comma, or not of benefit to Missouri ratepayers. Right?

A. Yes.

Q. So you're -- what you were looking for for unit 1 was imprudently incurred but for unit 2 it was imprudent, unreasonable or not of benefit to Missouri ratepayers. Right?

A. No.

Q. No. Okay.

A. I mean I could have listed those for both Iatan 1 and Iatan 2, but the report didn't. But the disallowance for Iatan 1 and Iatan 2 were based on costs that were either imprudent, inappropriate, unreasonable or not of benefit to Missouri ratepayers.

Q. Okay.

A. Those criteria apply to all adjustments for Iatan 1 and all adjustments for Iatan 2.

Q. Okay. So when your testimony said, For Iatan 1, Staff has found to be imprudently incurred -- I thought that meant you didn't find any unreasonable, inappropriate. That's not right?

A. No. No. It could have been more

detailed but it wasn't.

Q. Okay. So --

A. But the Staff report I think identified that criteria.

Q. Okay. Well, help me with that. And this might be the fastest way to do it. Can we -- I'm going to read from your DR response. Actually, I'm going to ask you to read from your DR response that I think you still have up there. I've got another copy if you need it.

A. No, I have it here. Thank you.

Q. All right. Can you go to page 5 of that?

A. Yes.

Q. There was a question 13 that says essentially define your use of imprudent, unreasonable, inappropriate. And can you just go to the first, second, third paragraph where you talk about what unreasonable means? And would you go ahead and read that paragraph out loud? And I'll tell you I'm going to ask you when you're done, if that's still your testimony today so think through that.

A. Unreasonable means not showing appropriate judgment, especially in the terms of the incurrence of cost by failure to take actions consistent with obligations and duties. Inappropriate

means actions or conduct which are not suitable or required given, for example -- given, for example, an agreement. For the authorities or standards that support the definition imprudence, please see Staff's construction audit prudence review reports.

An example of imprudence was Schiff Hardin's contract administration regarding the payment of increased hourly rates of pay without any documentation of KCPL approval of these higher rates as well as payment of Schiff Hardin expenses without the receipts as required by contract.

Q. Okay. And is that -- that definition of unreasonable, is that the definition that you used when you prepared the Staff Construction Audit and Prudence Review?

A. I -- I didn't prepare a definition unreasonable for the report. I think that may be the portion prepared by Mr. Dottheim. but I believe that this definition -- I think it's a dictionary definition is consistent with it.

Q. I might have asked a bad question. I'm not asking you what's in the report. I'm asking you if this definition you gave in response to this DR is the same definition you used when you prepared the Construction Audit and Prudence Review?

A. It would have been one I applied. I don't know if I created the definition -- specific definition, but unreasonable is -- that's the definition of it. I mean I just don't know -- I didn't create a definition before the audit. I've been auditing company utility costs for 17 years and it's kind of implicit in what unreasonable and reasonable is.

Q. So did you use this definition or did you use another definition?

A. My judgment was based on a definition substantive to this, yes. I just don't want to give the appearance that I created this definition before.

Q. I didn't ask you that.

A. This definition, okay, was created in response to this data request.

Q. Yes. I'm with you.

A. Okay.

Q. But it is the definition you used in preparing the audit?

A. Substantively, yes.

Q. Okay. Good. Inappropriate -- is that the definition of the term "inappropriate" you used when you prepared the audit?

A. I didn't prepare a definition when I

prepared the audit, but this would be substantively similar to what the standards of inappropriate costs that I used was.

Q. Okay. Unreasonable -- now, let's -- putting that aside for a minute, when we use the term "unreasonable," it doesn't mean imprudent. Right?

A. It can. It -- it's a subset. I think if you read the Staff report, I think it could be considered as a subset of imprudence.

Q. Gotcha.

A. An unreasonable incurrence of cost, is that imprudent? No. I think imprudence covers different, unreasonable, inappropriate. I think it's a broad definition.

Q. All right. So inappropriate charges mean the same thing as imprudent charges?

A. Inappropriate charges could be imprudent, yes. Inappropriate -- costs that are inappropriate may not, by definition, be imprudent.

Q. Okay. Back to your direct testimony on page 3 then when you said the list of adjustments reflects unit 2 costs that Staff found to be imprudent, comma, unreasonable, comma, or not of benefit to Missouri ratepayers did you mean us to understand that those are three separate terms to be

used in a disjunctive with the term "or"?

A. No. As I explained I think -- I believe in our deposition and I explained in a data request, those terms overlap a lot. I mean you can have inappropriate and unreasonable costs that are prudent. You can have prudent -- imprudent costs that -- that meet other criteria. I mean they're not strictly separated. They could be encompassing of all.

The underlying criteria as you see in the scope of the Staff audits, was to ensure that no inappropriate, imprudent or unreasonable costs were charged to Missouri ratepayers. And Staff made a determination what costs were imprudent, unreasonable or inappropriate that should not be allocated to Missouri ratepayers.

Q. Okay. Let's go to -- stay on the same page, line 3 -- I'm sorry, page 3, line 9, The Commission has ordered Staff members who perform audit activities on this case to comply with the Generally Accepted Auditing Standards. In this testimony, I describe these auditing standards.

Why is that in there?

A. Because to advise the Commission -- I put that in here to let the Commission know that we take serious their orders. They said they require -- the

auditors need to require GAAS and I was affirming to them that we did.

Q. But you did not follow the GAAS reporting standards. Right?

A. The -- no.

Q. Okay. Did you come back to the Commission and seek clarification on whether you should follow the GAAS reporting standards?

A. I did not determine a need to --

Q. Okay.

A. -- as I explained.

Q. And that's because in your opinion the four GAAS reporting standards do not apply to the prudence review and construction audit you did. Right?

A. Correct.

Q. And similarly, although you applied the field work portion of the standards, you did not necessarily review individual interpretations of the field work standards. Right?

A. No. And as I explained, there are 220 individual statement on auditing standards --

Q. Right.

A. -- 220 different ones. Between the time the Commission ordered us to comply with GAAS on this

audit and in the middle of an audit in a rate case, it would be no time at all to develop trainings and lesson plans to come in to get up to speed on all that training of the individual statement on auditing standards and how they apply to an audit of a utility company. There would just not be sufficient time.

We -- I made the understanding that the Commission required us to comply with GAAS. GAAS are ten standards. And supportive of those ten standards are the individual SAS or State Accounting Standards. Four are reporting standards dealing with how certified public accountants and audit of private companies need to make their reports. The statements to their reports are in compliance with Generally Accepted Accounting Principles.

And specific detailed requirements of reporting, the Staff does not do any of that reporting. So they would not apply to the Staff.

Q. All right. And on -- you were just talking about the SAS, which explained the GAAS. You say that you would need extensive training in order to review and apply all of those SASs?

A. Yes.

Q. And that's because when Staff began the audit, it did not have training sufficient to review

and apply all of those interpretations. Right?

A. Yes. The Commission has never required the Staff to comply with GAAS.

Q. All right. So the Staff was not trained on the interpretations of the GAAS standards --

A. Correct.

Q. -- prior to this audit?

A. Correct.

Q. Now, you believe that the stipulation and agreement, sometimes called the regulatory plan, required Kansas City Power and Light to provide specific documentation to the Staff. Right?

A. Yes.

Q. And you base that on the plain language of the stipulation and agreement?

A. Yes.

Q. I have just a couple more questions about your testimony and they may be on various topics. I'll just sort of warn everyone.

Surrebuttal testimony, page 7.

A. Yes.

Q. Would you read lines 5 through 9, please.

A. Yes. From response to Staff data request, the Staff noticed that Mr. Blanc began his employment with KCPL in 2005 when he was hired as an

in-house attorney. After four years as a KCPL in-house attorney, Mr. Blanc was promoted to senior director of regulatory affairs. This would indicate that Mr. Blanc's experience with utility construction projects in Missouri is extremely limited.

Q. Why did you include that last sentence, This would indicate that Mr. Blanc's experience with utility construction projects in Missouri is extremely limited?

A. I think it goes to Mr. Blanc's testimony where he was critical of the Staff's auditing and auditing procedures for Missouri utility companies and the construction project. And I understand as an attorney, he -- he may have had some federal utility work, but I didn't note any state regulatory work in his background.

Q. So that's why you included that sentence that his experience is extremely limited?

A. Yes.

Q. Okay. He has more experience than you do on utility construction projects, doesn't he?

A. I don't believe he's ever performed an audit of a utility construction project.

Q. Which wasn't exactly my question.

A. Well, my experience is is in auditing.

Q. Okay.

A. I don't believe he has any experience in auditing.

Q. Okay. Do you have any experience with utility construction projects other than in auditing?

A. Again, I don't want to quibble. I have evaluated a lot of construction projects, for example, on other utilities as far as service line replacements and work order and construction of that nature. But none on the construction of a new power plant like Iatan 2.

Q. Okay.

A. I understand the basics of the accounting and what types of costs go into utility construction projects. A lot of work in that area, yes.

Q. All right. Let's turn to page 8, still in that same testimony, line 13. There's a question in your testimony that says, Mr. Blanc also alleges at page 10 of his rebuttal testimony that Staff, quote, engineer's review of the Iatan projects has been largely cast aside as a non-dollar adjustment, end quote. Is there any truth to this allegation?

And you answered, No. Right?

A. Yes. That's correct.

Q. And then you go on to elaborate on your

no. And would you read that, please?

A. Mr. Blanc may --

Q. Let's start with right after, No.

A. Okay. As he does throughout his testimony, Mr. Blanc just makes pejorative statements against the Staff with very little or no explanation or support for his statements. The full results of the findings and conclusions of the Staff engineers regarding the Iatan construction audit were included in the Staff's August 6th, 2010, November 3rd, 2010 audit reports. Dave Elliott, one of the Staff engineers who Mr. Blanc refers to, is submitting surrebuttal testimony and addresses KCPL's rebuttal testimony.

Q. So let me make sure I understand what you're saying here. You're saying that throughout Mr. Blanc's testimony, he just makes pejorative statements?

A. Yes.

Q. All right. And why did you want to tell the Commission that you thought his statements were pejorative?

A. Well, because they were pejorative to the Staff with little or no substantive or evidence behind them. And I can go into examples if you'd like.

Q. We might do that a little later. So if there is a statement made that has no evidence behind it, it's pejorative?

A. No.

Q. Okay.

A. He did it in a pejorative manner, I believe.

Q. Okay. Help me with the definition of the term "pejorative." What does that mean?

A. To cast in a negative light.

Q. Okay. So Mister -- throughout his testimony, Mr. Blanc makes statements casting Staff in a negative light?

A. Yes.

Q. All right.

A. Cast-- I'm sorry. Not casting Staff individuals, but the Staff's audit. I want to make that -- I don't think he took any pejorative statements against individuals, but against the Staff's work product.

Q. Oh, right. Yeah. I didn't --

A. Okay.

Q. So when you say "pejorative statements against the Staff," you mean against the Staff's work product?

A. Yes.

Q. Yeah. Okay. Okay. I'm going to move on from Mr. Blanc. I'm sure he appreciates me reading all of this, but page 11, please. I just want to make sure I understand your testimony. On line 7 --

A. Yes.

Q. -- your testimony says, Mr. Blanc's experience is principally in law and not accounting or auditing. And he has never completed any education in auditing and never participated in an audit as an auditor, yet he expresses an opinion about what it would take to complete an audit such as the Staff has undertaken.

So you're saying it's not appropriate for a lawyer to have an opinion on your auditing. Right?

A. No. He can have an opinion, but I believe any -- any allegations of what it -- of inappropriate audit activity ought to be substantiated by a person who has audit experience.

Q. Okay. Did he say your audit activity was inappropriate? Where --

A. I don't know if he used that term, but he was very critical of a lot of the audit activities.

Q. So a lawyer should not be critical of auditing activity because he doesn't know anything

about auditing?

A. I didn't say that.

Q. Sorry.

A. I said he in his position has no ex-- no training, no experience whatsoever in auditing.

Q. Okay.

A. Has never conducted an audit.

Q. Right. So similarly an auditor who has never negotiated a contract shouldn't take positions on contract terms. Right?

A. Well, I think an auditor is specifically trained on making evaluative statements of contracts, agreements, costs incurred. They evaluate whether they're reasonable, prudent given the circumstances and the documentation available.

Q. Okay. And so an auditor can also make judgments on whether to settle a lawsuit. Correct?

A. No.

Q. Okay. Can an auditor make decisions on whether it's appropriate to settle a threatened lawsuit?

A. We have not.

Q. All right. So you don't have any opinions on whether it was appropriate to settle any threatened lawsuits?

A. No.
Q. All right. Good. I'm glad we cleared that up.
A. I can explain, if you'd like.
Q. We'll -- I'm sure Ms. Ott will have you do that for us a little later.
Okay. We talked about these unexplained cost overruns a little bit and the stipulation and agreement. Let me make sure I understand. The Staff agrees that KCPL does have a cost control system in place that identifies and explains cost overruns. Right?
A. The Staff believes that KCPL is required to. And I --
Q. Yes.
A. -- I see no evidence that they don't.
Q. Okay. And here's my question. Does the Staff agree that KCPL has a cost control system in place that identifies and explains cost overruns?
A. They have a cost control system. The document which describes it does not mention the stipulation agreement, does not mention cost overruns, does not mention tracking. All those are basic requirements of the stipulation and agreement. The document that describes their cost control system

doesn't reference that.

Now, I believe as an auditor with 17 years experience, that KCPL has the ability with the personnel and the software available to identify and explain each cost overrun above the definitive estimate. I believe they have that capability. They have not done it. The Staff believes they're required to.

MR. HATFIELD: All right. Judge, I'm sorry to have to do this, but this is a really important issue. I need the witness to give me a yes or no answer to the following question.

JUDGE PRIDGIN: All right.

BY MR. HATFIELD:

Q. Does the Staff believe that KCPL has a cost control system in place that explains and identifies cost overruns?

A. I believe they do. And if I can speak for the Staff, the Staff believes they have the capability.

Q. Okay. I think we've got it, but just to be clear, on page 14 of your surrebuttal testimony, line 11 would you please read that first sentence to us?

A. The Staff position is that KCPL does have

a cost control system in place that does indeed identify and explain cost overruns.

Q. All right. Thank you. Now -- okay. Let's talk about the Construction Audit and Prudence Review. Do you -- the November 3rd filing. Do you have a copy of that there?

A. Yes.

Q. Let's just turn to page 1. Page 1 is an executive summary that was prepared by -- begins -- I'm sorry, begins an executive summary prepared by Mr. Schallenberg; is that correct?

A. Yes.

Q. And page 2 that continues and then on page 3 you're still in an executive summary; is that right?

A. Yes.

Q. Line 7 says, The Iatan project experienced significant overruns from the definitive estimate.

So Staff knew what the definitive estimate was in conducting this audit. Right?

A. Again, I don't want to quibble. This is Mr. Schallenberg's testimony and I think he can speak to what he meant when he wrote that statement.

Q. Oh, I know. I'm not asking what he

meant. That would be speculation. I'm just asking if Staff knew what the definitive estimate was when they prepared this audit?

A. We knew what KCPL was using as a definitive estimate.

Q. Okay. All right. And then on line 31 it says, The Iatan 1 AQCS construction project experience cost overruns from the definitive estimate.

So in order to calculate a cost overrun, you would have to know what the definitive estimate was. We talked about this earlier. Right?

A. Yes.

Q. All right. And so you did know what the definitive estimate was in order to calculate the overruns. Right?

A. Again, I don't want to quibble. I don't believe the Staff ever agreed that KCPL's document that they called a control budget estimate was synon-- synonomous with a definitive estimate. The definitive estimate the Staff understands is an estimate that's based on engineering and substantially complete.

Q. Well, I think we talked about that on your DR response. Right? That Staff has agreed to allow KCPL to substitute the control budget estimate for a definitive estimate?

A. Yes. Unless the Staff took a position and saying, KCPL, your control budget estimate did not meet the requirements of definitive estimate requiring you to go back and -- and submit a different budget. We did not do that. Therefore, we used the control budget estimate as a substitute for the definitive estimate.

Q. And when you say "we," you mean Staff did that?

A. Yes, Staff. I'm sorry. Staff.

Q. And you did that for purposes of your analysis under the regulatory plan?

A. We had no definitive estimate to use. We had a control budget estimate.

Q. Okay. So on page 4, line 25, the audit report says, Instead, KCPL referred to the definitive estimate as a control budget estimate?

A. That's correct.

Q. So that's what you were just saying. You knew that when they said control budget estimate, they meant the definitive estimate?

A. Yes.

Q. And vice-versa?

A. Yes.

Q. All right. On page 5 there's some

discussion about train cars. And just so I'm clear, which disallowance is related to the leasing of train cars?

A. There is no specific disallowance related to the train cars. I don't think the report indicated there was any disallowance --

Q. Thank you.

A. -- related to the train cars.

Q. Okay. So on page 6 then there's a little chart. And I think you told me in your deposition that although this is Mr. Schallenberg's section, you may have prepared this chart?

A. Yes, I did.

Q. All right. And so on page 6 you're identifying cost overruns by category. Right?

A. Yes.

Q. So we can identify that the overrun in excess of the definitive estimate for procurement was a specific dollar amount. Right?

A. Yes.

Q. And we can do that -- I mean you've got a number there that ends in 343. So you can do it down to the dollar?

A. Yes.

Q. All right. And you can do that for

procurement, you can do it for construction, you can do it for indirects, you can do it for contingency and you can do it for total cost. Right?

A. Well, I don't think you have an overrun on contingency. You subtract contingency from the amount to get an overrun. I mean it's -- we don't have an overrun --

Q. Well, some of them are underruns actually.

A. Yes. Actually that's correct.

Q. I think Ms. Ott and Mr. Archibald talked about variances.

A. Mr. Archibald?

Q. Yes.

A. Okay, yes.

Q. Sorry. You may not have been here for that.

A. I was.

Q. Okay. You agree that a budget variance refers to either an overrun or an underrun; is that fair?

A. Yes.

Q. All right. Okay. Now, let's go ahead and flip to page 12 of the audit report. As a participant in the audit, do you agree with the

statement there that the objective of Staff's audit has been to determine whether the Iatan construction project, Iatan 1, Iatan 2 and common plant, contains inappropriate, slash, unreasonable, slash, not of benefit to Missouri ratepayer charges or unnecessary facilities?

A. Yes.

Q. And is that the entire audit objective?

A. That's the -- I mean that's the objective, yes.

Q. And you agree that in performing the audit, Staff identified and explained with particularity any disallowances that Staff believes are justified; is that right?

A. With any particularity? We made an adjustment called the unidentified/unexplained cost overrun adjustment. And the basis of it is that we couldn't identify and explain the cost overruns.

Q. Okay. So you agree that the auditing objective was not to look for imprudent charges. Right?

A. Well, as I said, inappropriate, unreasonable, not of benefit, all those fit under the umbrella of prudence. And I think that's indicated in the section of the report on prudence.

Q. Okay. But the audit objective -- I think it's here -- it doesn't say that the objective was to find whether any charges were prudently or imprudently incurred, does it?

A. No.

Q. But -- and your understanding is that was, in fact, the audit objective was --

A. Well, I mean, I'm saying inappropriate, unreasonable, not of benefit all -- that term could be consumed under the term "prudence," which is identified and described in another section of the report.

Q. Okay. Then let's move to page 15, line 5.

A. Yes.

Q. And here we're talking about some over-- we're still in Mr. Schallenberg's section, I think. I understand that. It says, KCPL's response to Staff Data Request 969 provided the identification that 69 million, I think Iatan 1, of cost overruns exist at April 30th, 2010. Right?

A. Yes.

Q. So I guess I want to make sure I know what we're quibbling about. We could identify cost overruns. Right?

A. The total number, yes.
Q. Okay. And you could do it by categories in your -- your chart earlier. Right?
A. Yes.
Q. And the -- do you -- do you understand the stipulation and agreement to require it be done by categories?
A. No.
Q. Do you understand the stipulation and agreement requires it to be done by anything other than total number?
A. Yes.
Q. And on what do you base that?
A. Identify and explain any overruns over the definitive estimate.
Q. Yes.
A. So any time you have a cost overrun, that has to be identified and explained.
Q. Okay. All right. And here you have identified the cost overruns in this sentence?
A. The total number, dollar amount of actual costs incurred in excess of the control budget estimate, yes.
Q. Okay. Okay. Now, let's turn to your sections, I believe it starts on page 16. First,

you're talking about auditing procedures. And that's what that section's intended to explain. Right?

A. Yes.

Q. It says, In addition -- I'm sorry. I'm on line 15. The Staff reviewed thousands of documents received through data requests that were specifically related to the costs charged to the Iatan project. Right?

A. Yes.

Q. And it is true that Kansas City Power and Light provided you thousands of documents related to the project?

A. Yes.

Q. Do you have an estimate as to how many thousands were provided to you?

A. No, I don't. I know it was thousands is -- 10,000, could be a rough estimate.

Q. Okay. All right. I want to just for a minute ask you about -- well, how did you receive -- or how did you go about obtaining those documents generally? Was it through data requests?

A. Yes.

Q. All right. Let me show you --

MR. HATFIELD: Let's go ahead and mark as KCPL exhibit, Judge.

JUDGE PRIDGIN: Let me get you a number.
MR. HATFIELD: That would be great.
JUDGE PRIDGIN: I'm up to KCPL 94.
MR. HATFIELD: Did you say 94, Judge?
MR. FISCHER: Yes, sir.
(KCP&L Exhibit No. 94 was marked for identification.)
BY MR. HATFIELD:
Q. Mr. Hyneman, do you recognize --
MR. HATFIELD: Uh-oh. Judge, I might have given you -- I just realized mine had two attached.
BY MR. HATFIELD:
Q. Do you recognize KCPL 94?
A. Looking for the number on it. Is there a number 94 on this? Is this Exhibit 94?
Q. Yes. Exhibit 94.
A. Yes. I do recognize it.
Q. And that's Staff Data Request 653. Correct?
A. Yes.
Q. And that's a data request from you to Kansas City Power and Light. Right?
A. Yes.
Q. And this is a data request that you sent

on January the 18th of this year. Correct?

A. Yes.

Q. So nine days ago?

A. I'll take your word for it.

Q. January 18th of 2011. Right? That's when you sent it? Is that --

A. This is not -- it's an e-mail from Amanda Berendzen.

Q. It's a printout from my office, right. Here let me --

A. This is not the data request that -- this is an e-mail.

Q. That's what I did wrong. Let's try this way. Sorry. I gave the Commission the right one. Still we're on Data Request 653. Correct?

A. Yes.

Q. And tell us what that is.

A. It's a data request from me to KCPL on January 18th, 2011 referencing KCPL/Alstom contract paragraph 20.7, consequential damages.

Q. Okay. So nine days ago you were requesting documents related to the Alstom contract. Correct?

A. Yes.

Q. And you wanted the names of each and

every individual who reviewed the contract. Right?

A. Right.

Q. And you wanted every document in KCPL's possession related to the contract. Right?

A. Contract clause limited -- I think limited to that specific clause, the consequential damages clause.

Q. All right. And you wanted a copy of each and every correspondence between KCPL and any entity related to the contract clause. Right?

A. If there were any, yes.

Q. And so you're asking for any communications between KCPL Power and Light and its attorneys. Those should be included in here. Right?

A. I don't know if they were or not.

Q. Well, you didn't say except for your attorneys is all I'm trying --

A. I normally don't.

Q. And even though we've had some objections on attorney/client privilege, you continue to ask for every correspondence between any entity about contract clause. Right?

A. Well, KCPL can assert privilege on a DR if they want to. I -- the Staff has not found it a normal practice to ask for documents except those

provided to an attorney. It's just something we don't normally do.

Q. Okay. So these are documents that you did not have when you performed the audit that was filed November 3rd. Right?

A. Yes.

Q. And these were audits that -- these were documents that you did not need to perform the audit?

A. That I did not believe I needed, correct.

Q. Okay. Good. So now have you changed your belief? Is that what you mean?

A. Yes.

Q. So if your audit's already been filed, why are you sending a DR nine days ago asking for all these documents?

A. Well, I think as early as the December 2009 audit report where the Staff sponsored an adjustment to exclude the cost of the May 18th, 2008 crane incident, the Staff has been led all along throughout its audit and -- and -- that KCPL would not be seeking recovery of those costs.

In fact, KCPL asserted to the Commission during the acquisition of Aquila hearings that it would not have any financial responsibility for these costs. So the Staff's audit activity was very

limited.

It was not until the Staff read the surrebuttal testimony of Mr. William Downey did the Staff find out that KCPL was, in fact, seeking recovery of these costs. And this contract language was a substantial part of his reason for seeking these costs. So we didn't find out until probably really close to the date of this data request -- this data request that KCPL was seeking recovery based on a consequential damage clauses in the Alstom contract.

Q. So prior to -- if you don't mind, try to stay tight with me for a little bit here so we don't have to go into HC.

A. Okay.

Q. Prior to sending this data request then, you had not requested all documents related to the Alstom contract; is that right?

A. I know we requested the Alstom contract and any changes and modifications to it, I believe. I don't know if I had a data request any documents related to the Alstom contract. I don't know if that's a data request or not.

Q. Okay. So you don't know one way or the other whether prior to completing the audit report, you had requested all documents related to the Alstom

contract?

A. Sitting here today, I can't remember a specific DR that used that term. I know we requested the Alstom contract. I know we got a copy of the Alstom contract.

Q. Now, after you filed your audit you believe it's necessary to request documents related to the Alstom contract. Right?

A. The Staff was led to believe that KCPL --

Q. Stay with me because if you start saying that, we're going to have to go HC.

A. I apologize.

Q. You do believe now it's necessary for you to see documents related to the Alstom contract that you did not have before. Right?

A. Yes.

MR. HATFIELD: Okay. Let me -- let me mark another KCPL exhibit, Judge.

JUDGE PRIDGIN: KCP&L 95.

(KCP&L Exhibit No. 95 was marked for identification.)

BY MR. HATFIELD:

Q. Can you tell me have you seen that before?

A. Yes.

Q. What is that?
A. It's Data Request 652. It's a data request from me to KCPL on January 14th, 2011 with reference to the -- an Alstom contract amendment.
Q. So 13 days ago. Right?
A. Yes.
Q. And would you just read what it is you were requesting?
A. Reference Ken Roberts of Schiff Harden invoice work on July 7th -- July 21st of 2009. Please provide a copy of the Alstom contract amendment referenced here. Please provide a copy of all meeting notes, correspondence between KCPL and Schiff and Schiff and Jonathan Marks related to this issue.
Q. Okay. So were these -- you didn't have these documents before January what? I'm sorry. When did you ask for it? January 14th?
A. I don't believe I did.
Q. You hadn't asked for these documents before January 14th?
A. We may have asked for a DR for the Alstom contract and any amendments thereto. I know we got the basic contract. I don't recall if we have any amendments or modifications to that contract.
Q. Okay. It says, Please provide a copy of

the Alstom contract amendment referenced here.

A. Right.

Q. So you -- did you or not have all the Alstom contract amendments before you completed your audit?

A. He referenced work in an invoice on a contract amendment -- Alstom contract amendment. I do not know -- I don't believe we had that amendment.

Q. Okay. So you had not asked for all of the amendments to the Alstom contract before you completed the audit; is that right?

A. Sitting here today, I don't know if there's a DR existing whether we asked for all contract amendments to the Alstom contract.

Q. And you didn't try to find out before you sent out another DR 10 days -- or 13 days ago?

A. Well, this data request asked more than that amendment. I mean if they want to say we provided this amendment in DR X and here are the meeting notes, correspondence, that would be fine.

Q. Right.

A. Did I take the time to go through all the data to see if we had that specific amendment? I did not believe we did.

Q. Okay.

A. But I did not take the time and effort to do that research.

Q. Yeah, and let's talk about that for a minute. This is Data Request No. 652; is that right?

A. Yes.

Q. How many data requests have there been total related to the Iatan projects?

A. I have no idea.

Q. It's in the thousands?

A. I have no idea.

Q. It's more than 652 anyway?

A. Yes.

Q. All right. Let's mark --

JUDGE PRIDGIN: Do you need an exhibit number? This is KCPL 96.

(KCP&L Exhibit No. 96 was marked for identification.)

BY MR. HATFIELD:

Q. Can you tell me if you recognize KCPL Exhibit 96?

A. Yes.

Q. And is this another data request?

A. Yes,s.

Q. Number 651. Correct?

A. Correct.

Q. And when was this one sent?
A. This was sent on January 14th, 2011.
Q. In here you're asking for project status reports among other things; is that right?
A. Risk assessment, white papers.
MR. HATFIELD: What's our number again, Judge?
JUDGE PRIDGIN: This is KCPL 96.
MR. HATFIELD: I'd move the admission of KCPL 96.
JUDGE PRIDGIN: Any objections? Hearing none, KCPL 96 is admitted.
(KCP&L Exhibit No. 96 was received into evidence.)
BY MR. HATFIELD:
Q. Related to Request No. 10 you say, What was the purpose of the expenditure of $1,408 on color copies between April 23rd, 2010 and April 29th, 2010?
A. Yes.
Q. Why did you want to know why Schiff Hardin was making color copies?
A. Well, KCPL was required to obtain invoices and documents supporting charges from Schiff Hardin. KCPL must have made a decision it was not going to require Schiff to provide the documents. So

it had a listing on an invoice.

When Staff reviews invoices, it identifies charges that it believes should -- you know, should be verified. $1,400 in color copies -- copies indicated that -- you know, we want to make sure why did they expend that amount of money and was it chargeable to the project. It seems like a lot of money for color copies.

Q. So might have been imprudent to make them in color or might have been imprudent to make that many?

A. First of all, it was imprudent for KCPL for not seeking the documentation supporting the charge. Second of all, $1,400 for color copies is a lot of money. The Staff felt an obligation to make sure that that expenditure was related to the Iatan 2 project and was reasonable.

MR. HATFIELD: All right. Can I have another exhibit number, Judge?

JUDGE PRIDGIN: You may. This will be KCPL 97.

(KCP&L Exhibit No. 97 was marked for identification.)

BY MR. HATFIELD:

Q. Mr. Hyneman, can you tell me what KCPL 97

is, please?

A. It's Data Request No. 650 requested on January 13th, 2011 referencing a full and complete CP package.

Q. Okay. So let me make sure -- I should have done this on some earlier ones, but you requested this on January 13th and it was due earlier this week, is that right, the 23rd?

A. Yes.

Q. And we've heard some testimony on this already, but CPs are related to reforecasting; is that right?

A. Yes.

Q. And you knew that there were CPs, you talked about them in the audit report, didn't you?

A. We knew there -- the existence of CPs, yes.

Q. And, in fact, there was some testimony filed about the difference between R&Os and CPs?

A. May have been, yes.

Q. But prior to sending this data request on January the 13th of 2011, you did not have all of the CP packages for each and every CPA ever created for the Iatan construction project?

A. We had the CP I think for an earlier

forecast. Whether that DR asked KCPL to update it when the next reforecast was done -- if it did, they didn't update the DR. We had to go back and issue a subsequent DR to get that information. And we also learned that the current documentation for the current reforecast is not yet available.

So the -- the purpose of this DR was to make sure we had all the CPs, which we didn't. And that we get the current one that's still not completed yet. I think the November 2011 CP is not finished yet, but hopefully KCPL will provide it when it's complete.

Q. So this says, Please provide a full and complete package for each and every CP ever created. Right?

A. Right. I think there were three.

Q. So there would be CPs that were created before you did the audit report you filed in this case. Right?

A. I don't know the date of the first CP, but we did have the first CP.

Q. Okay. So you already had them but you asked for them again two weeks ago?

A. Well, we wanted to make sure that we had them all. We wanted to make sure that the

documentation we had was complete, and it wasn't. We wanted to make sure we get that data.

Q. And -- and so Thursday, January 13th at 6:27 p.m. you sent another DR asking for some documents you already had. Right?

A. Are you referencing this DR?

Q. Yes, sir.

A. When I drafted this DR was -- did I know that we had a full and complete CP package for every CP? No. I had another DR where I asked for a CP -- a listing of CPs and that -- that was not artfully worded. I meant to ask for all the CP packages.

And each CP is a volume of paper about this thick (indicating). And I got back a listing, but what I really meant to ask for was the whole package. So this DR was just to make sure I got the whole package.

MR. HATFIELD: Move the admission of KCPL Exhibit 97, please.

JUDGE PRIDGIN: Any objections? Hearing none, KCPL No. 97 is admitted.

(KCP&L Exhibit No. 97 was received into evidence.)

MR. HATFIELD: Can I have another exhibit number, Judge, please?

JUDGE PRIDGIN: You may.

(KCP&L Exhibit No. 98 was marked for identification.)

BY MR. HATFIELD:

Q. Mr. Hyneman, would you identify KCPL 97, please -- 98 --98, sorry?

A. Yes. It's Data Request 645 dated January 7, 2011 referencing the May 2008 crane accident.

Q. Now, you have a disallowance in your construction audit for -- related to the May 2008 crane accident. Correct?

A. Yes.

Q. And on January the 7th of 2011, you in this data request are asking for a copy of each and every document and correspondence between KCPL and Alstom associated in any manner with the 2008 crane accident. And that's what you wanted. Right?

A. Yes.

Q. And so you didn't already have each and every document associated with that; is that correct?

A. Correct.

Q. You -- did you have any documents associated with the crane accident?

A. Yes.

Q. Well, why were you asking for them again?
A. Well, as I explained, the Staff made its -- an adjustment to remove the cost of the crane accident and --
Q. Yes.
A. -- these costs were allocated in a separate cost code, a separate pool.
Q. Did you do that based on documents you reviewed?
A. A limited number. The Staff made the adjustment based on KCPL's assertion that had no financial responsibility.
Q. I understand that. I'm just asking you what documents you had that you found it necessary to submit a DR three weeks ago asking for each and every document associated with the crane accident?
A. Well, I advised the Staff was caught by surprise by Mr. Downey's testimony saying they are, in fact, seeking recovery of these costs. The Staff was led to believe that it was not -- KCPL was not seeking recovery. Because of Mr. Downey's surrebuttal testimony, we had to issue discovery to see, you know -- to update our costs.
And may I add on these DRs, the Iatan 2 construction audit is still being completed. The

audit's not finished. This data -- these data requests are responsive to a continuing audit.

Q. Right.

A. It's not like we're issuing data requests after the audit's completed.

Q. Mr. Downey's surrebuttal testimony was filed after you filed the construction audit in this case. Correct?

A. Yes.

Q. Thank you.

MR. HATFIELD: Judge, I'd move the admission of whatever that exhibit was.

JUDGE PRIDGIN: That was KCPL No. 98. Any objection?

MR. HATFIELD: I also --

JUDGE PRIDGIN: I'm sorry. It is admitted.

(KCP&L Exhibit No. 98 was received into evidence.)

JUDGE PRIDGIN: I'm sorry. Go ahead.

MR. HATFIELD: I'd also move the admission of KCPL Exhibits 94 and 95, which were previous DRs we discussed.

JUDGE PRIDGIN: Any objection? Hearing none, those are admitted.

(KCP&L Exhibit Nos. 94 and 95 were received into evidence.)

JUDGE PRIDGIN: And, Mr. Hatfield, could I inquire about how much cross you'd have?

MR. HATFIELD: Judge, what I'd like to do, I'm at a point to take a break if that's what you're asking. Oh, and then how much more cross? I think I'm down to I'd say an hour or less.

JUDGE PRIDGIN: All right. Let's take about 15 minutes. Let's go back on the record at about five till 4:00.

(A recess was taken.)

JUDGE PRIDGIN: All right. We're back on the record. Mr. Hyneman, you are still under oath. Mr. Hatfield, whether you're ready, sir.

MR. HATFIELD: Thank you. And actually, Judge, my next exhibit number I believe is Exhibit 99. And what I would like to do, after conferring with counsel, is move the admission of Kansas City Power and Light Exhibit 99 did I say?

JUDGE PRIDGIN: Yes, sir.

MR. HATFIELD: Which is Data Request No. 624.1, 632, 633, 634, 635, 636, 637, 642, 642.1, 643 and 644.

JUDGE PRIDGIN: All right. Those are

being offered?

MR. HATFIELD: Those are being offered, yes.

MS. OTT: Can we show them to Mr. Hyneman? Has Mr. Hyneman looked at them yet?

MR. HATFIELD: I didn't do that yet. I'm sorry. I gave you a full set. Yeah.

JUDGE PRIDGIN: I'll give you a moment.

MR. HATFIELD: Sorry.

JUDGE PRIDGIN: That's all right.

MR. HATFIELD: Okay. If it will help any, I don't actually intend to examine the witness on these. I just wanted to move their admission. I don't mind him looking at them, I'm not objecting to that, but --

MS. OTT: Judge, Staff doesn't have an objection to KCPL 99; however, Staff would like to note for the record that we still have a true-up proceeding.

And pursuant to the procedural schedule, true-up information was supposed to be provided to the parties by Friday, January 21st, 2011. We have true-up direct due on February 22nd, 2011 and then true-up rebuttal due on February 28, 2011.

JUDGE PRIDGIN: All right. Thank you.

Hearing no objection noted, KCPL No. 99 is admitted.

(KCP&L Exhibit No. 99 was received into evidence.)

MR. HATFIELD: Thank you, Judge.

BY MR. HATFIELD:

Q. Now, Mr. Hyneman, I'd like to talk about some specific disallowances and I'll do my best to pick up the pace here. To help us get oriented, maybe you can just tell us. We were talking about disallowance lists earlier. What do you have in front of you that would show disallowances recommended by Staff? Are you going to refer to the construction audit schedule?

A. Yes.

Q. Okay. And I had a little conversation with Ms. Ott. Can you identify which schedule to the Construction Audit and Prudence Review that would be?

A. Schedule 1-1.

Q. Okay.

A. And 1-2.

Q. And 1-2. And for everyone else who may be following along, I was going to use Mr. Dottheim's demonstrative which is a combination of 1-1 and 1-2, but I agree with Mr. Dottheim's explanation that the numbers are the same, et cetera.

So, Mr. Hyneman, the -- is it fair to say that the largest disallowance recommended by Staff for Iatan 2 is for net unidentified/unexplained cost overruns?

A. Yes.

Q. And for Iatan 1 is it fair to say that the net unidentified/unexplained cost overrun adjustment is the second or third largest item depending on how you think about it?

A. Yes.

Q. And on Iatan 1 fair to say that the largest item is the combined disallowances for the Alstom settlement; is that right? Please we're not going to talk numbers yet.

A. Right. There's one adjustment for the Alstom settlement and there's one adjustment about KCPL's failure to enforce the liquidated damages. There are two separate adjustments.

Q. Right. And I think our documents are all very clear on this, but just so the record's clear for people reading this later, both of those adjustments are related to a decision Alstom made on or about July 18th, 2008 to settle with Alstom. Correct?

A. That KCPL made, yes.

Q. What did I say?

A. Alstom.

Q. Sorry about that. Alstom settled with Alstom. KCP&L settled with Alstom?

A. Correct.

Q. So now let's talk about the net unidentified and unexplained cost overrun adjustment. And we've spent a lot of on this. But as I understand it, that is an adjustment for all costs incurred above the control budget estimate. Right?

A. Yes.

Q. And you're not aware of anything in the stipulation and agreement that says that any costs above the control budget estimate will be disallowed. Right?

A. Right.

Q. Staff made a decision that in Staff's opinion, there should be a disallowance for those overruns?

A. Yes.

Q. And that is based on the fact that Staff does not believe Kansas City Power and Light complied with its commitment in the stipulation and agreement to provide a cost control system that identifies and explains cost overruns above the definitive estimate. Correct?

A. I don't think that's the exact wording of the paragraph. Identify and explain any cost overruns above the definitive estimate.

Q. Thank you.

A. Okay.

Q. But that's -- that's the reason for it?

A. Yes.

Q. And I think we've already covered this, but the audit report -- well, the audit report, page 37, 911 which is one of your sections, contains the statement, It is clear that KCPL has the ability to track, identify and explain control budget cost overruns. Right?

A. Yes.

Q. And you agree that it is clear that KCPL has the capability to do all of that?

A. KCPL does, yes.

Q. All right. Now, those adjustments there on Mr. Dottheim's demonstrative, they are listed as Issue 30, net unidentified/unexplained cost overrun adjustments. There are two numbers there. I'm not going to read them out loud, but just to make sure we're on the same page, one ends in $836. That's for Iatan 1. Do you see where I am?

A. Yes.

Q. And the other ends in $296 and that's for Iatan 2. Right?
A. Yes.
Q. You don't have an opinion as to whether those net unidentified/unexplained cost overruns are imprudent, do you?
A. No.
Q. You don't have an opinion as to whether they're inappropriate, do you?
A. No.
Q. You don't have an opinion as to whether they're unreasonable, do you?
A. No.
Q. Don't have an opinion as to whether those costs were of benefit to ratepayers, do you?
A. No.
Q. Don't have an opinion as to whether those costs were for any unnecessary facilities, do you?
A. No.
Q. You just don't know one way or another whether those amounts represent prudent expenditures?
A. Correct.
Q. And you're the sponsor of Staff's adjustment on -- on unexplained overruns. Right?
A. Yes.

Q. Okay. All right. Let me -- let's just stay with Iatan 1 -- or let's look at Iatan 1, I should say. And let's just start at the top of the list. There is a proposed disallowance -- disallowance for inappropriate charges?

A. Yes.

Q. And that -- that is a round number ending in 000. Correct?

A. Correct.

Q. And that is an estimate of inappropriate charges?

A. Yes.

Q. And you did not attempt to identify specifically each inappropriate charge in your report. Correct?

A. Well, we did attempt to identify, but there were so many that the Staff made an estimate just to get the issue done.

Q. Which -- I'm sorry, which part of your -- I believe the inappropriate charges section begins on page 25, line 21; is that correct?

MS. OTT: What page?

MR. HATFIELD: Page 25. Maybe I said it wrong. I'm sorry, Jaime. Page 25, line 21, I think.

THE WITNESS: That's correct.

BY MR. HATFIELD:

Q. Where in there did you specifically identify the particular charges?

A. Well, page 26, line 29.

Q. Okay. Let -- let's not read it right now just because that part may contain some HC material, but thank you.

A. Okay.

Q. Is that the only place?

A. There was an exhibit in the Staff's December 31st, 2009 report that listed a list of what it considered as an example of inappropriate charges.

Q. Okay.

A. I don't believe that list was filed with the November report.

Q. Okay.

A. I'm assuming it will be with the true-up report.

Q. Okay. You know, let me ask you about that for a minute. Does -- as far as you know, will there be any new categories of disallowance in the true-up report or will it simply be to update the numbers for the disallowances already proposed?

A. I haven't been in any discussions related to that topic.

Q. Just don't know one way or another?
A. Not sitting here today. I -- I would have to review the Commission order to see if there's any specified guidance or orders on that. I haven't had any discussions.
Q. Well, you know, all this discussion of Wolf Creek we've had reminds me that I'm relatively new to this process so help me out with this. I thought true-up meant we've already dealt with all the main issues and now we're just fine-tuning the dollar amounts. Is that the laymen's understanding of true-up?
A. Yes.
Q. Okay. Is that what you think you're supposed to do as Staff auditor during the true-up process?
A. Normally in rate case true-ups, you identify the issue for the -- for the hearing and then you update the issues. And based on the Commission order, those numbers fall into the revenue requirement.
Q. Okay. All right. Let me go back and just finish up on these inappropriate charges. I didn't see any -- I see where you say they're inappropriate and I see where you refer to them as

unreasonable. I didn't see you use the word "imprudent" anywhere in the inappropriate charges section. Did I miss it?

A. I don't think so.

Q. Okay. Let's turn to the next disallowance -- and by the way, the -- I said let's stay with Iatan 1, but the inappropriate charges adjustment, you have a discussion about there's no difference in how you treated that adjustment for Iatan 1 and Iatan 2, is there?

A. No. Just the allocation.

Q. Yeah. Absolutely. Okay. And then the next one on the proposed disallowances is Iatan 1 only and it's the May 23rd, 2008 crane accident disallowance. Right?

A. Correct.

Q. And that was in the preliminary audit report as well. Correct?

A. The December 31st, 2009 report?

Q. Yes.

A. Yes.

Q. Is that right?

A. Yes.

Q. And that is on page 41 of the audit report. Correct?

A. Yes.
Q. And you sponsored that adjustment?
A. Yes.
Q. And does that adjustment identify and explain with particularity the disallowances of the expenses and the reasons Staff believes those disallowances are justified?
A. Yes.
Q. So Staff is not offering an opinion on whether KCPL was liable in any way regarding the crane accident?
A. Staff relied on KCPL witness testimony that was not financially liable.
Q. Gotcha.
A. I don't know of any determination Staff made if KCPL was liable for those costs.
Q. Okay. And sitting here today, you don't have an opinion on that. Right?
A. I don't believe I've received a data request back when I addressed that issue based on Mr. Downey's rebuttal testimony when I got the information back and had time to analyze what basis do they believe the potential liability. I don't believe we've got that data yet. I'm not sure.
Q. Okay. So I don't see any opinion in here

that the expenses for the crane accident were imprudent. Am I missing that?

A. No.

Q. I don't see any opinion that they were unreasonable.

A. No.

Q. No opinion that they were inappropriate?

A. No.

Q. No opinion that they were not a benefit to ratepayers?

A. Yes.

Q. There is an opinion in here that the expenses for the crane accident were not a benefit to ratepayers?

A. I don't know if that terminology was used in this -- if that was stated here.

Q. Okay.

A. The Staff's position is that KCPL was not at fault, that the contractor was at fault for this accident and the contractor should bear the responsibility for the cost. So, therefore, any cost that KCPL ratepayers pay for an incident that was not the responsibility of KCPL would be inappropriate.

Q. All right. I think I understand. So -- and you're basing that solely on statements of KCPL.

Correct?

A. Statements of KCPL and -- and documents reviewed by KCPL, yes.

Q. I'm sorry. I thought we were done. I thought you didn't have an opinion on the prudence, reasonableness or appropriateness of the expenses. Correct?

A. About -- my opinion they should not be borne by Missouri ratepayers was based on statements made by KCPL --

Q. Right.

A. -- and documents that I have reviewed indicating KCPL had no responsibility for the crane accident.

Q. All right. So the purpose of this adjustment is to make sure it's not charged to the ratepayers?

A. Yes.

Q. And to advocate on behalf of the ratepayers to make sure --

A. No.

Q. Oh, I'm sorry. No?

A. Staff does not advocate on behalf of the ratepayers.

Q. Okay. But the sole reason for this

adjustment is to protect ratepayers is what you're saying?

A. To ensure that no cost that did not benefit ratepayers are charged to them. I don't know about protections, but that no cost that they should not bear are charged to them.

Q. Okay. All right. Okay. The next adjustment is for the severance costs and there are adjustments there for both Iatan 1 and Iatan 2; is that right?

A. Yes.

Q. And that adjustment's on page 42?

A. Yes.

Q. And as I understand it, Staff is proposing this adjustment based solely on prior Commission orders. Correct?

A. No.

Q. All right. Tell me where the other explanation for the proposed disallowance is.

A. Could you refer to the appropriate page?

Q. Yes. Page 42.

A. Okay. The adjustment was based on the fact that the severance agreements provide no ratepayer benefit.

Q. Where are you reading? I'm sorry.

A. The first paragraph, it's implicit in the paragraph.

Q. Okay. Why don't we read why the Staff is proposing an adjustment to remove the severance charges? Just point me to it.

A. It's at page 42, beginning at line 9.

Q. It's not at page 42, beginning at line 24 where it says, The Staff is proposing an adjustment to remove the severance charges from the Iatan work orders for two reasons?

A. Well, the first para-- two paragraphs set up the summary of the two reasons why.

Q. I understand. Are all of the -- are all of the reasons for the disallowances explained with particularity in that section?

A. Yes.

Q. All right. Thank you. Now, the next one on my list is the JLG accident adjustment and there's an adjustment for both Iatan 1 and Iatan 2; is that correct?

A. Yes.

Q. And that is on page 45?

A. Yes.

Q. And the reason for that adjustment is contained on page 46, line 31; is that right?

A. Well, that's -- the concluding statement I believe begins there, yes.

Q. Well --

A. The reasons are listed above it.

Q. -- let me read it. Staff does not believe it was reasonable and prudent for KCPL to enter into this settlement agreement and pay any cost for the JLG accident.

Now, go ahead. Where is another sentence that explains why Staff is disallowing?

A. Beginning on line -- page 46, line 21.

Q. Okay.

A. Would you like me to read it?

Q. Well, how much do you want to read?

A. That paragraph.

Q. Okay.

A. In change order supplemental documentation form attached to this change order by KCPL on October 13, 2008, seven months after the JLG accident settlement agreement with Alstom --

Q. It's actually not -- I don't believe it is marked HC on my copy.

A. -- KCPL reiterated its belief that operator error was the cause of the JLG accident, not soil conditions. The supplemental change order

documentation signed by Steve Jones and Carl Churchman, former KCPL vice president of construction, provided the rationale behind KCPL's decision.

Q. Can I ask you to skip the number?

A. Yes.

Q. Would that be all right? The Commission can --

A. Yes. Decision to pay Alstom for costs which KCPL believed it bore no responsibility. The rationale was that KCPL wanted to resolve these issues and keep the project moving forward.

Q. All right. Thank you. The next one on my list is the employee mileage charge adjustment and that's only for Iatan 1. Right?

A. I -- I did have a statement I need to correct that I made earlier.

Q. Oh, please do.

A. And I want to be clear and this is not worded artfully at all on page 46, line 31. The Staff did not reach a conclusion that it was not prudent for KCPL to enter into this settlement agreement. As in all settlement agreements that -- KCPL entered into it for its own reasons. The Staff does not believe that the cost of this settlement agreement should be borne by Missouri ratepayers.

So -- and if that thought was not conveyed by this statement, then it -- it's incorrect. But the Staff position -- and I think it's outlined in other portions of the report is we're not saying that the decision to enter into that settlement agreement was imprudent. We're saying the costs that were incurred as a result should not be borne by Missouri ratepayers.

Q. Okay. There's an employee mileage charge adjustment, there's an affiliate transaction adjustment. Correct?

A. Yes.

Q. And then we have what I'm going to call the Alstom settlement adjustments that we talked about a little bit before --

A. Yes.

Q. -- right?

And again, if you and I can kind of dance and avoid the actual numbers here as long as possible, that would be great.

A. Okay.

Q. But I do want to talk about those. So they're both related to a July 18th, 2008 settlement. Right?

A. Yes.

Q. And back in December the Staff recommended disallowing the payment of some money to Alstom. Right? Have I got that wrong?

A. We have made no opinion on KCPL's payment to Alstom.

Q. Okay. Why don't you -- can we find together in your testimony where the Alstom settlement is? There's actually a table of contents. Here we go, page 54.

A. Yes.

Q. And so on page 54 here there's a heading entitled KCPL's July 18th, 2008 Alstom Settlement, Iatan 1. Does it -- does the narrative there then discuss both adjustments?

A. I think the -- you mean both adjustments for the liquidated damages and the settlement?

Q. Right. The foregone liquidated damages and the settlement.

A. Yes. I think it does.

Q. And so here's what I was trying to ask. As I understood what you were explaining, and I'm looking particularly at page 55, line 4, there was a settlement in which KCPL agreed to pay Alstom an amount of money. Correct?

A. Yes.

Q. All right. And the -- you were able to review some documents at Kansas City Power and Light that estimated that potential cost exposure within a particular range; is that correct?

A. Liquidated damages?

Q. No. For the amount that might have to be paid. I'm looking now at page 54, line 23.

MR. HATFIELD: Judge, I think it would be easier just to go in-camera. I'm sorry.

JUDGE PRIDGIN: That's all right. We'll go HC. Just a moment, please.

(REPORTER'S NOTE: At this point, an in-camera session was held, which is contained in Volume 28, pages 2728 to 2744 of the transcript.)

JUDGE PRIDGIN: We're back in public session.

THE WITNESS: Yes.

CHARLES HYNEMAN testified as follows:

BY MR. HATFIELD:

Q. So -- and I'm going to paraphrase here, tell me if I've got this wrong. That's because of insufficient documentation of Schiff Hardin's expenses. Right?

A. No documentation.

Q. No documentation?

A. Yes.

Q. Well, you got an invoice that says, We made this expense. Right?

A. There was invoices listing categories like meals --

Q. Right.

A. -- non-meals, travel.

Q. And you know things like they made color copies?

A. Yes.

Q. Right. Because you had a DR on that. Right?

A. $1,400 in copies, yes.

Q. So are you then -- are you assuming

Schiff Hardin is lying about that when they say that they incurred those expenses?

A. No.

Q. Are you assuming they're telling truth?

A. I don't approach audit -- that -- that people are telling the truth or not telling the truth. Under -- under Generally Accepted Auditing Standards, an auditor is required to approach audit evidence or documentation with professional scepticism. That's what I apply.

Q. Okay. So professional scepticism. So when a lawyer at Schiff Hardin says, I flew from Chicago to Kansas City and I expended X amount of money, professional scepticism says you don't believe that cost unless they produce a receipt?

A. I can't validate the cost was incurred.

Q. All right.

A. And professional scepticism would say show me the documentation and then I'll be understanding the cost that was actually incurred. Schiff Hardin was required to provide that documentation to KCPL. KCPL decided not to enforce the contract terms.

Q. I understand.

A. Okay.

Q. I understand. Now, let me ask you about the legal services rate adjustment for a minute. And I think we talked about this before. You're saying that what -- when you arrived at this, you took the total number of hours worked by Schiff and you discounted the rate charged for those hours --

A. No.

Q. -- is that right? No? Sorry.

A. I took the total cost by Schiff and I made a percentage which we allocate to legal work and a percentage to project management, project control type work.

Q. Okay. I want to break them in half for a minute. So on the sheet I'm looking at, there are two different adjustments. There's one for Schiff Hardin project management labor rate.

A. Yes.

Q. And so that's where you determined that there was a certain portion of Schiff's work that was really project management. Right?

A. Yes.

Q. And what you did is you just discounted the amount that was paid for that portion of the work. Right?

A. When you say "discounted," I took that

percentage of total Schiff charges and I applied a project management cost rate, which was the rate that LogOn Consultants, a very experienced project management group of individuals, were charging KCPL.

Q. Right.

A. I substituted that rate for the rate that Schiff Hardin should be compensated for for project management type work.

Q. You assumed that the LogOn rate was the market rate for project management services?

A. It's the rate KCPL was paying LogOn.

Q. Okay.

A. Yes.

Q. That's not what I asked you.

A. I'm --- ye-- well, market rate -- a reasonable rate is what I determined.

Q. So you determined that LogOn was a reasonable rate?

A. Yes.

Q. You did not determine that LogOn was the market rate?

A. I didn't do a market survey to determine a market rate.

Q. There you go. So the only project management rates you looked at were LogOn's?

A. They're the only one I used as a substitute to -- for -- for Schiff Hardin.
Q. Gotcha.
A. I've looked at a lot of invoices and I've seen a lot of rates for different -- different individuals.
Q. For project management on construction projects?
A. The promp-- the best sample to use for that would be LogOn Consulting --
Q. Okay.
A. -- the type of work they were performing.
Q. Right. But I just want to make clear because you told us before you haven't done a construction audit before. Right?
A. For a new power plant, yes. Or I'm not going -- a construction audit, yes.
Q. Haven't done one?
A. Correct.
Q. Okay. Because that will save us a lot of time.
A. Yes.
Q. Because if you have, I got to go back.
A. No.
Q. Good. I understand. And you applied a

percentage to all of Schiff Hardin's bills in order to figure out which was project management and which was legal. Right?

A. No.

Q. I thought it was 80/20.

A. I took a percentage of the cost for Iatan 1, Iatan 2.

Q. Yeah.

A. Took 80 percent of that --

Q. Yeah.

A. -- and categorized that as project management.

Q. Okay. And you came up with the 80 percent based on your judgment from reviewing invoices as to what was project management and what wasn't. Right?

A. Reviewing contract -- the Schiff Hardin contract.

Q. Yeah.

A. Reviewing Mr. Downey's testimony and the type of work Schiff Hardin performs.

Q. So did he say 80 percent was project management you're saying?

A. No. He provided a description of the services.

Q. Okay. All right.
A. Reviewing detailed invoices over a period of three to four years.
Q. Okay.
A. That's -- there are probably other documents I reviewed to come to that conclusion, but that's substantively what they were.
Q. Okay. And you determined that -- and in some cases you determined that lawyers were actually performing project management work. Right?
A. I determined the work performed was project management related work and it was done by Ms. Okizaki or Ms. Shermer (ph.) their attorneys, that they were performing work.
Q. And so you moved some of Ms. Okizaki's work into the project management category as a practical matter?
A. Again, I would have to look at my work papers to see how I recognized that.
Q. Okay. All right. Let me just ask you then, so you determined that 20 percent of Schiff Hardin's costs were legal services. Is that fair to say?
A. Yes.
Q. Okay. And that was based on your -- your

opinion about the percent that was legal services versus the percent that was project management?

A. My evaluation of the evidence.

Q. And then did you reach an opinion?

A. Yes.

Q. Okay. And you decided to lower the rate that Schiff Hardin was entitled to there. Right?

A. Again, I came up with a reasonable rate for project management services based on what KCPL paid LogOn Consultants.

Q. I'm not talking about project management anymore. I'm talking about legal services.

A. The legal services were based on a rate. And the range I determined were based on a high end, which would be the Laffey index, which would be the attorneys providing service in Washington, DC in the current period based on the year -- their years of experience.

Q. Right.

A. I reviewed invoices of -- that KCPL paid for -- for attorneys working on the Iatan 2 project and came up with a range that -- that what I felt was reasonable --

Q. And then --

A. -- for the legal work.

Q. -- you took the Laffey index and then you discounted below that. Right?

A. What do you mean "discounted below that"?

Q. I thought you applied a volume discount --

A. Oh, yes.

Q. -- even below the Laffey index.

A. Yeah. Given the fact that KCPL has received volume discounts from other attorneys on the Iatan project, that KC-- that Schiff Hardin would be charging thousands and thousands and thousands of hours on the project, I felt it would be reasonable for KCPL to at least make an attempt to secure a volume discount. They did not. So I imputed a volume discount.

Q. Did you hear the testimony from Mr. Roberts that KCPL actually did attempt to get a volume discount and he said no?

A. I believe I heard that, yes.

Q. And would that change your opinion at all?

A. No.

Q. Okay. I -- I've lost it. I'm not going to spend too much time on this, but can you help me find the Laffey matrix numbers in your testimony?

A. Page 88.

Q. Page 88. Thank you so much. So under the Laffey matrix, an attorney -- let's see here. I graduated in -- all right. So an attorney with 11 to 19 years of experience would have a rate of 410 an hour; is that right?

A. Yes. And I believe that is probably pretty reasonable to what -- a high end of what attorneys charge for that years -- those number of years.

Q. And then you subtracted a 10 percent volume discount. Right?

A. Yes.

Q. So that would take that number down to -- I can't -- I'm not an accountant, as you've told me. 370, is that right? The 410 comes down to 370?

A. Roughly, yes.

Q. And so this is the only market survey you looked at. Right?

A. I don't think this is a market survey.

Q. Oh, I'm sorry. Did you look at any market surveys? I think you told me you didn't before.

A. I don't know of any market surveys that I had available, no.

Q. All right. So you didn't look at any

surveys of the AmLaw 200. Right?

A. I don't know what that is.

Q. You don't know what the AmLaw 200 is?

A. No.

Q. All right. You didn't look at the Missouri Lawyers Weekly Annual Survey of Missouri Hourly Rates?

A. No.

Q. Didn't know that existed, did you?

A. No.

Q. Didn't consult with any attorneys about the average hourly rates for attorneys in Missouri. Right?

A. No.

Q. Okay. Now, we have the Cushman project management adjustment, the Pullman adjustments. and those are for both Iatan 1 and Iatan 2. Right?

A. Yes.

Q. And those were not in the preliminary audit report. Did you already explain to us why not earlier in -- I know it's been a long day.

A. I don't recall if we addressed the Cushman adjustment or not, whether or not -- in the December report. I know the Pullman adjustment wasn't.

Q. All right. Cushman project management adjustment, same deal. You took Cushman's hourly rate and you dropped it down to LogOn's rate. Right?

A. Yes. KCPL, in an effort to have assistance with the project execution plan, hired Cushman and Associates.

Q. All right. And you -- you didn't do any study again of project management rates. You just took the LogOn rate. Right?

A. Actual rates, yes.

Q. Okay. Now, 49, adjustment from KCC Staff audits. There was not one of those in the preliminary audit. Right?

A. Correct.

Q. You just took whatever KCC Staff audit found and you plugged in those exact numbers. Right?

A. Where is that? I'm --

Q. It says, Adjustment from KCC Staff audits.

A. Yes. These are the R&Os which KCPL decided not to challenge from Mr. Drabinski in the Iatan 1 audit. KCPL acquiesced in Kansas, decided not to charge Kansas ratepayers for those costs, then --

Q. Missouri Staff did not reach any independent conclusion about the prudence of those

costs. Right?

A. If you could tell me which specific costs that you're addressing there.

Q. The costs you're disallowing.

A. I think one -- R&O 139, can you refer me to that one?

Q. You've got two numbers there.

A. Yeah. I mean if we want to --

Q. Well, you have $438,200 for 1 -- Iatan 1, $1,509,915 for Iatan 2. And I just want to know if the -- well, let me put it this way. I don't see anything in the audit that says Missouri Staff has reached an independent opinion on whether those costs were prudently incurred or not. Did I miss it?

A. No. The Staff reviewed the testimony of Mr. Drabinski on this and reviewed the R&Os and it reviewed KCPL's decision not to seek recovery of these costs and it agreed that they shouldn't be sought recovery in Missouri. Did I know that I categorized them as imprudent? No.

Q. Okay.

A. Did -- were they -- meet another category? Yes. KCPL admitted that it was not seeking recovery.

Q. So your testimony is that somewhere they

admitted that those costs were imprudently incurred?

A. I didn't say that.

Q. I'm sorry. I thought you said "admitted." I misunderstood you.

A. They admitted they weren't seeking recovery.

Q. In Kansas?

A. Correct.

Q. Okay. All right. So let me make sure now I understand. The -- there's a note A and it says, Gross unidentified/unexplained cost overruns. And so that's just you took the control budget estimate and you added up everything over that as of just June 30th. I think we talked about this. Right?

A. Yes.

Q. And you used the exact dollar amount of the control budget estimate. Correct?

A. Yes.

Q. You didn't give them a -- an allowance for -- I believe the number in the audit report is 10 percent degree of confidence in a definitive estimate?

A. I don't know what you're referring to.

Q. You didn't add anything to the control budget estimate. You took that exact dollar amount

that's been said, 1.68 for the Iatan 2?

A. Which includes $220 million of contingency.

Q. I understand.

A. Plus a $48 million decrease in scope. So basically $260 million above what KCPL projected it would cost them.

Q. I understand.

A. So that's the cost around that, yeah.

Q. You took that exact amount. Right?

A. Yes.

Q. And disallowed everything above that? And then you reduced from that the Staff disallowances for things like the JLG accident, the Alstom settlement. Right?

A. Yes.

Q. So were you able to identify that there was a cost overrun for the May 23rd, 2008 crane accident?

A. Sitting here today, I don't recall whether that cost was charged as an overrun or whether that was charged to the contingency.

Q. Okay. Were you able to identify that the specific disallowances were, in fact, cost overruns? We know Schiff was. Right?

A. I don't know that.
Q. Okay.
A. I don't know whether it was charged -- I know there were pieces of the Schiff charges identified in -- in contingency. The -- and we don't even know what the budget for Schiff was, but assuming it's what Mr. Archibald said, about $7.3 million --
Q. Wait a minute now. You don't know what the budget for Schiff was?
A. We have a document that appeared to be approved by the board of directors saying the budget for Schiff Hardin for Iatan was $1.6 million.
Q. You do?
A. Yes.
Q. And do you believe that's accurate?
A. I had no reason to believe it's inaccurate. It's attached to the board minutes. There's question whether those were the numbers that the board approved. I didn't see signatures, but an indication that that's the number, the budget, which tied to the $1.685 million, that Schiff Hardin budget was in that number.
Q. Hang on now. Let's back up. Let's go to page 66 of the Construction Audit and Prudence Review, line 15. This is your section. Right?

A. Yes.

Q. It says, In the Iatan 2 cost report, the total Schiff amount in the control budget estimate is -- and there's a number there?

A. Yes.

Q. Are you saying that number -- what you put in the report is wrong?

A. No. That is the number that's in the cost report. That's clearly the number that's in the report.

Q. Well, wait. It says, The total Schiff amount in the control budget estimate.

A. Right. The cost report has the control budget estimate in it.

Q. Right.

A. That's the number that was allocated for the budget for Schiff Hardin.

Q. Gotcha.

A. As Mr. Archibald said, he didn't see the document that -- that had Schiff Hardin budget at the $1.6 million. It was in the document that the board supposedly approved. So there's question whether this is the actual board approved budget or is the 1.6 billion -- million the actual board approved budget.

Q. So you think the board approved line by line every line in the control budget estimate? Is that your testimony?

A. They were -- it appears they were presented with a document that had line by line budgets and they approved that document. Do I know if they said, Okay, we're approving this one or we're approving -- okay, the 1.6 is good, we'll go with that or the specific areas? I don't know if they did specifically or in total.

Q. Okay. When you say "it appears," you're relying on the language of a particular document that I believe we've talked about in this hearing. Correct?

A. I'm relying on a numerical document which lists the budget that's attached to board minutes.

Q. I meant whether or not the board approved line by line, the only evidence you have of that is documentary. Correct?

A. Yes.

Q. Okay. Thank you. All right. If -- now, if the Commission were to accept your disallowance and disallow all cost overruns over the control budget estimate, has Staff given any thought as to what effect that would have on future construction

projects?

A. Well, I have not. Let me ask -- I can't speak for the Staff on that question.

Q. If a policy's adopted that we're going to disallow everything over a control budget estimate, based on your experience as an auditor, your 17 years and all that, isn't there just by common sense an incentive for utilities to set the budget as high as possible?

MR. SCHWARZ: Objection. In order to set a policy, the Commission would have to adopt a rule. This is a contested case and any decision in this case is excepted from the rulemaking. And if the Commission's going to adopt a policy, it has to be done by rule.

MR. MILLS: And further, the question calls for speculation.

JUDGE PRIDGIN: That's the objection I was expecting. Mr. Hatfield?

MR. MILLS: Just trying to help.

MR. HATFIELD: Well, Judge, I'm exploring -- we already talked with Mr. Henderson about Staff's -- and I haven't asked him this, I can by foundation -- Staff's obligation to not just advocate for ratepayers but rather to balance

interest. And he's the sponsor of particular disallowances and he said Staff made the decision to recommend disallowances above the control budget estimate.

So if I've phrased the question inartfully, I apologize, but I would like to ask him what the effect would be if that disallowance were adopted.

MS. OTT: It's still -- still think it calls for speculation.

JUDGE PRIDGIN: I'll let him answer if he knows. If he doesn't know, he can say so.

THE WITNESS: Could you repeat the question, please?

BY MR. HATFIELD:

Q. I don't know if I can. And I may draw another objection, but I think my question was if Staff succeeds in disallowing everything over a control budget estimate, isn't that an incentive in future projects to set the budget as high as possible to avoid disallowances?

A. Again, that -- an incentive to -- to engage in inappropriate conduct, I don't know. But the thing is, is Staff is not doing an adjustment based on what a purported incentive may be in the

future. It is making the adjustment based on a regulatory stipulation and agreement entered into between several parties.

Q. Gotcha. All right. Let me ask this real -- just -- do you agree that it is important for construction projects to be budgeted as accurately as possible?

A. Yes.

Q. And that that budgeting could -- should occur on fact -- on a fact basis?

A. Again, budgeting occur on a fact basis?

Q. Yes.

A. I don't know if that's how budgeting's -- budgets are created, on a fact basis.

Q. So conversely then, you agree that budgets should be created without facts?

A. Budgets are created on studies and estimates of what it would take to cost to construct a project.

Q. Right. And that should be done with as much information as possible. Right?

A. Given the constraints of the construction project, yes.

Q. And you agree it's prudent and reasonable to construct budgets -- to construct, that's a bad

word -- to create budgets for a construction project?

A. Yes.

Q. And I think you've said that you agree that it's prudent and reasonable to update those budgets as additional information becomes available. Correct?

A. I think I said it wasn't im-- I didn't believe it was imprudent.

MR. HATFIELD: Thank you, Judge. I don't have any further questions.

JUDGE PRIDGIN: Mr. Hatfield, thank you. Let me see if we have any bench questions. Commissioner Kenney?

COMMISSIONER KENNEY: I'm the only one?

JUDGE PRIDGIN: Commissioner Jarrett was here and stepped out so it's to you.

COMMISSIONER KENNEY: Okay. I have -- I just have a few.

QUESTIONS BY COMMISSIONER KENNEY:

Q. Mr. Hyneman, thanks for your time and I won't keep you too very long. I want to ask about the exhibits that you went through with Mr. Hatfield. Can you hear me okay?

A. Yes.

Q. Okay. I just want to ask you about the

exhibits that you went through with Mr. Hatfield. I think it was Exhibits 94, 95, 96, 97. And they -- those exhibits were certain data requests. Do you remember that?

A. Yes, sir.

Q. Can you tell me is it -- is it your practice to -- to draft those data requests yourself and send them out or do you do it in consultation with the Staff attorneys?

A. We do that in consultation with the Staff attorneys.

Q. Okay. With all of them?

A. That's the intent, yes, sir.

Q. Is that what, in fact, happened with those particular Exhibits 94, 95, 96, 97?

A. Yes, sir. Our data requests before we send it to the company, we send it to our general counsel's office for coordination and approval.

Q. Okay. But do you -- you draft them -- you take the first shot at drafting them and then you send them over to the Staff counsel's office to review?

A. Yes, sir.

Q. Okay. Were you involved at all in the negotiation of the Comprehensive Energy Plan or the

stipulation and agreement as it's been variously referred to?

A. No.

Q. Okay. I want to ask you -- I was not clear and I may have just misheard. I think -- and I'm not going to refer to any numbers, but we were talking about those various settlements and you said that the costs of the settlement shouldn't be borne by the ratepayer because it's inappropriate. Is that -- did I hear you correctly?

A. Yes, sir. That's correct.

Q. So are you meaning that the actual dollar amount that was paid in the settlement shouldn't be borne by the ratepayers? Is that what you're referring to?

A. Yes. For unit 1, Iatan 1, both the actual dollar amount of the settlement, for example, that KCPL paid to Alstom and the liquidated damages that KCPL gave up should not be charged to Missouri ratepayers. And Staff is not --

Q. But -- but you're not -- but the act of entering into the settlement itself, have you formed an opinion about whether that was prudent or imprudent?

A. We have not come to an explicit decision.

Now, we know a lot of the problems that were created and we have evidence in the case and testimony in the case and attachments support that KCPL had an inexperienced project management team, KCPL hired outside experts, including Ernst & Young, Carl Morano, LogOn Consulting.

And their evaluation indicated that KCPL's management of the major contractors, for example, Alstom and Burns and McDonnell, were not effective and a lot of -- caused a lot of cost to be incurred that resulted in the settlement.

So that -- that's substantively the reason why we don't believe that the cost of the settlement -- and we're not saying that KCPL because they were behind schedule and you wanted to get the project done on time and -- we're not saying that was imprudent to do that. We're just -- do a cost allocation of the settlement is where the Staff is involved on that.

Q. Okay.

A. And if I may add, I don't believe KCPL --

Q. Sure. Go ahead.

A. -- has provided any information to show where -- any part of the settlement broken out. For example, if KCPL can show that a part of the

settlement was a realistic claim based on force majeure items or, you know, differing site conditions where they -- they assert too the economizer. If they can quantify that a portion of the settlement was attributable to that, which is reasonable, the Staff would have no problem allowing that.

But the Staff is of the understanding that the settlement was based on problems and faults of the contractors, delays, excess costs caused by its lack of aggressive management of the contractors.

Q. So it's -- it's the improper management of the project in the first instance and everything that flows from that that is the basis of the disallowances?

A. Well, it's improper management as far as you had an inexperienced project management team. KCPL was warned by Ernst & Young that if you're going to fast track the project, you have to have an experienced project management team in place. Staff's position is it did not have an experienced project management team in place and that was a cause of a lot of cost.

KCPL was to have a definitive estimate completed. And definitive estimate as -- as Schiff Hardin has defined, is one that's 75 -- or a

definitive estimate is one that's approximately 75 percent engineered. KCPL's budget was based on an engineering that's roughly 25 percent.

Q. Well, what's the significance of that fact?

A. Well, when you have a project that's -- that's not substantially designed prior to incurring procurements and construction, a lot of the procurements later on will have to be changed based on updated design. And those changes incur costs and --

Q. Is that a function -- is that a function of when they set the control budget or is that a function of entering into an EPC contract, for instance?

A. I believe that's a function of what is the design of the -- of the engineering when the budget is complete. They have a much better understanding of what the costs are going to be.

Q. Okay. Were you involved in the -- there was a July 11th, 2006 meeting that was referred to earlier in which KCPL's cost control systems document was presented to Staff. Were you there at that meeting?

A. No, sir.

Q. Okay. Do you know the meeting I'm

referring to?

A. I've heard discussions of it and I don't -- I was not involved with the project at that time or the discussions.

Q. Okay. All right. Mr. Hyneman, thanks for your time. I don't have any other questions.

JUDGE PRIDGIN: Commissioner Kenney, thank you. Any recross? Mr. Mills?

RECROSS-EXAMINATION BY MR. MILLS:

Q. Just a few. And this goes to that -- to the question of the timing, the control budget and the percentage engineering and all that. When was the regulatory plan negotiated?

A. The negotiations I think took place in 2005.

Q. Spring of 2005?

A. I think it was along the time when the negotiations took place. That's reasonable.

Q. And in the regulatory plan what was the deadline for a definitive estimate?

A. I believe KCPL committed to have it done on August 1st of 2006.

Q. Okay. Based on your understanding of the process, would it have been possible to get a definitive estimate, something in the neighborhood of

70 to 75 engineered, in the period of time between when the regulatory plan was negotiated and that August deadline a year and a half later?

A. Again, I know there were issues with the -- with Burns and McDonnell, the amount of resources they were devoting to the project. I don't know if they could have -- that period of time would be sufficient to -- to get 75 percent. I have no experience to base that assumption on.

Q. When was the control budget finally given to Staff?

A. I believe it was January of 2007.

Q. Okay. So that's another six months after the deadline?

A. Yes.

Q. Okay. And at that point do you agree that the engineering was only 20 to 30 per-- the -- 20 to 30 percent complete?

A. That's what KCPL asserts, correct.

Q. Okay. What is your understanding of why the engineering was so incomplete so long after KCPL committed to presenting a definitive estimate?

A. The documents I reviewed indicated that -- that Burns and McDonnell were not devoting enough resources to this project. And I have reviewed

documents from Schiff Hardin where they experienced significant difficulty getting information from Burns and McDonnell to get the budget. That's what I know.

Q. Okay. So in a previous answer, you said you don't know whether that's enough time to get to a definitive estimate. But you do know that it was enough time to be more ahead than the 20 to 30 percent they ultimately were. Right? Because of those problems with Burns and Mac?

MR. HATFIELD: Judge, just for the record, I want to object. It calls for an opinion that this witness is not qualified to give.

THE WITNESS: I don't have an opinion on that.

MR. HATFIELD: I withdraw my objection.

MR. MILLS: That's all I have.

JUDGE PRIDGIN: Mr. Mills, thank you. Further recross, Mr. Schwarz?

MR. SCHWARZ: No.

MR. HATFIELD: Are we up to me?

JUDGE PRIDGIN: Mr. Hatfield, yes, sir.

RECROSS-EXAMINATION BY MR. HATFIELD:

Q. Just briefly since we got into the discussion of definitive estimate. So I take it from the discussion you have an understanding of what a

definitive estimate is then?

A. Yes.

Q. So did KCPL at some point have a definitive estimate, some point in time?

A. I believe around May of '08 was -- the engineering was 75 percent complete.

Q. Okay. And so I guess I'm trying to understand now. Do you -- is whether the estimate was definitive important to the analysis of how much you recommend disallowing?

A. I would say yes, to the extent where KCPL made the decision to fast track the project based on engineering being 25 percent complete --

Q. All right.

A. -- and they were warned by its auditors that it needed an experienced project management team in place and it didn't have that. So that -- that was issues that the Staff considered in formulating its adjustments.

Q. Okay. And I guess here's what I'm trying to understand. Let's say for a minute that the 2006 control budget estimate was definitive under your definition. You would still disallow all cost overruns over that, under your analysis?

A. If KCPL did not provide documentation

which they're required to do to explain and list each cost overrun over that definitive estimate, then we'd be in the same predicament.

Q. Gotcha. And by the way, you keep going back to that documentation. You think that the stipulation and agreement has the word "documentation" in it?

A. It implies documentation.

Q. All right. Fair enough. So KCPL did have a definitive estimate in 2008. Right?

A. Yes.

Q. And your testimony is that the stipulation and agreement requires KCPL to have a definitive estimate by a specific date and time; is that right?

A. It requires KCPL to track costs overruns to a definitive estimate.

Q. Okay.

A. KCPL committed I believe to having that definitive estimate completed on August 1st, 2006.

Q. And if that agreement is not in the stipulation and agreement, how would that -- that date is not in the stipulation and agreement, how would that change your opinion?

A. If it's not -- if that agreement is not

in any document that KCPL committed to, then unless it made it orally and is not going to stand by it, then it wouldn't.

Q. So then you track to the definitive estimate in 2008 instead of the 2006 number?

A. Again, I'm a little lost on your line of questioning.

Q. I'm sorry. I think I can do it very quickly. You agree there was a definitive estimate in 2008. Correct?

A. I -- I believe that -- that KCPL's reforecast --

Q. Yes, sir.

A. -- where it created a new budget was based on engineering that was approximately 75 percent complete and had a better understanding where the cost's going to be in May of 2008.

Q. And that was a definitive estimate?

A. I think it meets the criteria outlined by Mr. Roberts in meeting that, yes.

Q. Okay. So when the stipulation and agreement says, Track cost overruns above the definitive estimate, you would track the overruns above the 2008 number. Right?

A. No. I think --

Q. No?
A. -- for the purposes of the stipulation and agreement and we've been through this --
Q. Yes.
A. -- the Staff agreed to use the control budget estimate for the definitive estimate at that time. That's what it was using, that's what it's used all along.
Q. Okay.
A. Just that the budget was not completed with engineering based on definitive estimate criteria.
Q. Okay. And the reason you're using the 2006 control budget estimate -- let me make sure I understand -- is because you believe that the -- in the stipulation and agreement, KCPL agreed to provide the definitive estimate by a date back in 2006?
A. Yes. I've seen documents I think from KCPL where they indicated they had that obligation.
Q. Okay. Can you -- do you know which section of the stipulation and agreement that date would be in?
A. I don't know if it's specifically outlined in the stipulation and agreement, but I can locate that document if you'd like.

Q. All right. And then just very briefly on Commissioner Kenney's questions about Alstom, if Alstom -- I'm going to use a negative so let me warn you. If Alstom was not late in meeting their schedule, KCPL would not have been entitled to LDs. Right?

A. Their original schedule, yes.

Q. Okay. The -- when the Construction Audit and Prudence Review that you performed refers to an R&O that says if Alstom continues to meet deadlines, you're referring to the original -- you think that R&O was referring to the original deadlines?

A. Well, and KCPL -- Alstom had a deadline. In the R&O it explained that KCP&L gave Alstom an extra 47 days.

Q. Right.

A. Then it set a new target date for completion and it based its liquidated damages on that. The Staff did not take issue with the 47 days.

Q. Don't have a problem with extending the 47 days?

A. We didn't -- we didn't take issue.

Q. Prudent decision to make?

A. I'm not -- I didn't make evaluation whether that was prudent or not. We decided not -- we

gave -- the 47 days were there. It's only after those 47 days that gave -- KCPL gave Alstom to complete the work --

Q. Yeah.

A. -- then if they didn't finish it by then, that's when the liquidated damages kicked in.

Q. Okay. If they did finish it by then, then you don't have a problem with waiving the LDs, liquidated damages?

A. That's the position that we took in the adjustment. Now -- and that position was based on that there were legitimate cost delays, force majeure, differing site conditions, you know, weather conditions that were not contemplated in the contract. To compensate for those criteria, we did not take issue with the 47 days.

Q. By the way, I thought force majeure was French for it was really cold. You said weather conditions. Is that -- they're two different things?

A. The French word for cold is "froid."

Q. Thank you. I think was thinking "force." It's really "froid." All right. But on that point, by the way, you acknowledge that there were some claims being made by Alstom for force majeure. Correct?

A. That there were claims for differing site conditions?

Q. Yes, sir.

A. And I think they were also claiming weather delays that KCPL indicated were suspect.

Q. Yes.

A. All right.

Q. Just to be clear, I think it is in the audit, but part of Alstom's claim was there's weather problems that delayed us. Right?

A. And whether they -- they identified weather. They didn't say that the weather was force majeure that I know of.

Q. So two different things; force majeure, something other than weather; and weather?

A. Right. Force majeure kind of implicates that it's something that happened that's outside of the control of the entity that's stopped the project.

Q. Right. That was my next question. Kansas City Power and Light's not in control of the weather?

A. Correct.

Q. And force majeure indicates that's something other than in the control of the parties?

A. Right. But a certain degree of bad

weather is included in the contract.

Q. Yes.

A. It's a firm fixed price contract.

Q. And then there were some other claims by Alstom that the delays were KCPL's fault?

A. Or Burns and McDonnell or Kiewit or other contractors on -- not on the site.

Q. They were blaming a lot of stuff for those delays?

A. Yes.

Q. And it really was hard to tell whose fault they thought it was. Right?

A. Well, it's not hard to tell whose fault they thought it was.

Q. Everybody but Alstom's. Right? Including God?

A. I think there were instances where they admitted that they were late.

Q. Okay.

A. Yes.

Q. All right. Fair enough. We'll get off that for a minute. I'm sorry. I realize I didn't ask you -- we were having this discussion about the definitive estimate. And if you could help us out a little bit, do you know if the Commission decided to

use the 2008 reforecasted budget as the definitive estimate for purposes of the stipulation and agreement, what would the disallowances be? What's the cost over that 2008 budget, just generally?

A. I would need to see a K-Report.

Q. Okay.

A. If I saw one of those, I could do that.

Q. Okay. And we don't need do that because we're all -- I know I'm getting hungry. The -- you could tell from the K-Report?

A. What the total would be -- what the amount would be in total, yes.

Q. So you just take the column that is the 2008 reforecast --

A. Reforecasted budget.

Q. -- and you'd compare that to?

A. The actual whatever date you want incurred costs.

Q. Okay. And on that K-Report then you can identify what the total amount of overruns is compared to the 2006 budget. Right?

A. Yes.

Q. And you can see what it is compared to the 2008 budget?

A. Yes.

Q. And you can see what it is compared to another reforecast that happened after 2008?

A. If I recall -- I don't know how many reforecasted budgets are on there, but I know the May '08 reforecasted budget is on there.

MR. HATFIELD: Thank you, Judge.

JUDGE PRIDGIN: Redirect?

MS. OTT: If this is a good time for a break, I don't think this will be -- this isn't going to be short.

JUDGE PRIDGIN: Okay. Give me your definition of not short.

MS. OTT: Could be anywhere over half an hour or more.

JUDGE PRIDGIN: Because I generally have been, you know, breaking about 6:00 for dinner. Not that I'm, you know, stuck to that, but I was hoping to get Mr. Hyneman off the stand and then -- then break for dinner. Do you --

MS. OTT: It will go past 6:00. I can tell you that. But if you want me to start and then break in the middle of it?

JUDGE PRIDGIN: Let me propose this. I'm fine with breaking for dinner and then allowing a little extra time because I had heard -- well, let's

do this. Let me go off the record and we'll plan to resume at 7:00.

And if it's okay with the parties, we'll discuss off the record some scheduling possibilities. And I think -- I had also had some requests of parties having more time to talk. So if I could take that up with parties off the record briefly just so I can give the court reporter a break. I don't know why she needs to transcribe it.

Ms. Kliethermes?

MS. KLIETHERMES: While we're still on the record, we had the outstanding exhibits to be provided from this morning. And I just needed to clarify one item for the record. Empire did have something that they considered sensitive that they wish redacted from the HC copy of 284.

So what I'll be providing to the court reporter does have a page -- I believe it is pages -- Schedule 2, pages 1 and 2 is physically pulled out of this -- the copies that will be provided, if that could just be reflected in the record.

JUDGE PRIDGIN: Okay. So it -- I'm looking for 284. Well, my notes may be faulty.

MS. KLIETHERMES: It's the direct testimony of Roberta A. McKiddy.

JUDGE PRIDGIN: We discussed it. I'm sorry. I'd written those numbers down. We discussed that on the record, but I failed to correct it on my notes. I'm very sorry. You're correct. So 284 --

MS. KLIETHERMES: And again, the pages that are physically removed is Schedule 2, pages 1 and 2.

JUDGE PRIDGIN: All right. Is that still an NP?

MS. CARTER: It's now HC.

MS. KLIETHERMES: It's now HC. And we have provided the NP versions of Schedule 28-- of Exhibit 283.

JUDGE PRIDGIN: 284. Right?

MS. KLIETHERMES: We have the HC still an HC of 284 from which two pages of sensitive material have been removed and the NP version of 283.

JUDGE PRIDGIN: Of 283. Now I'm with you. All right. Anything further before we go off the record? All right. Ms. Kliethermes, thank you.

We will stand in recess until 7:00. Thank you. We're off the record.

(A recess was taken.)

JUDGE PRIDGIN: All right. Good evening. We're back on the record. When we broke for dinner, I

understood that Ms. Ott had redirect for Mr. Hyneman. Is there anything -- anything further before she resumes? Mr. Hyneman, I'll remind you you're under oath, sir.

THE WITNESS: Yes.

JUDGE PRIDGIN: Ms. Ott, when you're ready.

REDIRECT EXAMINATION BY MS. OTT:

Q. Good evening, Mr. Hyneman.

A. Good evening.

Q. There were some discussions about Staff Data Request 490 and 491. Do you remember that?

A. Yes.

Q. Okay. Now, what did KCPL provide for Staff to review?

A. I believe there was no documents provided to review.

Q. And did Staff follow up with the data request?

A. Well, when I -- I think it was redacted documents provided.

MR. HATFIELD: Judge, I'm sorry. I just -- I thought we talked about 490 and 491 with Majors. I don't believe -- I think we were in the 600's on Hyneman. I don't think we talked about those

data requests with this witness.

MS. OTT: I believe it was in regards to the R&Os Staff received also along with Dave Elliott and that's what Data Request 490 and 491 are.

MR. HATFIELD: Well, I'm going to object that it's beyond the scope. I understand it's been a long day so -- I'm pretty sure that we talked about those with Mr. Majors and did not discuss those with Mr. Hyneman.

JUDGE PRIDGIN: Ms. Ott?

MS. OTT: I believe we did discuss R&Os and whether or not he reviewed R&Os in which Mr. Elliott received.

JUDGE PRIDGIN: All right. I'll overrule.

BY MS. OTT:

Q. Now, Mr. Hyneman, I'm actually -- I'll just --

MS. OTT: May I approach?

JUDGE PRIDGIN: You may.

MS. OTT: Probably first time I've asked this week. Sorry.

JUDGE PRIDGIN: No problem.

BY MS. OTT:

Q. I'm going to hand you a copy of an

e-mail.

A. Yes.

Q. Who is this e-mail to?

A. It is --

MR. HATFIELD: Do you have a copy, counsel? Thank you.

THE WITNESS: It is to Bob Schallenberg and Christine Davidson.

BY MS. OTT:

Q. Who is it sent from?

A. It's from Tim Rush of KCPL.

Q. And is anybody else carbon copied?

A. Yes. Jaime Ott, Nathan Williams, Steve Dottheim, Chuck Hyneman and Keith Majors.

Q. And what is the subject matter of this -- this data request -- or this e-mail?

A. Data request matters.

Q. Okay. Can you read the first two paragraphs?

A. Yes.

Q. Just for some background.

A. Bob, I appreciated the opportunity to meet yesterday and discuss issues about our upcoming rate case and talk about some of the concerns you are having regarding the discovery process. As I told you

yesterday, I am working on a response to your e-mail and I had hoped to send it out later in the day. I am sorry for the delay, but I understand that you have some significant excitement at your offices today. I hope and pray all is well.

The following is my response to your e-mail. If you would like to discuss or have any questions, please feel free to give me a call. As I have noted throughout my response, I would like to get your issues and concerns addressed as soon as practical.

Q. And what's the date of this e-mail?

A. It's November 10th, 2009.

Q. And then there's some discussion regarding data requests and then particularly on page 3 of 8 of this document he specifically addresses Data Request 490.

MR. HATFIELD: Judge, I'm sorry to interrupt. I'm concerned this may not be relevant. This is requesting -- this is in File No. 2010-0259 and the data requests that we were discussing were in a different case. And so I just -- I'm not -- I want to make sure that we're talking about the same DRs because this one -- the DRs I had I thought were in 2011. So I object to the relevance of this e-mail

that was in 2010 and contains a stamp on it that it's in Case EO-2010-0259.

JUDGE PRIDGIN: Ms. Ott?

MS. OTT: Well, all of the data requests from the 89 and 90 case were rolled over into the 259 case, which then have been updated through this case and are relevant. He was discussing the subject matter of DR 490 regarding R&Os and whether or not Mr. Hyneman reviewed the R&Os that Dave Elliott received.

MR. HATFIELD: Well, I guess if counsel's assuring me that it's the same Data Request 490, I'll take her word on that. But, Judge, I guess -- I know it's a little unusual, but just to be sure, I would like to put this e-mail -- I'd like to make sure it's admitted as an exhibit so that it's clear in the record exactly what we were talking about. And when we brief it, we can go back and look as this as an exhibit.

MS. OTT: And Staff has no problem marking this as an exhibit.

MR. HATFIELD: That would be great. I think that would resolve my problem, Judge. I'm sorry to interrupt.

JUDGE PRIDGIN: No, that's not a problem.

Will this be a Staff exhibit?

MS. OTT: Yes.

JUDGE PRIDGIN: I believe it's 285, but let me double check. I have in my notes it would be 285.

(KCP&L Exhibit No. 285 was marked for identification.)

BY MS. OTT:

Q. And then can you read Mr. Rush's response to Data Request 490?

A. Yes. For Staff Data Request 490, Staff is seeking copies of all documentation supporting the development, review and -- development, review, analysis and approval of the contingency and executive contingency included in the control budget estimate for environmental upgrades at Iatan 1.

KCPL's response did not assert any privilege or immunity objections related to the Staff data request. The response indicates that all documentation supporting the development, review and analysis and approval of the contingency and executive contingency included in the control budget estimate for environmental upgrades at Iatan 1 would be made available for review.

The KCPL response indicates that

information was provided to the Staff in early 2008 as part of its investigation in Case No. EM-2007-0374. Staff has hot been able to identify the information referenced --

Q. Mr. Hyneman, sorry to interrupt.

A. Yes.

Q. Maybe we're not reading the -- I'm just rereading Staff Data Request 490.

A. Okay. I was reading at the bottom of page 5.

Q. Oh and I was starting on page 3. Sorry.

A. My apologies.

Q. I was --

A. Okay. At page 3, Data Request 490, KCP&L initially allowed the Staff to review the R&O packets which were the basis for the development of the contingency funds for Iatan 1. Commercial issues were still pending at the time the Staff requested the R&O packets. Since commercial issues have been resolved related to Iatan 1, R&O packets were provided in supplemental response to Data Request 633. KCPL now explained that R&O packets -- KC-- KC-- KCPL has explained R&O packets to the Staff, in paren, Dave Elliott, but will be glad to do so again with you or any other Staff members.

Q. So at this time you hadn't received the R&O packet? Mr. Elliott had them?

A. This says, KCPL has explained R&O packets to Staff, Dave Elliott. Will be glad to do so again with you or any Staff members.

Q. Okay.

A. I don't -- yeah.

Q. Were R&Os in existence at the time the definitive estimate was adopted?

A. I don't believe so.

MS. OTT: With that, can I move for Staff -- or KCPL 285?

JUDGE PRIDGIN: KCPL 285 has been offered. Any objection? Hearing none, it is admitted.

(KCP&L Exhibit No. 285 was received into evidence.)

MR. HATFIELD: Judge, to be clear then, Exhibit 285 is an e-mail consisting of eight pages. Right?

MS. OTT: Correct.

MR. HATFIELD: Okay. Thank you.

BY MS. OTT:

Q. Now, there was some discussion regarding the Alstom settlement. Did you receive invoices

related to the Alstom settlement after December 31st, 2009?

A. Invoices? I'm not sure --

Q. Did you receive information related to the Alstom settlement after the Staff preliminary audit that was filed on December 31st, 2009?

A. Yes.

Q. Mr. Hatfield was kind of going over the way you approach a construction audit. Is the way one conducts a construction audit based on audit objectives and scope?

A. Yes. And audit procedures.

Q. Okay. And he was also discussing about a budget and when you -- when you need a budget in relationship to a construction project. Does the importance of a construction budget depend on the audit objectives and scope?

A. Yes.

Q. Is it important for the budget to a construction audit -- is the importance of the budget to a construction audit dependent on the construction audit objectives and scope?

A. Yes.

Q. Now, there was some discussions on -- you were talking about the fast tracking section of the

Staff's November 3rd report and just want to be clear. You didn't author that section, did you?

A. No.

Q. Okay. And did Mr. Schallenberg make any adjustments in this case?

A. Yes.

Q. And what were those adjustments Mr. Schallenberg made?

A. He made the common plant transfer, the Iatan 1 indirect costs related to common plant and I believe the permanent auxiliary electric boiler cost transfer.

Q. And is that Staff report supported by an affidavit?

A. Yes.

Q. Okay. There was also some discussion about the definitive estimate in relationship to the control budget estimate. Did KCPL ask Staff to accept this CBE as a substitute for the definitive estimate?

A. I don't know if they asked. KCPL used their budget, the 1.685 billion budget, as their definitive estimate. And Staff did not question their right to do that or take any action to say that they can't do that.

Q. Did KCPL use the CBE without seeking

Staff's opinion regarding its issue?

A. I -- I'm aware that KCPL was behind schedule completing the budget and I know Mr. Giles has testified that they -- that he contacted Bob Schallenberg and asked him if, you know, there's going to be a delay. And he indicated that Mr. Schallenberg said, you know, just make sure you, you know, get the numbers right. That's the only contact that I know between KCPL and the Staff on that.

Q. Okay. Going back to your interactions with Mr. Elliott and Mr. Lange, if Mr. Elliott had found an adjustment, would he need you to quantify the value of his adjustment?

A. Most likely, yes.

Q. And why would he need you to help him quantify that adjustment?

MR. HATFIELD: Object that it calls for speculation.

JUDGE PRIDGIN: I'll overrule. I'll let him answer if he know. If he doesn't know, he can say so.

THE WITNESS: Well, as Mr. Elliott has told me on numerous occasions and also has advised KCPL, he doesn't look at costs. He doesn't -- he relies on the Staff auditors to handle the costs.

BY MS. OTT:

Q. Okay. Okay. Mr. Hatfield was also discussing some language within your testimony and whether or not you applied two different standards to the Iatan -- if you applied one standard to the Iatan 1 project and a different standard to the Iatan 2 because in your testimony for Iatan 1 you had imprudence where for Iatan 2 you had imprudence, inappropriate and unreasonable, I believe.

A. Yes.

Q. Can I get you to turn to page 61 of your deposition?

A. Yes. I'm there.

Q. Okay. And he asked you a question starting on line 11. Can -- can you read that?

MR. HATFIELD: Judge, I'm going to object. It's improper impeachment to read a witness's deposition without asking him a question.

MS. OTT: This isn't impeachment. I'm not trying to impeach my witness here. I'm trying to clarify that Mr. Hatfield was aware that he had two different standards during his deposition and it wasn't -- wasn't new.

MR. HATFIELD: Oh, stipulate.

JUDGE PRIDGIN: Very good. Overruled.

BY MS. OTT:

Q. Can you read question 11?

A. Line 11?

Q. Or sorry, yeah. Line 11.

A. Yes. Question: Here's what I'm wondering. On page 2, line 12 you refer to Iatan unit 1 costs that were imprudently incurred. And on page 3, line 1 you refer to Iatan unit 1 -- unit 2 costs that were imprudent, unreasonable or not a benefit to Missouri ratepayers. Why are you making the distinction between unit 1 and unit 2 there?

Answer: The statement on line 11 and line -- the statement on line 11 and 12 is incomplete. It should say, Imprudent, unreasonable or inappropriate. It's just an incomplete statement. It should be consistent with the statement made on page 3.

Q. Okay. Thank you. So that was clarified during your deposition?

A. Yes.

Q. All right. Now, there was some discussion a little bit later on in the evening about the cost control system and whether or not it had the capability or it could identify and explain the cost overruns. Has KCPL's cost control system ever

produced the identity of cost overruns for the Iatan project?

A. It has never produced an identity and an explanation of any cost overrun over the definitive estimate.

Q. So was Staff never given an explanation related to the identification of the cost overruns?

A. There are some explanations of some cost overruns in a document, yes. But the Staff was never provided with the document explaining and identifying any cost overrun over the definitive estimate.

Q. Now, you were also -- in that, you had some discussion about a variance. Are you saying -- were you trying to say that all budget variances are cost overruns?

A. No.

Q. So variance could or could not be a cost overrun?

A. Yes.

Q. Okay.

A. A variance is just a difference plus or minus from budget. Cost overrun would be the amount in excess of the control budget estimate including the contingency, plus cost overruns, less cost underruns. That's the net cost overrun.

Q. So has Staff received the explanation for the cost overruns in this case?

A. No. The Staff has not received any documentation describing and identifying the cost overruns over the definitive estimate.

Q. Now, does Staff make disallowances for unsubstantiated costs?

A. Yes.

Q. So is Staff's disallowance for the cost overruns because the overruns above the CBE are not in -- not documented in accordance with the stipulation and agreement?

A. Yes.

Q. There was also some discussions on your other data requests which have been marked as Exhibits 94 through I think 99 and some discussions on the date in which they were -- they were issued to KCPL. Does Staff still have to prepare another audit regarding Iatan project?

A. Yes. A number of those data requests were based on KCPL's surrebuttal and rebuttal testimony. When they filed testimony, we issued data requests to get information about that testimony. Other data requests were written with -- in the nature of obtaining information to update or complete the

audit hopefully in -- in the future. And one part being the true-up audit that I think needs to be filed in February.

Q. And is this audit supposed to be based on costs through October 31st, 2010?

A. Yes. The true-up audit is.

Q. And when's that due?

A. It's late February I think is the date that it's due.

Q. And will this be -- will that February true-up be the final audit report for the Iatan project?

A. No. I don't believe so. That's the cost up through October 31st, 2010. I'm sure the remaining costs will be reviewed some time in the future.

Q. There was also some discussion about the liquidated damages and your opinion. You weren't offering a legal opinion about the Alstom settlement, were you?

A. No.

Q. Okay. I just -- there was -- wanted to clear that up. Now, Mr. Hatfield had you going through the specific adjustments, I think they were looking at Schedule 1 and 2 and what's been referred to as Mr. Dottheim's exhibit that he passed out in his

opening, the comparison and he went line by line through --

A. Right.

Q. -- your adjustments.

A. I was using Schedule 1-1 and 1-2 to the Staff November report.

Q. And just want to be clear on the last part. Did you reduce the cost overruns by the adjustments -- by the specific adjustments you made?

A. Yes.

Q. Okay. And why did you do that?

A. Well, the Staff wanted to make sure that any adjustments its ma-- it made came strictly out of the cost overruns. It didn't make any adjustments to the actual budget to construct, procure and are on direct costs and it didn't make any adjustment for cost in the $220 million contingency. It just made adjustments based on the cost overruns.

Q. Okay.

A. So even if -- if it found problems with contingency, it did not adjust any numbers that it -- that were in the contingency. Only the above -- the amounts over and above.

Q. Then there was also around that time discussion on the documentation of the cost overruns.

Do you have an opinion on whether the cost overruns are adequately documented?

A. We haven't seen any document identifying and describing the cost overruns.

Q. Is -- continue.

A. As -- in -- in the regulatory plan stipulation and agreement.

Q. Now, if KCPL were to identify and explain any cost overruns above the definitive estimate, would the Staff auditors' work be complete with the identification and explanation of the cost overruns?

A. No. At that time we would review that document for costs that were imprudent, inappropriate, unreasonable or not of benefit to Missouri ratepayers based on that documentation.

Q. Now, are there still costs that Staff will have to audit for -- for the true-up for Iatan 1, Iatan 2 and the common plant?

A. Yes.

Q. And you also had some discussions with Mr. Hatfield about the crane accident. Does the crane accident involve Schiff Hardin?

A. Schiff Hardin and another contractor that I believe Schiff recommended, Packer Engineering, had a lot of cost involved in the crane accident. They

charged hours to it. And I don't have the dollar amount, but those costs were charged to the crane accident project number.

Q. There was also some discussion on the Alstom adjustment for Iatan 2 and whether or not you interviewed the Ernst & Young auditors or the LogOn individuals or the STS individuals. Did Staff do any analysis related to these auditors or evaluations?

A. Well, the Staff did -- and I was asked if I interviewed anybody from LogOn. And I didn't interview anybody from LogOn. I did have a meeting with Mr. Carl Churchman, who's the vice president of construction, which we discussed LogOn construction and why he brought them on, the purpose they were there and what they would be doing. And Mr. Churchman is the person who brought LogOn to the Iatan construction projects.

Q. And in regards to Ernst & Young, LogOn and Strategic Talent Solutions, did you review any of their materials?

A. I reviewed, yes, all the Ernst & Young reports and they assisted KCPL's internal audit. And I reviewed the engagement letter and the STS report that it filed to KCPL on the Iatan projects.

Q. Now, there was discussion about if the

Commission were to adopt Staff's policy in this matter and the effect that it -- it may have or may not have going forward. But I kind of want to go in the reverse of what Mr. Hatfield asked you.

If the Commission were to disallow costs caused by the company's failure to comply with its agreement, would future construction audit projects have a cost control system that would identify and explain cost overruns over cost baseline?

A. No. This project was unique in that extent. And it's because of the regulatory plan, stipulation and agreement. That agreement which allowed what they call amortizations or, in effect, a prepayment of a cost to construct the Iatan plant, that's something I believe is unique, had never been done before in Missouri.

And to compensate the other party to that agreement, they wanted to make sure that if there were cost overruns on the Iatan project, the CEP projects, that those cost overruns would be identified and explained. And that's a consideration they got for giving up and allowing KCPL to recover the amortizations in rates during the project.

Q. Okay. But if the Commission were to not adopt Staff's policy and the -- with the cost

overruns, would it encourage other -- could it encourage other companies to not comply with a requirement to identify and explain cost overruns and discourage them from having to identify them in the future?

A. I believe it would, yes.

Q. I think on re-- recross you were discussing the definitive estimate and the control budget estimate again. If the control budget estimate was a definitive estimate, would that facilitate the identification, exploration of cost overruns?

A. I don't know if there's any distinction. KCPL used their control budget estimate and called it a definitive estimate. I don't think anybody has agreed what the definition of the definitive estimate is. KCPL defined it as their control budget estimate. That's the budget they agreed to track to. The Staff has accepted that. It hasn't said, you know, you need a better budget. It said this is the budget that we're going to use in our audits. So I don't think there's any disagreement on what budget it's going to be tracked to.

And my comment on definitive estimate is based on Mr. Roberts' description of his opinion of definitive estimate, which I believe is something in

the neighborhood of 75 percent engineering complete. Mr. Meyer said that the term "definitive estimate" is no longer used. He referred to Ace, which is the industry standard in construction that they don't use the term any longer because nobody knows what it means, it's vague.

But -- so my knowledge of definitive estimate is based on what Mr. Roberts used and what the Commission addressed in the Wolf Creek order, that definitive estimate was definition of a plant that's efficiently constructed.

Q. Okay. I'm sorry. I guess you also used -- you've also seen a definition of definitive estimate from the Wolf Creek case. Is that what you just said?

A. Yes.

Q. Have parties in this case agreed to a definition of definitive estimate?

A. No. But the Commission has identified a description of definitive estimate in the Wolf Creek case.

Q. There was some discussion of your disallowances of the Schiff Hardin fees. Have you ever participated in rate case adjustments in any of your -- any of your tenure here at the Commission?

A. Yes.

Q. And can you explain a little bit about that?

A. Well, normally during rate case we look at legal fees outside services for reasonableness and -- and appropriateness. And we make decisions based on adjustments, based on -- based on those reviews.

Q. Are you aware if the Commission has ever made an adjustment for a law firm used in -- like an out-of-state law firm made an adjustment to reflect more Missouri rates?

A. Yes. I believe I sponsored an adjustment in a 2002 Missouri Gas Energy rate case for an outside counsel from New York who came here and fees the Staff determined were excessive. And I believe the Commission upheld that adjustment in its order. But I would have to see the order to refresh my memory.

Q. I think I might have that order you're talking about in front of me, but we'll see. I have it flagged what I think you might be referring to. I could be incorrect.

A. Yeah. Well, it's 2004-- GR-2004-0209 is the rate case.

Q. And what's the caption of that case?

A. This is the Missouri Public Service Commission Report and Order.

Q. And just state the title of the case, you know, the case caption.

A. Oh, it's in the matter of Missouri Gas Energy's tariffs to implement a general rate increase for natural gas service.

Q. And what is the issue date of this order?

A. September 21st, 2004.

Q. And the effective date?

A. October 2nd, 2004.

Q. All right. Now, is this that case that you were referring to?

A. Yes.

Q. And on page 76, is that addressing the adjustment --

A. Yes.

Q. -- that you made?

Can you read the paragraph starting with, Eric? Well, actually --

A. You mean before --

Q. Will you start with, In this case?

A. The tab highlight -- yes.

Q. Start with, In this case, to give a little background.

A. In this case, MGE or perhaps Southern Union choose to hire Kasowitz, Benson, Torres, Friedman Law Firm out of New York. MGE explained that it chose that firm because it had previously represented Southern Union in other complex litigation and the company was very pleased with the results obtained in that case.

The other litigation for which the Kasowitz firm had represented Southern Union was, however, a merger and acquisition case and this case was the firm's first litigated regulatory rate case.

Eric Herschmann and Michael Fay of the Kasowitz firm did a good job of representing their client at the hearing. But the firm charged up to $690 per hour for its work. That rate is far higher than the typical rates charged by lawyers appearing before the Commission. The company is certainly entitled to hire lawyers with whom it is comfortable, but it would not be fair to require ratepayers to pay such high rates.

The Commission will reduce the rate to $200 per hour, which is the rate charged by MGE's local counsel. The -- the $16,250.75 in expenses incurred by the Kasowitz firm will be allowed. The total allowed for representation -- representation by

Kasowitz, Benson, Torres and Friedman is $188,200.75.

Q. Thank you. Okay. Mr. Hatfield also had you go through several of your 26 data request responses to KCPL to you. And since we discussed several of them, I'd like to have all of them marked as an exhibit. That would be Exhibit 2--

JUDGE PRIDGIN: This is 286.

MS. OTT: And it would be HC unless the company would decide to declassify it.

JUDGE PRIDGIN: This is HC; is that correct?

MS. OTT: Unless the company would decide otherwise.

JUDGE PRIDGIN: We'll call it HC.

(KCP&L Exhibit No. 286-HC was marked for identification.)

MS. OTT: And unless you want me to go through all of them, I can just move for the admission.

MR. HATFIELD: Whatever you think.

MS. OTT: Well, if you're going to object, then I'll go through each of them, but if you're going -- I'll move to admit.

MR. HATFIELD: Judge, the only objection we would have is that on page 11 in response to --

well, I've read this before. On page 11 the response to No. 26, Mr. Hyneman -- well, might I voir dire the witness with one question?

JUDGE PRIDGIN: You may.

VOIR DIRE EXAMINATION BY MR. HATFIELD:

Q. Mr. Hyneman, would you turn to page 11, your response to No. 26?

A. Yes.

Q. The second paragraph says, According to the Journal of Forensic and Investigative Accounting. Do you see that?

A. Yes.

Q. The paragraphs after that --

A. Yes.

Q. -- down to the end of that page are all direct quotes from an article. Correct?

A. Yes. I'm sorry. Article cited here.

Q. Right. And all of this is direct quotes verbatim from that article?

A. To the best of my recollection, it is.

MR. HATFIELD: So, Judge, I'd object to that as hearsay, but have no objection to the remainder of the exhibit.

JUDGE PRIDGIN: All right. 26 -- excuse me, objection is overruled. 286-HC is admitted.

(KCP&L Exhibit No. 286-HC was received into evidence.)

REDIRECT EXAMINATION (CONT'D) BY MS. OTT:

Q. Okay. Mr. Hyneman, you also had some discussion about the campus relocation. And I know that came up as well last night, but there was some information on what information you relied on to make that adjustment. So are you familiar with Staff Data Request 730?

A. Yes.

Q. Okay. Do you have a copy of it in front of you?

A. No. No.

Q. Okay.

A. But I believe that's the data request that I referenced in the Staff report.

Q. Well, I'll hand you a copy of it. And I -- I believe -- can you -- well, read what Staff Data Request 730 is.

A. Yes. It's a data request in Case No. ER-2009-0089 written on October 21st, 2009. The information was provided by Carl Churchman, requested by Chuck Hyneman. And it's a question related to the Code X016 construction trailer relocation, also known as the campus relocation.

Q. Okay. And can you read number four?

A. Yes. Question four: What are the reasons why the trailers were moved?

The answer: The original campus design and location was developed in the summer and -- summer of and fall of 2006. The facility construction began in the summer of 2006. The initial trailers onsite were for KCP&L, Kissick, Pullman and Alstom, each of whom mobilized to the site in late summer and fall of 2006.

In the summer of 2007, the balance of plant contractor, Kiewit, developed the ro-- a revised plan for laydown space needed for access to the turbine generator building. This plan included providing a new path for the unloading -- for unloading the turbine generator into the turbine bay. Kiewit's plan necessitated the moving of the existing campus's trailers to provide the area for the laydown space.

Additionally, Kiewit's plan of where it wanted to locate the erection cranes caused safety concerns because Kiewit would be lifting loads near or over the campus.

Q. Okay. I'm going to -- I'm trying to understand the difference between the auditing and

engineering review of this so I'm going to attempt to draw something and maybe you can explain it to me. And my understanding from visiting the Iatan plant and how it's laid out.

So if I can -- so here would be the river. And then this would be Iatan (drawing). And my understanding then -- and I'm not a very good drawer as you can all see. Is that the campus was located here (drawing). Is that your understanding so far or your understanding of the campus relocation --

A. Yes.

Q. -- prior to move?

So they were supposed to bring in the boiler off -- off the river from a barge?

A. Right.

Q. And it needed to get over here (indicating). So there was two options from -- understanding that you could crane the boiler over the Iatan or you could move the campus over 100 feet?

A. That's my understanding.

Q. Okay. So from the engineering perspective, from what I understand -- I don't know if you were in the room for Mr. Elliott -- is the risk of moving it over was greater than moving the campus to the side?

A. Yes. He did not take issue with the fact that they should move the campus.

Q. So if you move the campus over 100 feet, it incurred cost. What would be the auditing perspective of this campus relocation?

A. Well, the perspective that -- that the auditing Staff would look at is in the initial drawings of the site, why would the campus be re-- located so close to where the cranes would have to move the turbine into the unit? Now, if presumably it -- presumably if it was designed correctly, there would be enough space between the campus and where the -- the boiler had to go.

Q. So your adjustment is from a cost perspective?

A. Yes. What -- why did it have to be moved? Was the design incorrect? Why because Kissick became the balance of plant contractor all of a sudden was the campus location not correct?

Q. Okay. I think that cleared it up.

A. The additional -- see, charged to the project were the initial cost for the location of the campus, for the trailers and everything. That cost had already been charged to the project. By moving it, you're doubling up the cost. And according to

KCPL, there were no efficiency or savings. It was just extra work that's already been paid for, but it had to be paid for again.

And the Staff did not get sufficient explanation of -- of why that cost needed to be incurred and why its ratepayers need to pay twice for that cost.

Q. Okay. You and Mr. Hatfield also had some discussions about the budget and the CBE and whether or not needed to have the budget in place in order to -- if the budget had to be -- you had to have the design before the budget. Do you recall any of that discussion?

A. I don't recall that specific statement.

Q. All right. Let me see if I can better explain. Okay. How about in regards to the definitive estimate and the control budget and whether or not the definitive estimate was necessary at the time the budget was created?

A. The de-- the term "the definitive estimate" was a requirement for the regulatory plan. And the KCPL would have a definitive estimate. The term "definitive estimate" was not defined in the regulatory plan or any other document. KCPL used their December 2006 control budget estimate and they

classified that as a definitive estimate.

And the Staff has not contested KCPL's right to -- to call that a definitive estimate and I don't think any party in the case has agreed to what a -- the exact definition of a definitive estimate is.

Q. I'm going to hand you -- I'd actually like to have this marked and then --

JUDGE PRIDGIN: This will be KCPL 287.

BY MS. OTT:

Q. And can you look this over and tell me if you've ever seen this document before?

(KCP&L Exhibit No. 287 was marked for identification.)

THE WITNESS: Yes.

BY MS. OTT:

Q. Have you -- did you read -- and what is this e-mail? Who's it from?

A. It's from Chris Giles.

Q. To?

A. To Mike chesser.

Q. And anyone carboned?

A. John Grimwade.

Q. And what's the date of this e-mail?

A. Wednesday May 3rd, 2006.

Q. And the subject?

A. Risk for cost increases.

Q. Does it appear from this e-mail that the -- that it provides the company's position regarding the risk of recovery for costs increased above the CPE?

MR. HATFIELD: I'm going to object to a lack of foundation as to what it indicates. If we want to put the e-mail into the record, I have no objection to putting an exhibit in, but I do object to asking the witness to characterize an e-mail that he did not write.

MS. OTT: Well, can you -- well, I can save some time and just put it in the record.

MR. HATFIELD: No objection

JUDGE PRIDGIN: KCPL 287 is admitted.

(KCP&L Exhibit No. 287 was received into evidence.)

BY MS. OTT:

Q. But I am going to ask a couple questions regarding this e-mail. Does this e-mail indicate that the definitive cost estimate would not be available or meaningful until bidding results were known?

A. Yes.

Q. Does this e-mail indicate that the accuracy of the definitive cost estimate would not be

available or meaningful until a design had been reached at a certain level?

A. No. Not that I see.

Q. Do you know when KCPL -- or if they ever asserted that the definitive cost estimate would not be available or meaningful until the project reached a certain level of design completion?

A. No.

MS. OTT: I have nothing further. Thank you.

JUDGE PRIDGIN: All right. Ms. Ott, thank you.

MR. HATFIELD: Judge, just a quick question. Ms. Ott asked about DR No. 0730. Did we mark that as an exhibit?

JUDGE PRIDGIN: I'm not sure.

MS. OTT: I don't believe we marked it as an exhibit. I believe we read some of it.

MR. HATFIELD: Could we mark it as an exhibit and introduce it into the record?

MS. OTT: I don't even know -- let me see.

MR. HATFIELD: Here, I'll give it back to you.

MS. OTT: I have no problem with it, but

we'll have to run copies.

JUDGE PRIDGIN: This would be a Staff exhibit or KCPL? I just need a number.

MS. OTT: I mean it can be a Staff exhibit.

JUDGE PRIDGIN: Okay. Exhibit No. 288. Ms. Ott, you're offering that?

MS. OTT: Yes.

JUDGE PRIDGIN: Objections?

Hearing none, it is admitted. All right Mr. Hyneman, thank you very much, sir. You may step down.

(KCP&L Exhibit No. 288 was marked for identification.)

(KCP&L Exhibit No. 288 was received into evidence.)

JUDGE PRIDGIN: Are we ready for Mr. Schallenberg?

MS. OTT: sure.

JUDGE PRIDGIN: Do you need just a moment?

MR. DOTTHEIM: Yeah.

JUDGE PRIDGIN: Take five minutes? We'll be off the record until 8:10.

(A recess was taken.)

JUDGE PRIDGIN: All right. We're back on

the record. Mr. Schallenberg has taken the stand. Before I administer the oath, let me inquire. I believe when Mr. Henderson took the stand, he hadn't pre-filed any testimony and so it was a little different in the order of cross in that --

MR. FISCHER: Judge, I think this is a Staff witness though. Mr. Henderson was called on behalf of KCPL.

JUDGE PRIDGIN: Right. So even though he hasn't filed testimony, he's just going to be crossed because he sponsored some cost of service information. Is that correct?

MS. OTT: Yes. He filed -- it's the cost of -- Staff report in the Staff's direct case and he sponsored adjustments.

JUDGE PRIDGIN: Just double checking. I was trying to get this to go smoothly. All right. Anything further before he takes the oath? All right. Mr. Schallenberg if you'll raise your right hand to be sworn, please.

(Witness sworn.)

JUDGE PRIDGIN: Thank you very much, sir. You may have a seat.

And Ms. Ott, anything before he stands cross?

ROBERT SCHALLENBERG, having been sworn, testified as follows:

DIRECT EXAMINATION BY MS. OTT:

Q. Can you please state your name for the record.

A. Robert E. Schallenberg.

Q. And whom are you employed, in what capacity?

A. I'm employed by the Missouri Public Service Commission and I'm employed as the utility services division director.

Q. And are you the same Robert Schallenberg who sponsored adjustments in Staff's construction audit of Iatan that was filed on August 6th, 2010 that has been admitted as KCPL 204 and Staff's construction audit of Iatan dated November 3rd, 2010 marked as KCPL Exhibit 205?

A. I have the November 3rd here and I did sponsor adjustments in this one. If it's similar to this, I don't have the August one in front of me. I would have sponsored the common plant and probably auxiliary boiler issue in a prior report.

Q. Okay.

MS. OTT: with that, they're both already admitted. I'll tender him for cross-examination.

THE WITNESS: I did have a correction.
BY MS. OTT:
Q. Oh, I'm sorry.
A. That's all right. On page 3 of both the highly confidential that we filed and then the highly confidential after the company designation, on page 3 in the second line it says, Item 2 found to be imprudent or inappropriate and not charged to Iatan 1.
Q. Yes.
A. That should be charged. The "not" should be taken out. And then the next line following it has three found to be imprudent or inappropriate and not charged. It should be charged. The "not" should be removed in those two cases. And it's the same on both of these exhibits.
Q. Okay. Do you have any other changes?
A. No.
MS. OTT: All right. With that, I'll tender Mr. Schallenberg for cross-examination.
JUDGE PRIDGIN: Ms. Ott, thank you. Mr. Mills?
MR. MILLS: Just briefly.
CROSS-EXAMINATION BY MR. MILLS:
Q. Mr. Schallenberg, at a high level, can you explain to me the roles of Dave Elliott, Keith

Majors, Chuck Hyneman, yourself and Mr. Henderson in this audit or review process? Who did what and why?

A. Well, this audit is a continuation of the other audits that were ordered by the Commission to be done out of the -- I call them 89 and 90 cases. That would be the prior KCP&L rate case and the prior GMO rate case. And the Commission ordered audits to be done of -- at the time Iatan 1 and the common plant for Iatan 1 initially. There was also in initial order Jeffrey was included and I think Sibley, but their subsequent orders removed Jeffrey and Sibley.

And it ended up that we had to do a -- at the -- after the rate case settlement, we had to do an audit report on 12/31/09 of Iatan 1 and common plant needed to operate Iatan 1. We filed that report and then in response to that report, KCP&L -- I guess they're the ones that initiated the 259. I know the Staff didn't.

So we got in the non-- non-contested, contested case about the 12/31/09 report, which generated more Commission orders giving us new dates to complete audit reports by a date that was certain with no more audit activity after that.

And I believe it was that order that also inserted Mr. Henderson into a supervisory role that he

wasn't -- I mean he is my supervisor and he's also Natelle Dietrich's supervisor who has the energy department where Mr. Elliott works. Mr. Henderson got more actively involved and was put on a requirement to report our activities after the 259 case and orders.

The Commission, upon finding that by following the completion requirement that KCPL was asking, then created non-auditable costs because they couldn't be audited, they're still going to be incurred by those cut-offs. The Commission then removed those fixed dates which expanded it into -- basically where we're at is what we agreed to in 89 where we filed in this case Iatan 1 and Iatan 2 together and did true-ups.

Mr. Elliott's scope in this was he was allowed to do his engineering review as he had done in the past or as he saw -- as he saw fit, which he had been making, subsequent to the 89 cases, visits to Iatan and reviewing information. He was allowed to do basically whatever scope he wanted and we did not attempt to interfere in any way or even attempt to influence his reviews.

And I became -- I guess at first I was in charge because I was the only one doing it when the Commission first ordered the quick audits. And then

Mr. Hyneman was given to this -- to the project or to assist me because auditing made a few changes I guess in his work scope.

And then later Mr. Majors was brought in to do this to assist in terms of having three auditors to do the Iatan projects. So that's how we ended up as a band of brothers, so to speak.

Q. And -- and describe the interplay between the engineering part of the audit that Mr. Elliott was doing and the cost part of the audit that you and Mr. Hyneman and Mr. Majors were doing.

A. Well, Mr. Elliott does what he calls an engineering review. I -- I know that from that engineering review we always get a in-service date and in-service testimony telling us when the project is fully operational and used for service, which I know also that during an engineering review Mr. Elliott looks at other -- or gets other information. But I've never seen from an engineering review anything come out of it other than the in-service date certification.

That's -- and now the Commission -- one of the Commission's orders -- one of the initial ones said that we were to use all the information that the Staff had in-house. So we -- we had to take the data

requests that we had from the 89 and 90 case and merge that with the information that Mr. Elliott had, which at that time that he gave it to us was change orders. Unfortunately, there was a glitch. He only gave us the change orders for Iatan 1 and I didn't discover that error until much later in the process.

And then we also merged the -- the information from the acquisition case -- some people try to call it a merger case -- of EM-2007-0374. And in accordance with the Commission's order, those three databases were combined and then used to build off of for the audits that you see today.

Q. And was the role of Mr. Elliott and the relationship of Mr. Elliott's role to the -- what I'll call the cost auditor's role the same in this case as it has been in prior cases?

A. From what I -- what I -- what I've seen, it's had the -- the similar result from past engagements. Usually in his work, we get a in-service certification that the plants are in-service. And then in cases where he works with auditors, there have been adjustments that have come, but they're sponsored by the auditors. And usually when there's no auditor assigned to his projects, we get in-service certifications only.

MR. MILLS: Judge, that's all I have. Thank you.

JUDGE PRIDGIN: Mr. Mills, thank you. Mr. Schwarz?

MR. SCHWARZ: No questions.

JUDGE PRIDGIN: KCP&L, Mr. Fischer?

CROSS-EXAMINATION BY MR. FISCHER:

Q. Good evening, Mr. Schallenberg. Did you ask Mr. Hyneman to sponsor specific adjustments to the Staff's construction audit report?

A. Are you talking about the most recent one?

Q. That November 3rd.

A. I didn't ask him to do -- I -- I -- I told him he could do all the adjustments that he was willing to do and I would do any adjustments that he wasn't willing to pick up.

Q. Did you testify in your deposition that we took that -- whenever I asked you that question, I told him that he could put in whatever adjustments he wanted. I didn't -- I didn't sit down and say yes to this adjustment and no to that adjustment or you have to make this adjustment or you can't make that adjustment. I didn't do that.

A. You want me to read that portion of my

deposition?

Q. I'm just asking if you recall -- it's on page 144 if you want to check.

A. I mean I can go check. I think that's consistent with what I just said, but if you want the exact language out of my deposition.

Q. Well, I just want to make sure that's what you said.

A. Well, I mean I told -- I gave you the answer today to your question. I'll go back and look at what I said at the deposition if that's what you want.

Q. No. I don't want you to take any more time if that answer's consistent with your answer today.

A. I mean I think it is, yes.

MR. FISCHER: Okay. That's all I have. Thank you, Judge.

JUDGE PRIDGIN: All right. Redirect?

MS. OTT: I don't have -- I do have one.

REDIRECT EXAMINATION BY MS. OTT:

Q. Mr. Schallenberg, do you fully support all of Staff's adjustments in its Staff report?

A. I believe the -- the adjustments, yes. I mean I -- probably personally in some cases I probably

would have -- my rationale would be somewhat different, the dollar amount may be somewhat different, but in my dollar amounts the adjustments probably would be larger than those sponsored by Mr. Majors and Mr. Hyneman.

Q. So you don't disagree with any of the adjustments Mr. Majors or Mr. Hyneman has made?

A. No.

MS. OTT: Okay. I have nothing further.

JUDGE PRIDGIN: All right. Thank you. Mr. Schallenberg, thank you very much, sir. You may step down.

COMMISSIONER KENNEY: Hey, Judge?

JUDGE PRIDGIN: Commissioner Kenney, I'm sorry. I did not know you were there.

COMMISSIONER KENNEY: No, I was hiding. I don't have any questions, Mr. Schallenberg. Thank you. I was just going to ask the judge a question. I'm sorry.

JUDGE PRIDGIN: That's quite all right. Mr. Schallenberg, thank you.

Can we do this -- do you want this on the record, Commissioner, or off?

COMMISSIONER KENNEY: No, no, it doesn't have to be. I was going to ask what your plans were

for the rest of the night but maybe you were getting to that.

JUDGE PRIDGIN: That's exactly where we were going. I was going to see if we could discuss scheduling off the record. I'm sorry, Mr. Dottheim. Did you have something?

MR. DOTTHEIM: Yes. Still with the Iatan issue there's the -- the matter with the ruling last week of the Commission where the Staff sought to subpoena for hearing three witnesses or three individuals who were not specified as -- who did not have testimony filed in the case, Mr. Terry Bassham, Ms. Denise Shewmaker and Mr. David McDonald. Mr. Bassham and Ms. -- and Ms. Shewmaker have been deposed. The Commission permitted the -- the deposition of Mr. McDonald which took place this -- this Tuesday.

And what's -- still is yet to occur is the Staff specifying what portions of the depositions it seeks to place in the record and the -- the company responding to that.

JUDGE PRIDGIN: All right.

MR. DOTTHEIM: So I think that in particular is -- is what remains of Iatan other than I think I may not have offered Exhibit I guess it's KCPL

Exhibit 215-HC which I utilized in the cross-examination of Mr. Steven Jones, the project execution plan

JUDGE PRIDGIN: That's consistent with my notes.

MR. DOTTHEIM: And I'd like to offer that at this time.

JUDGE PRIDGIN: Any objection to 251-HC? Hearing none, it is admitted.

(KCP&L Exhibit No. 251-HC was received into evidence.)

JUDGE PRIDGIN: Mr. Dottheim, thank you. I would like to discuss scheduling and -- and ask counsel if they object to doing that off the record?

MS. OTT: No. But I do have copies of that Staff exhibit that was put in and I don't remember the number, but it's DR 730.

MR. SCHWARZ: 288.

JUDGE PRIDGIN: Perfect. Thank you. 288. All right. If there's nothing further, we'll stand in recess until 8:30. All right. We'll go off the record then. Thank you.

(WHEREUPON, the hearing was adjourned until 8:30 a.m., January 28, 2011.)

CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Tracy Thorpe Taylor, CCR

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