

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 19, 2011

Jefferson City, Missouri

Volume 15

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

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

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

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Tracy Taylor, CCR No. 939
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1 JUDGE PRIDGIN: All right. Good morning.
2 We are here in Case Nos ER-2010-0355 and 0356. It's
3 about 8:35 a.m. January 19th, 2011. I'm Ron Pridgin,
4 Regulatory Law Judge over the 0355 case.

5 If I would -- if I could just ask
6 counsel, make sure we are all on the same page. As we
7 closed yesterday, I believe Mr. Dottheim completed
8 giving a mini opening on Iatan issues. And would KCPL
9 like a mini opening on those issues as well?

10 MR. FISCHER: Yes, Judge. We'd like a
11 few minutes.

12 JUDGE PRIDGIN: All right. Is there
13 anything else before Mr. Fischer gives a mini opening?
14 Ms. Ott?

15 MS. OTT: Judge, I just wanted a
16 clarification on the order of the mini openings going
17 forward. It was my understanding they would follow
18 the same order of openings when -- the comprehensive
19 openings. Are we just going to go in what order
20 parties feel like or just something going forward?
21 I'd like to clarify.

22 JUDGE PRIDGIN: Sure. I understand. It
23 was my understanding too that we would go in the order
24 that -- listed on the -- on the order of opening
25 statements there for yesterday, but obviously it

1 doesn't matter to me. I'm willing to do whatever.

2 MR. FISCHER: That's fine, Judge. I
3 think Mr. Dottheim was all prepared to go forward and
4 that's the only reason we went out of order yesterday.

5 MS. OTT: Thank you.

6 JUDGE PRIDGIN: You're welcome. All
7 right. Anything else before KCPL gives its mini
8 opening on Iatan?

9 All right. Mr. Hatfield, when you're
10 ready, sir.

11 MR. HATFIELD: Thank you, Judge. I just
12 intended to cover some of the basic issues and then
13 run through who the witnesses were for KCPL during
14 this portion. So I wasn't going to -- not going to do
15 an extensive reading of Wolf Creek just so you know.
16 Mr. Dottheim and Mr. Fischer have me at a disadvantage
17 on 1985 Wolf Creek decisions.

18 And, Judge, there are a lot of issues to
19 talk about here, but I think the sheet that
20 Mr. Dottheim handed out yesterday, which was highly
21 confidential, probably gives us a nice outline for
22 this section of the hearing.

23 There are proposed disallowances listed
24 there sort of in the middle of the section. And I --
25 our witnesses that we're presenting are prepared to go

1 through in each and every one of those proposed Staff
2 disallowances. They track pretty well to the other
3 witness I think you'll hear from, which is
4 Mr. Drabinski. He has some issues with some of those
5 as well. So I think it's a good outline to go
6 through.

7 Judge, I don't know that you were in the
8 case, but we were here before, many of the
9 Commissioners were here before on a pre-- what we
10 sometimes call the preliminary audit case. There was
11 a hearing here where live testimony was taken on an
12 audit that was filed by the Staff December 31st of
13 2009.

14 That proceeding, that audit was made a
15 part of these proceedings and was -- I guess the
16 technical term -- rolled into this case number as
17 well. The Commissioners will recall and I'm sure the
18 record will reflect that in that preliminary audit,
19 the Staff raised two primary issues for reasons that
20 the audit was not completely completed during the
21 first rate case and as of December 31st, 2009. And
22 that was sort of the big issue there, was whether
23 Staff had to complete the audit by December 31st,
24 2009.

25 There were two issues raised at that

1 time. Number one, Staff said that Kansas City Power
2 and Light had delayed the ability of Staff to complete
3 the audit by its discovery practices. And the
4 Commission heard testimony from several witnesses for
5 I think two days on the issue -- on the issue
6 primarily focused on discovery practices.

7 Heard from some of the same witness
8 that's you'll hear from in this proceeding.
9 Mr. Giles, Mr. Blanc testified in that proceeding as
10 well. They talked about the discovery issues and how
11 Kansas City Power and Light was complying with
12 discovery requests.

13 The other issue that was raised at that
14 time about the December audit was the cost control
15 system. And the Staff alleged in the preliminary
16 audit filed December 31st, 2009 that the cost control
17 system did not sufficiently track costs. I do not
18 recall, the record will reflect, whether they
19 specifically said that was a violation of the previous
20 agreement, but they did make that allegation.

21 we asked for a hearing. we submitted a
22 issues list. we presented witnesses, particularly
23 Mr. Giles, who went through the cost control system
24 and explained how it worked and explained that the
25 cost control system did allow the Staff to conduct its

1 audit.

2 staff presented, in my recollection, the
3 record will be what it is, no evidence that the cost
4 control system was not functional at that time. Even
5 though that was one of the issues identified, that was
6 one of the issues briefed for the Commission at the
7 time, but staff did not at that time present anyone to
8 say that the cost control system was not working.

9 So we had a hearing, we heard testimony.
10 Mr. Schallenberg testified, Mr. Hyneman testified at
11 the time. The Commission entered an order as a result
12 of that hearing and found that there were, in fact, no
13 discovery delays. The wording of that order is in the
14 record. And there were -- there were actually --
15 there was, as I recall, a preliminary order that
16 discussed the cost control system, but the final order
17 did not contain any language about the cost control
18 system. Just to say that we've been here before on
19 this issue of cost control and there is testimony in
20 the record already about that.

21 Interestingly, in the December 31st, 2009
22 audit, staff did not propose a disallowance based on
23 cost control system. Did not propose any
24 disallowances based on unidentified or unexplained
25 cost overruns, but now staff has proposed that

1 disallowance, among others.

2 So let me just talk about the proposed
3 disallowances. And it seems pretty straightforward to
4 me that the Commission should really focus on a couple
5 of big issues on Mr. Dottheim's sheet. And I'm just
6 going to refer to it so we don't have to go into HC.

7 Mr. Dottheim's sheet in the left column
8 of numbers under Iatan 1, you'll see disallowances and
9 there's a total down there. If you add together
10 Issue 41, which is the Alstom settlement -- first is
11 forgone liquidated damages and second is Alstom
12 settlement -- if you add those two numbers together
13 and then you add in the net unidentified, unexplained
14 cost overruns, you're going to get nine-tenths of the
15 disallowances on Iatan 1.

16 So although all of our witnesses are
17 prepared to discuss each and every disallowance, I
18 would suggest that the focus of the questioning by the
19 Commissioners might want to focus in on the
20 nine-tenths of the issues, which are the Alstom
21 settlement and the net unidentified, unexplained cost
22 overruns. That's Iatan 1.

23 Iatan 2 contains a broader list of
24 disallowances, but if you do the math there -- and
25 again, I'm not going to say the numbers to avoid HC,

1 three-fourths of the dollars for disallowances are
2 contained in the net unidentified, unexplained cost
3 overrun adjustments. So you'll see there, Judge, it's
4 listed as Issue 30 and there's a number and then right
5 below that number is the total. So the way I get that
6 is that the number in line 30 is three-fourths of the
7 total proposed disallowances.

8 So we would suggest that those are the
9 things to focus on. And although we'll cover all of
10 them, those are the big issues that Kansas City Power
11 and Light sees in this case.

12 So on the unidentified -- what Staff
13 calls unidentified and unexplained cost overruns, the
14 first question is -- and it's already been
15 discussed -- did Kansas City Power and Light have a
16 system that identified and explained cost overruns
17 above the definitive budget estimate. Mr. Dottheim
18 correctly read paragraph Q from a previous agreement.
19 That's already in the record.

20 The evidence is going to show that Kansas
21 City Power and Light did have such a system and that
22 the system did identify and explain the cost overruns
23 on the projects. There are several witnesses who will
24 talk about that. Particularly the Commission may want
25 to start with -- and I forgot to -- if you'll indulge

1 me for a moment. I forgot to push the minus button up
2 here, as I was instructed yesterday.

3 Commission may want to start with witness
4 Steve Jones, who's going to be relatively early on our
5 list. And Mr. Jones has attached to his testimony as
6 SJ2010-1, the cost control system that Mr. Jones
7 designed in 2006. Mr. Jones can walk through what
8 that cost control system entailed, what the components
9 of it were, how it identified and explained the cost
10 overruns.

11 And again, I think the Commissioners may
12 want to ask him about when that was developed, what it
13 did. He can walk through all of the development of it
14 and how it was to be used for the system.

15 Mr. Giles is going to testify. The
16 Commission has heard from him before. Mr. Giles can
17 talk about when that cost control system was presented
18 to the Commission staff and when staff saw it and what
19 the discussions were. Mr. Giles can also answer
20 Mr. Kenney's questions -- Commissioner Kenney's
21 questions about the negotiation of paragraph Q and
22 what was meant by -- or I should say not what was
23 meant by, what was discussed about the meaning of the
24 phrase "identify and explain cost control systems."

25 I think it's also important that the

1 Commission talk to Mr. Giles or any of our witnesses,
2 for that matter, about the meetings -- get this --
3 about the meetings that occurred on the cost control
4 system. And I just, for illustrative purposes here,
5 listed some of the meetings that occurred.

6 So Mr. Giles, depending on the timing
7 of -- of when we want to talk about, Mr. Blanc,
8 Mr. Davis can all talk about the fact that the cost
9 control system was presented actually in 2006, that
10 control budgets were presented in January of 2007,
11 that there were then quarterly meetings with the Staff
12 about the project status throughout 2007 and 2008.

13 You'll see in May of 2008 that there was
14 a reforecast review presented to the Staff that
15 explained why the budget was being reforecast as Staff
16 was told in the original cost control system. The --
17 Mr. Jones can talk about how the original proposed
18 control system alerted all the parties that the budget
19 would be reforecast, that was a normal part of the
20 process, normal part of prudent planning for the
21 process. So we would suggest you ask the witnesses
22 about the time line.

23 As relates to the cost control system,
24 the evidence is going to show that no other utility --
25 no other electric utility in the state of Missouri has

1 a better system to track and explain costs, that Staff
2 has not identified another system anywhere that can
3 better explain or identify costs than this system.
4 Not only is this a sufficient system, but our
5 witnesses will explain that it is the high end of
6 industry standards for cost control.

7 Particularly the Commission should ask
8 Mr. Meyer who has extensive experience with several
9 systems throughout the country; Mr. Nielsen who is an
10 outside retained expert who has analyzed the system;
11 and Mr. Archibald who worked with the system on a
12 day-to-day basis and can explain exactly how it
13 worked.

14 As important as in the cost control
15 system is to ask Mr. Elliott, Staff's witness, how he
16 used the cost control system to identify and explain
17 the changes to the project from an engineering
18 standpoint.

19 Two experts, Mr. Nielsen and
20 Mr. Drabinski, used the cost control system to
21 identify and explain the cost overruns. The
22 Commission may wish to ask them how they were able to
23 do that and what they did to use that system.

24 Staff was able to identify and explain
25 certain cost overruns and says so in their audit

1 report. Staff admits in the audit report that the
2 system has the capability to identify and explain cost
3 overruns. And there's -- there's -- there will be a
4 lot of discussion on this issue, I'm sure.

5 The next issue is even if for some reason
6 in the -- in the face of the evidence, the documents
7 that we're going to go through there was -- an order
8 would find that the cost control system did not
9 sufficiently identify, explain cost overruns, then
10 what?

11 There's nothing in the agreement that was
12 read yesterday, paragraph Q, that says that there's a
13 disallowance as a consequence. There's nothing in the
14 law that says there should be a disallowance as a
15 consequence. When Staff did their audit in -- in
16 December of 2009, they did not make a disallowance as
17 a consequence.

18 So -- so what is the result? We would
19 suggest to the Commission, and will brief this at the
20 end, that regardless of what the system was able to
21 do, there has to be evidence of imprudence in order
22 for a disallowance to occur. You won't have to reach
23 that because you're going to find that the cost
24 control system did comply. That's the big one.

25 The other big one that I think we'll need

1 to spend some time on, the Commission may want to
2 spend time on is the Alstom settlement. And the issue
3 here is whether it was prudent for Kansas City Power
4 and Light to pay a contractor an amount of money that
5 is listed on the disallowance sheet when that
6 contractor was threatening with claims in excess of
7 double that amount and whether it was prudent to
8 forego liquidated damages.

9 Let me just mention as a footnote, in
10 Staff's preliminary audit report in December of 2009,
11 Staff recommended a disallowance for the money that
12 was paid to Alstom, but did not recommend a
13 disallowance for the foregone liquidated damages. And
14 although nothing has changed since then, Staff has now
15 decided that they should double essentially the
16 disallowance and recommend disallowing the foregone
17 liquidated damages.

18 I think the evidence is going to show
19 simply that the Staff witnesses on this issue are
20 simply not qualified to opine on whether the Alstom
21 settlement was prudent and that it is outside the area
22 of expertise. It was a risk management decision that
23 was prudent, that is fully explained.

24 As made clear by Staff's surrebuttal
25 testimony, particularly Mr. Hyneman's surrebuttal

1 testimony, Staff actually does not say the decision
2 was imprudent. They -- they simply say that it was
3 unreasonable.

4 So let me just run through the witnesses
5 that -- that you'll hear from Kansas City Power and
6 Light. Curtis Blanc will be available to testify.
7 You've heard from him already. He gave an overview of
8 the case. He's prepared to discuss the un-- the cost
9 control system and how it did identify and explain and
10 how no disallowance is proper there.

11 He can also answer any questions you
12 might have about the discovery process and what --
13 what access the Staff had to the documents that
14 comprise the cost control system. The amount of
15 discovery in this case was massive and it -- it might
16 bear some inquiry as to the transparency the company
17 has shown in explaining the control system and all of
18 the costs incurred at Iatan.

19 Next witness is Mr. Brent Davis whom this
20 Commission has heard from before. He directed unit
21 one and unit two projects. He can describe the scope
22 of the project, the management of all the major
23 contractors, including Alstom, which is one of the big
24 issues we described. He can compare the Iatan 2
25 project in particular to other projects he has worked

1 on during his career. He can explain also the
2 contracting.

3 He can also explain how he used the cost
4 control system to identify potential cost overruns and
5 to explain why there was a need to increase the budget
6 in particular areas or why there was a need to enter
7 into, for example, some sort of revisions to a
8 contract or a change order.

9 Mr. Bob Bell was Kansas City Power and
10 Light's senior director of construction for unit two.
11 He has 30 years of national and international power
12 plant construction experience and he'll discuss the
13 day-to-day management. He can respond to the
14 criticisms of the cost control system, risk management
15 oversight of Iatan 2. He can also respond to the
16 criticisms of Mr. Drabinski concerning prudent
17 management.

18 Next is Mr. Steve Jones, the former
19 senior procurement director of Kansas City Power and
20 Light. Discusses the procedures, policies that he
21 helped to develop on procurement and the procurement
22 of the contracts, particularly for the balance of
23 plant work. Again, attached to Mr. Jones's testimony
24 is the cost control system that he developed and that
25 was presented to Staff back in 2006.

1 Next, Mr. Chris Giles, the former vice
2 president for regulatory affairs who was involved in
3 the meetings that I mentioned earlier, was involved in
4 the negotiation of paragraph Q, can answer
5 Commissioner Kenney's questions about any discussions
6 about what it means to identify and explain cost
7 overruns. He can explain how the company kept the
8 staff and all the parties updated on significant
9 developments. He can discuss the control budget
10 estimates that were talked about in opening and how
11 the company's team identified and controlled the risks
12 associated with the project.

13 Mr. Downey is the highest level executive
14 that we can call to testify. We've brought him here
15 in the spirit of transparency to explain the overall
16 oversight of the project, to explain the procurement
17 options, performance of the major contracts. He can
18 discuss the settlement with Alstom, he can discuss the
19 shift disallowances as well. He'll -- he'll be happy
20 to take any questions the Commission has.

21 Mr. Ken Roberts is here. He's a lawyer
22 from Schiff Hardin. There are disallowances related
23 to Schiff that he can discuss. Mr. Roberts can
24 explain the data that was presented to executive
25 management for decision making. That's a crucial

1 element on the issue of prudence and Mr. Robert --
2 Roberts can explain how the system was set up, who the
3 team -- who compromised the team that was the Schiff
4 Hardin team that set up the -- the control system and
5 the project controls generally.

6 Dr. Kris Nielsen is here. Dr. Nielsen is
7 an outside expert from the Pegasus Global Management
8 firm. He evaluated the effectiveness of management
9 and the prudence of decisions. Pegasus Global
10 concluded that KCPL's management showed good
11 understanding of the initial conditions and
12 circumstances and the management efforts required in
13 regards to Iatan; made appropriate judgments to the
14 decisions on -- as the project unfolded; and he found
15 Kansas City Power and Light's management to be prudent
16 and reasonable.

17 As mentioned earlier, Pegasus is a -- I'm
18 sorry, Peg-- he will identify certain areas, as was
19 discussed in opening, where he feels there is some
20 issues with prudence and he can discuss those and be
21 questioned on those.

22 Mr. Forest Archibald is going to testify
23 next. And I think Mr. Archibald is someone the
24 Commission may want to question about how the control
25 system worked. Mr. Archibald was the hands-on

1 day-to-day operator of the cost control system. And
2 there are several documents attached to his testimony
3 that I think the Commission should ask him about to
4 get an understanding of how the system worked.

5 For example, one of the exhibits that's
6 attached to his testimony is what's known as the
7 K-Report. This is probably the best way to do it.
8 This is a report that was prepared regularly and
9 shared with all of the signatory parties. It shows
10 what the control budget was, it shows what the changes
11 were, it shows what the current budget was, it shows
12 what awarded costs were. It shows what committed
13 costs were, it shows what pending change orders were
14 at any given point in time. Shows the current
15 forecast for the total cost at completion.

16 So it -- I don't think any reasonable
17 person could say that this document fails to identify
18 where the costs were and what the increases were above
19 the control budget estimate. They're right there,
20 they're numeric and they're explained and
21 Mr. Archibald can go through them.

22 Mr. Archibald also includes in his
23 testimony as one of his schedules the Iatan 1 and 2
24 cost reforecast documents. These were discussed
25 briefly in the opening statement, but the cost

1 reforecasts were an extremely important part of this
2 process. They alerted all of the signatory parties
3 that the control budget estimate was going to need to
4 be increased or exceeded and explained the reasons
5 why.

6 That Kansas City Power and Light's
7 management had made a decision that more money would
8 need to be committed for the Iatan projects and on a
9 line-by-line basis explained exactly why that was
10 going to happen on a go-forward basis. This wasn't an
11 after the fact approach by the company where we came
12 in when it was all done and said, Sorry, guys, we --
13 we spent all this extra money nobody told you about.
14 There were reforecasts that were presented at the
15 time. If there were questions about it, those could
16 be addressed.

17 The reforecast documents that
18 Mr. Archibald has included in his testimony includes a
19 great amount of detail. The one thing that you might
20 want to spend some time on was this sheet that was
21 prepared with the reforecast, presented to all of the
22 signatory parties as the reforecast was done. Talks
23 about drivers for the reforecast. And this is a very
24 high-level overview that Mr. Archibald can drill down
25 into.

1 But here are the drivers, for example, in
2 this particular reforecast. The original construction
3 budget estimate was based on 30 percent completion.
4 Reforecast is based on a design engineering at
5 75 percent completion. So right there he's telling
6 you one of the drivers is our engineering is more
7 developed.

8 One of the drivers is that the Kiewit
9 bid -- related to the Kiewit bid and the schedule of
10 quantities. One of the drivers was the Alstom
11 schedule performance and then it lists risk and
12 opportunity items.

13 And just briefly -- I'm not going to go
14 through them all -- I'm sorry. Here's the page that
15 talks about the estimated changes by category, so here
16 are changes to the budget. One of the reasons for the
17 change is price because of the effect of normal price
18 escalation, increased prices due to shortages,
19 increased prices due to construction market
20 conditions.

21 One of the driving factors is design
22 maturation. As we designed the thing, we -- you know,
23 you realize you need to make this change in order to
24 make the design work. That may increase costs, may
25 reduce costs. Leads to a reforecast.

1 I'm not going to go through all these,
2 but it's just by way of saying that this was presented
3 to all of the signatory parties. Estimated changes
4 were presented in a -- in a chart -- pie chart. For
5 example, in this reforecast, 26 percent of the
6 reforecast changes were a result of design maturation,
7 13 percent were a result of operations and
8 construction optimization, 1 point -- I'm sorry,
9 2 percent were a result of pricing, and 59 percent
10 were a result of design maturation related to the
11 schedule.

12 Included in that document were also
13 what's known as R&O sheets. And the Commission may
14 want to go through these as well. These are the risk
15 and opportunity analysis sheets. So this particular
16 one, for example, has a reforecasted cost. That's the
17 amount above the budget that is going to go into a
18 particular line and there's an analysis. The control
19 budget associated with managing a single entity was
20 underestimated. The original control budget was
21 predicated on staffing for one shift per day, 50 hours
22 per week. And then that R&O goes on to explain why we
23 now need to reforecast.

24 So Mr. Archibald can go through that
25 process and can show that for each and every decision

1 that was made on the Iatan project, there was
2 identification of that issue not after the fact, but
3 as it occurred in real-time project management
4 go-forward basis. There was explanation as to why
5 that cost would be increased. It was written down, it
6 was documented in a way that no other utility in this
7 state has ever done before and it was all presented
8 and it was all available. It complied fully with the
9 agreements that Kansas City Power and Light entered
10 into.

11 Dan Meyer will also testify. Dan Meyer
12 can also explain at length the cost control system.
13 He's an outside consultant with 40 years of experience
14 in cost analysis in project oversight. The Commission
15 may want to ask him about the other systems that he's
16 worked on, the other cost controls that he's been
17 involved in. He can talk about the process for
18 establishing this system as well as how the system
19 worked.

20 Now, as those witnesses testify and --
21 and with the testimony they present, in presenting the
22 cus-- the company's testimony, we operated under the
23 assumption that the law presumes that Kansas City
24 Power and Light made prudent expenditures. And there
25 was a lot of discussion on this in opening; burdens of

1 proof, et cetera.

2 Burden is on the -- as the statute says,
3 the burden is on the company to establish
4 reasonableness of its charges. The law and the case
5 law that's been cited to your Honor, and I'm sure
6 we'll all brief ad nauseam, entitles us to what I
7 would call an evidentiary presumption to start, that
8 the decisions made were prudent. And we believe we're
9 entitled to that.

10 But in presenting the testimony, we went
11 ahead and presented specific evidence to show that all
12 of the decisions were prudent as if we had the burden
13 across the board to prove each and every one of them.
14 If you believe for some reason that Staff's failure to
15 understand the cost overruns shifts the burden, the
16 company has met its burdens fully and completely.
17 Particularly you may wish to look at the testimony of
18 Mr. Meyer and to ask him about his analysis of each
19 and every cost overrun.

20 Now, when it comes to Staff issues,
21 Mr. Dottheim yesterday discussed the issue of
22 Mr. Elliott and the engineering review. And I think
23 Commissioner Kenney made a good point about that,
24 which is sort of we're damned if we do, damned if we
25 don't.

1 If the engineers say that something was
2 not needed, it leads to a disallowance. If the
3 engineers say that something was needed, it still
4 leads to a disallowance. Our point is simply that
5 from an engineering standpoint, this project has been
6 reviewed and all of the decisions that were made out
7 there were prudent and reasonable from an engineering
8 standpoint. And I think this point should not be
9 lost.

10 This unidentified and unexplained cost
11 that the Staff seeks to disallow, which is a
12 significant number, includes engineering decisions
13 that have been approved as prudent engineering
14 choices. If staff doesn't know -- the accounting
15 staff doesn't know whether they're prudent or
16 imprudent, can't explain them one way or another, then
17 the engineering Staff has told you that there were
18 decisions there that were prudent.

19 But the whole issue goes to a second
20 point and it's an important one as well, which is that
21 this Commission -- and, Judge, this may fall to you a
22 little bit -- is going to have to do an analysis of
23 the expert testimony and whether people are experts in
24 the area in which they're offering testimony.

25 The Supreme Court in a case called

1 McDonagh looked at this issue in the context of
2 administrative proceedings. And your Honor may be
3 familiar with it, but the Supreme Court looked at
4 whether expert testimony is a technical evidentiary
5 issue or a substantive evidentiary issue and
6 determined that it's more than a technical issue and
7 that administrative agencies must reach a conclusion
8 as to whether someone is qualified to testify in an
9 area of expertise and what that area is.

10 In this case you have a -- all of the
11 disallowances -- all of the significant disallowances
12 are sponsored by Mr. Hyneman who is a CPA and an
13 accountant and who is no doubt an expert in
14 accounting. I have no doubt the evidence will show
15 that. The evidence will not show that he is an expert
16 in the other areas on which he offers an opinion and
17 his testimony simply cannot be considered under the
18 McDonagh case. And that's important. That's one
19 reason we're discussing the engineering opinions
20 because those are important.

21 I heard yesterday Staff talking to the
22 Commission about with whom the Commission should
23 discuss these disallowances. And I just wanted to
24 mention in terms of Staff witnesses, Mr. Schallenberg
25 has filed no testimony in this case. Mr. Hyneman has

1 filed the testimony sponsoring the Staff adjustments
2 and disallowances.

3 And Mr. Schallenberg did put his name on
4 certain sections of the audit report that was
5 submitted by Mr. Hyneman as part of his direct
6 testimony, but these are Mr. Hyneman's disallowances
7 when you go through the audit report and the
8 Commission should question him on them.

9 I'm not sure I understand the purpose of
10 Mr. Schallenberg's testimony when he has not filed
11 testimony in this case, but that may be something the
12 Commission wants to consider as witnesses are called.

13 At the end of the day here, the big issue
14 is whether this Commission has evidence that the
15 expenditures at Iatan were prudent or not. Our
16 witnesses have filed their testimony describing the
17 process, they've made a prima fascia case. As I said,
18 we believe we're entitled to an evidentiary
19 presumption that those were prudent.

20 If for some reason we're not or if that
21 presumption has been rebutted, we've filed voluminous
22 testimony that establishes with a preponderance of the
23 evidence, which is the proper standard, that all of
24 the expenditures were prudent and we've carried the
25 burden of proof.

1 we ask the Commission to question the
2 witnesses. Please don't pass on any of those folks.
3 They're all important to the process. They've all
4 filed testimony and they all can explain the important
5 issues the Commission faces. Thank you very much.

6 JUDGE PRIDGIN: Mr. Hatfield, thank you.
7 Is there any other party who wishes to give a mini
8 opening on Iatan?

9 All right. Hearing none, would Mr. Blanc
10 then be the first witness for KCP&L?

11 MR. FISCHER: Yes, sir.

12 JUDGE PRIDGIN: All right. Mr. Blanc, if
13 you'd come forward and be sworn, please. If you'll
14 raise your right hand to be sworn, please.

15 (witness sworn.)

16 JUDGE PRIDGIN: Thank you, very much,
17 sir.

18 Mr. Fischer, when you're ready.

19 (KCP&L Exhibit Nos. 7, 8 and 9 were
20 marked for identification.)

21 CURTIS BLANC, having been sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. FISCHER:

23 Q. Yes. Please state your name.

24 A. Curtis Blanc.

25 Q. Are you the same Curtis Blanc that

1 appeared yesterday and sponsored testimony on overview
2 issues?

3 A. I am.

4 Q. Does some of your testimony, which I
5 think is included in Exhibit -- KCP&L Exhibits 7, 8
6 and 9, discuss Iatan-related issues?

7 A. It does.

8 MR. FISCHER: Judge, I would tender the
9 witness to be crossed on Iatan-related issues.

10 JUDGE PRIDGIN: All right. Mr. Fischer,
11 thank you. Let me again try to speed things up.
12 Ms. Ott, you'll have cross?

13 MS. OTT: Yes.

14 JUDGE PRIDGIN: All right. Mr. Mills?

15 MR. MILLS: I have no cross.

16 JUDGE PRIDGIN: Mr. Schwarz. Anyone
17 else? All right. Mr. Schwarz, when you're ready,
18 sir.

19 CROSS-EXAMINATION BY MR. SCHWARZ:

20 Q. Mr. Blanc, good morning, sir.

21 A. Good morning.

22 Q. Are the costs for the Iatan unit 1
23 project final and complete as we sit here today?

24 A. I would say nearly 100 percent. Forrest
25 Archibald would be a witness that would be able to

1 give you -- I don't know if down to the penny, but
2 down to the dollar what has been incurred versus
3 what's to be incurred.

4 what I can tell you is that the
5 control -- the current estimate to complete that we
6 provided was \$484 million and we believe we'll come in
7 under that. But as far as the details of how much
8 under we anticipate to do that, Mr. Archibald can give
9 you that number.

10 Q. But the answer to my question then is no?
11 As we approach the second birthday of the in-service
12 of Iatan unit 1, the calculation of the cost is not
13 100 percent complete?

14 A. I would say it's nearly 100 percent
15 complete.

16 Q. That's a no?

17 A. My answer --

18 Q. It's not complete, is it?

19 A. No, it's near--

20 MR. FISCHER: Asked and answered.

21 MR. SCHWARZ: Thank you, Judge. I'm
22 sorry. I'm sorry.

23 JUDGE PRIDGIN: That's all right.

24 BY MR. SCHWARZ:

25 Q. And what about Iatan unit 2 costs? Are

1 those completes as -- as we sit here today?

2 A. No.

3 Q. So is it fair to say that all of the
4 parties to this case, as well as the Commission, at
5 some point in the future to finally establish costs to
6 be included in rate-base for these two projects will
7 have to be considering both Iatan unit 1 and Iatan
8 unit 2 in the future?

9 A. I'd say the Commission addressed that as
10 part of our last rate case. And in the procedural
11 schedules as things have gone along, I think they've
12 drawn pretty clear demarcations. In this case, for
13 example, the true-up date is December 31st, 2010 and
14 so any costs incurred prior to that are included and
15 to be resolved as part of this case. But to your
16 point, any cost incurred after December 31st, 2010,
17 will have to be addressed at a later time.

18 Q. Thank you. So that all parties will have
19 to address at least a very small part of Iatan 1 and
20 probably a bigger part of Iatan 2 in the future?

21 A. Any costs incurred after December 31st,
22 2010.

23 Q. Thank you. What's your understanding of
24 the prudence definition as it's being applied in this
25 case to the costs incurred for the construction

1 projects at Iatan 1 and Iatan 2?

2 A. Sure. I'm not here to testify as a
3 lawyer, but I think as has been explained, that
4 ultimately the company has the burden of proof to show
5 that its rates are just and reasonable. However, I
6 believe as the wolf Creek Supreme Court decision talks
7 about in the context of construction prudence audit,
8 that the other parties have to raise a serious doubt
9 that an expenditure is imprudent before the company is
10 put in the position of having to prove that -- that
11 no, that expenditure was prudent.

12 Q. And what is the standard that will be
13 employed when -- when gauging whether the costs and
14 the activities which cause them are prudent or not
15 prudent?

16 A. Yeah, I would defer to Dr. Nielsen on
17 that. He is our prudence expert and has a lot of
18 experience in that area.

19 Q. You have no opinion? You don't know what
20 the prudence standard is?

21 A. Well, I think it's a -- as described by
22 Dr. Nielsen in his testimony it's what a reasonable
23 person would do knowing what they knew at the time the
24 decision was made and so it's really kind of a
25 two-part analysis. First, you have to look at was

1 there a decision or action that was imprudent based on
2 that standard. And then step two, you have to
3 quantify if there was any impact on the project from
4 that decision or act.

5 Q. So for a -- a decision or -- or process
6 that occurred in the year say 2006 or 2007, an action
7 by the Commission in 2011 would have no bearing on the
8 prudence or imprudence of a decision in that time
9 frame?

10 A. I'm not sure what you mean by "action by
11 the Commission" at this time.

12 Q. Any action by the Commission in 2011
13 cannot affect the circumstances of the decision in
14 2006 or 2007?

15 A. No. The company should be judged based
16 upon what it knew at the time the decision was made.

17 Q. Very good. So the impact on shareholders
18 of a Commission disallowance in this case has -- has
19 no relevance or materiality to decisions taken in 2006
20 and 2007?

21 A. Well, I can't speak for how the
22 Commission makes its decisions, but I believe they are
23 in the position of having to balance interests between
24 the shareholders and the customers. So is that
25 relevant to their decision making? Absolutely. They

1 have to balance that interest. But does it go to your
2 question what the prudence standard is? It doesn't
3 impact what the prudence standard is, but it is an
4 interest they have to balance.

5 Q. Thank you. Let's assume a hypothetical
6 that it is decided that La Cygne will not be
7 retrofitted. Assume further that the Commission makes
8 some prudence disallowance in -- both on Iatan 1 and
9 Iatan 2 in this case. Are we okay? At the -- at
10 the -- in the -- strike that.

11 In the decision-making process once the
12 decision not to retrofit La Cygne has been made, would
13 KCPL still consider building a new plant?

14 A. Yeah, we discussed this yesterday. And
15 first, just to clarify, there are no costs associated
16 with La Cygne retrofit in this case. But as we
17 discussed yesterday, our modeling shows a need for
18 that capacity. And whether that capacity is met by
19 retrofitting La Cygne, building something else,
20 entering into a power purchase agreement, the option
21 of spending nothing isn't available to the company.

22 So your question is if I know if we would
23 build something if we didn't retrofit La Cygne? I
24 don't know the answer to that. I know we would have
25 to address that need for capacity in some manner.

1 Q. But at the -- at the time that your --
2 you're making that decision, going forward the -- one
3 of the options that KCPL would have to reasonably
4 consider at that time would be the addition of
5 company-owned generation; is that correct?

6 A. Yeah. We would and we have considered
7 that. That's part of our modeling, is not
8 retrofitting and building something else. That's part
9 of the modeling that has occurred.

10 Q. Okay. Is it -- is it your understanding
11 of the prudence analysis that the -- that there is
12 some kind of hold-harmless zone that prudence will not
13 be examined if a project is 5 percent over budget or
14 10 percent over budget or are -- are -- one question
15 at a time. Sorry.

16 MR. SCHWARZ: Sorry, Charlie.

17 THE WITNESS: I don't know if there's any
18 kind of hold-harmless zone. But in -- what is in Dan
19 Meyer's testimony you can look at as kind of a zone of
20 what you would expect a project to ultimately cost if
21 you look at how much it had been engineered when a
22 particular budget was developed.

23 Like in this case, our control budget
24 estimate, the project was 25 to 30 percent engineered
25 at the time. And Dan Meyer will tell you their

1 industry standards that your expectation would be
2 5 percent below or 15 percent above based on that
3 level of engineering. But I -- does that create a
4 hold-harmless zone? I don't have an opinion about
5 that.

6 MR. SCHWARZ: Thank you. I think that's
7 all I have.

8 JUDGE PRIDGIN: Mr. Schwarz, thank you.

9 Ms. Ott?

10 CROSS-EXAMINATION BY MS. OTT:

11 Q. Good morning.

12 A. Good morning.

13 Q. So you just testified that you're not
14 offering testimony as an attorney?

15 A. That's correct.

16 Q. Okay. Are you an expert on prudence
17 reviews?

18 A. No, I am not. That's Dan Meyer and
19 Dr. Nielsen.

20 Q. Are you an expert on financial audits?

21 A. No. I am not an auditor or profess to be
22 an expert in auditing.

23 Q. Do you have any formal training in
24 project management?

25 A. No. Other than coursework as an

1 undergraduate in operations management and that was
2 certainly an aspect of the course. I don't profess to
3 be an expert, but I have taken classes in that regard.

4 Q. Do you have formal training in project
5 cost management?

6 A. No, I do not. Our cost experts are Dan
7 Meyer and Forrest Archibald.

8 Q. How about project integration?

9 A. No.

10 Q. How about project scope management?

11 A. No, I am not a construction person.

12 Q. Project time management?

13 A. Other than the operations management
14 generally, we discussed early that coursework in
15 business school, no.

16 Q. And that -- and what year would that have
17 been in?

18 A. I graduated undergrad in 1996.

19 Q. How about project quality management?

20 A. No. Just general management coursework
21 that would have addressed that at that time.

22 Q. Any formal training in project
23 procurement management?

24 A. Not specifically to procurement. That's
25 Steve Jones for our witnesses.

1 Q. And how about project risk management?

2 A. Other than general management coursework
3 that certainly addressed that, no.

4 Q. And you're not claiming to be an expert
5 in cost engineering?

6 A. No. That's Forrest Archibald and Dan
7 Meyer.

8 Q. Could you agree with me that a person
9 that is not an expert in the subject area has a
10 significant probability of making inaccurate
11 statements?

12 A. I would agree with the statements made by
13 Mr. Hatfield in his opening that a Commission does
14 have to look at --

15 Q. Okay.

16 A. -- what an expert is saying.

17 Q. So are you agreeing with my statement
18 that I just made or not? That if you're not an expert
19 in a subject area, you have a high probability -- or
20 you have a probability of making inaccurate
21 statements?

22 MR. FISCHER: Calls for speculation.

23 JUDGE PRIDGIN: I'll let him -- I'll
24 overrule and let him answer if he knows.

25 THE WITNESS: Yeah, I don't know. I

1 don't think it necessarily means it increases the
2 likelihood of being inaccurate, but I think it goes to
3 the credibility of the evidence and the Commission
4 should consider it.

5 BY MS. OTT:

6 Q. Did you draft your testimony?

7 A. I did.

8 Q. Did you have anyone review it?

9 A. Yes.

10 Q. Who reviewed your testimony?

11 A. We have a normal process where the
12 regulatory department reviews testimony, as does
13 counsel.

14 Q. So if your testimony is not being offered
15 as an attorney or an expert for prudence reviews or
16 audits, what is your testimony being offered for?

17 A. I think as it clearly indicates on the
18 first page, it goes to the policy basically and
19 describes our interactions with the Staff, how we
20 understood the audit to be proceeding and then our
21 observations over time of how the audit was actually
22 proceeding.

23 Q. So you're just presenting your view on
24 the policy of the Iatan projects?

25 A. As well as summarizing the company's

1 position.

2 Q. Okay. I'd like to direct you to page 2
3 of your surre-- or your rebuttal testimony. You
4 mention that KCPL strongly disagrees with Staff's
5 17 acts or decisions that we have classified as
6 imprudent. But then later you state that the primary
7 purpose behind your testimony is related to the cost
8 overruns; is that correct?

9 A. That's correct.

10 Q. So you're not specifically addressing the
11 17 acts or imprudents?

12 A. Well, there are a couple -- if you'll
13 read my testimony, there are a handful of those I do
14 address. The prim-- as the testimony you just
15 summarized says the primary point is to identify or to
16 explain the unidentified cost overruns, but there are
17 a handful of the specific 17 that I do address.

18 Q. Okay. Then starting on line 6 you state
19 that, Although KCP&L strenuously disagrees with
20 Staff's recommended disallowance, Staff appears to
21 have attempted to follow the requisite two-step
22 process for a prudence review; first, to identify an
23 imprudent act or -- or decision; and second, to
24 quantify any impact that an act or decision has on the
25 cost project.

1 Do you see that?

2 A. I do.

3 Q. Okay. When you use the term "requisite,"
4 are you using the -- do you mean required or --

5 A. I do.

6 Q. Okay. Could you elaborate on what Staff
7 is required to do and what regulation, law or
8 Commission order requires the Staff to conform with
9 this two-step process?

10 A. I explain the two-step process there and
11 I also explained it just a moment ago in response to a
12 question from counsel from MRA.

13 Q. But where does that come from?

14 A. It's two places. The Wolf Creek order
15 and then, as I understood it, the Commission's order
16 to the Staff in the 0089 case. The order --
17 April 15th, 2009 order regarding the audit where the
18 Staff was ordered to provide a specific rationale for
19 each and every disallowance recommended.

20 Q. Now, is the Commission bound by this
21 two-step process?

22 A. The Commission itself?

23 Q. Yes.

24 A. I believe under the Wolf Creek decision,
25 it would be. And then under its own order, that's the

1 way it instructed its Staff to conduct its audit.

2 Q. Are Commission decisions binding?

3 A. No. But the Missouri Supreme Court
4 decision in Wolf Creek would be.

5 Q. Have you ever performed a prudence
6 review?

7 A. No, I have not.

8 Q. Have you ever performed a construction
9 audit?

10 A. No, I have not.

11 Q. Are you aware of any outside independent
12 authority that controls the methodology for conducting
13 a prudence review?

14 A. As I said before, I think the Missouri
15 Supreme Court's Wolf Creek decision dictates how it's
16 to be done, at least in Missouri.

17 Q. Are you aware of any outside independent
18 authority that specifies a requisite two-step process
19 for a prudence review?

20 A. The Wolf Creek decision I just
21 referenced.

22 Q. Are there any other decisions or outside
23 sources?

24 A. That's the only one I'm aware of or the
25 only one that comes to mind at the moment.

1 Q. Now, are you aware if the KCC made any
2 adjustments to Kansas City Power and Light's Iatan
3 project because they lacked carefulness, caution,
4 attentiveness and good judgment?

5 A. The -- I don't recall the specific
6 rationale, but the KCC did find -- following the
7 two-step analysis we're talking about, they did
8 identify two decisions they concluded were imprudent
9 and then quantified the impact of those decisions.

10 Q. And what were those two? Are you -- do
11 you remember what those two were?

12 A. I do. They are two -- they pertain to
13 our decision to hire specialty welders and share the
14 expense of that with Alstom. That's WSI welding. And
15 Brent Davis can speak to I guess the construction
16 reasons for doing that. And then the other is the
17 incremental expense of a temporary auxiliary boiler
18 that was added during startup of unit 2.

19 Q. Now, lets go to page 3 of your rebuttal.
20 You use this term "plug." Where did this term come
21 from?

22 A. It's one we standardly use. I believe
23 Mr. Featherstone used it on the stand yesterday to
24 describe -- basically it's an -- the term used in
25 these regulatory proceedings for an unsupported

1 number, a guess. And yeah, Mr. Featherstone used it
2 yesterday in his testimony and used it largely in the
3 same context as I used it here.

4 Q. Okay. Before you heard Mr. Featherstone
5 use that term, where did you get that term from?

6 A. In prior rate case proceedings. It's
7 not -- it's not an unusual term.

8 Q. But is it usually used to discuss cost
9 overruns?

10 A. It's usually used in terms of an
11 unsupported number, a -- a plug. I think it speaks
12 for itself.

13 Q. So are you attempting to rename Staff's
14 adjustment that Staff refers to as the net
15 unidentified and unexplained cost overruns as a plug?

16 A. Yeah, I think that's what my testimony --
17 exactly what my testimony describes. My testimony
18 describes a Staff's net unidentified, unexplained cost
19 overrun adjustment as a plug because it's not
20 supported.

21 Q. Do you believe ratepayers should pay for
22 unidentified, unexplained cost overruns?

23 A. Unless they've been shown to be
24 imprudent, yes.

25 Q. So when a presumption of imprudence is --

1 is made, doesn't the company then have to come back
2 and then show that the action was not imprudent?

3 A. I think the word in the Wolf Creek order
4 is serious doubt. When a party raises serious doubt
5 about a particular expenditure, that the company has
6 to demonstrate that that expenditure was prudent.

7 Q. So when a party has raised serious doubt
8 about the unidentified, unexplained costs, do you
9 think the ratepayers should have to pay for those?

10 A. I guess first I would say that a serious
11 doubt has not been raised. It's simply --

12 Q. I said if.

13 A. -- the result of subtraction.

14 Q. If there has been serious doubt raised,
15 should ratepayers have to pay those costs if the party
16 has not shown that it has been?

17 A. I'd say that would only be the first
18 part. That would be the threshold -- and Mr. Hatfield
19 went through this in his opening statement, but if
20 that -- if the burden did shift, the company has put
21 on evidence showing that those cost overruns were
22 prudently incurred. And if the Commission concludes
23 that they were prudently incurred, the company should
24 get to recover them.

25 Q. Okay. Where has the company identified

1 and explained the cost overruns?

2 A. We've identified and explained the cost
3 overruns in a lot of different ways. And
4 Mr. Archibald and Mr. Meyer are the experts in this
5 area, but as described earlier in the mini opening,
6 each of the reforecasts -- that's probably the easiest
7 place to start because by definition, the reforecasts
8 showed a deviation from the control budget estimate,
9 the definitive estimate which is what -- how the
10 regulatory plan defines a cost overrun.

11 And in each of those reforecasts, there
12 were binders of material that identified and explained
13 each deviation from the control budget estimate. And
14 then we came down and met with the Staff and the other
15 parties after each of those reforecasts to go over
16 that, explain that, answer any questions.

17 And in addition to that, there's the
18 change orders, the purchase orders, the contingency
19 logs. All of those explain -- identify and explain
20 cost overruns above the control budget estimate.

21 Q. So are you saying you have to have all of
22 that information and be able to use all of those
23 documents to identify and explain the cost overruns?

24 A. I'm saying we have a cost control system
25 and I explained that in my testimony. And then the

1 mechanics of walking through particular questions I
2 would have to leave to Mr. Archibald and Mr. Meyer.
3 But yes, if you look at those documents -- and in the
4 instance of the reforecast binders, we're not talking
5 about a mammoth amount of documents. We're talking
6 several binders. But, yeah, you would have to look at
7 several binders of material to identify and explain
8 each of the cost overruns.

9 Q. Have those binders been provided to
10 Staff?

11 A. Yes, they have.

12 Q. Do you know when they were provided to
13 Staff?

14 A. It would have been very shortly after
15 each of the reforecasts. As soon as they were
16 available following the reforecasts.

17 Q. Are those a part of a data request or
18 were they just voluntarily given to Staff?

19 A. I don't know that for sure, but I would
20 assume they would have been in response to a data
21 request.

22 Q. Now, did you say that the control budget
23 was 25 to 35 percent engineered back in December of
24 '06?

25 A. That's right. When we developed the

1 control budget estimate, the project was roughly 25 to
2 30 percent engineered.

3 Q. Can you have a definitive estimate when
4 the pro-- when the engineering of a project is only
5 25 to 35 percent complete?

6 A. Dan Meyer has extensive testimony on
7 that. He's the expert. I would defer to him on that.

8 Q. Do you have an opinion on it?

9 A. I think it was appropriate for a control
10 budget estimate and that estimate accurately reflected
11 what we thought the project would cost based on what
12 we knew at the time.

13 Q. What's your definition of definitive
14 estimate?

15 A. For purposes of the regulatory
16 planning -- again, Dan Meyer is the expert for
17 industry, but from my perspective, it's regulatory
18 plan. It would be the budget that basically we would
19 be -- we would track to. And that's what the cost
20 control system was designed around.

21 And that's why in the cost report that
22 was put on the overhead earlier, the left-hand column
23 was always the control budget estimate. That never
24 changed. With each reforecast over the past several
25 years when that report was provided, that left-hand

1 column was always the control budget estimate. That
2 never changed.

3 Q. Okay. Let's go to page 5 of your
4 rebuttal. Is it your testimony that Staff never
5 provided KCPL with notice that it was going to
6 evaluate the cost overruns prior to November 3rd,
7 2010?

8 A. That Staff wasn't going to evaluate the
9 cost overruns? It was always our understanding that
10 Staff would evaluate all the costs, including the cost
11 overruns.

12 Q. Okay. But you're saying that you didn't
13 know prior to November 3rd, 2010, that they were
14 addressing the cost overruns.

15 A. No. What changed November 3rd, 2010 with
16 Staff's audit report is that was the first time that
17 Staff asserted that it was going to seek to disallow
18 the -- this unidentified -- the cost overruns, so to
19 speak.

20 And once you subtract out what they
21 looked at so they wouldn't double count, that was the
22 first time that they'd made it known to us or the
23 Commission that their position was because they didn't
24 believe the cost control system did what it was
25 supposed to do, that they were going to disallow those

1 costs. That's the first time that appeared.

2 Q. So you weren't aware prior to that that
3 Staff was considering disallowing those costs?

4 A. No. The earlier reports basically just
5 said that they were -- certainly questioned our cost
6 control system. But when you read those reports, it
7 was in the context of why Staff's audit wasn't done as
8 of that time.

9 And then I believe going back to the
10 December 31st, 2009 report, they explained that's why
11 they were going to have to take an alternative
12 approach. They just suggested it -- they were going
13 to have to do their audit differently than they
14 originally anticipated based on how the cost control
15 system was working. But they -- they had never
16 suggested that disallowance was the appropriate
17 remedy.

18 Q. But would you agree that Staff had said
19 that the inclusion of those costs was not -- also not
20 the appropriate remedy at that time?

21 A. I believe the language was something that
22 they couldn't recommend inclusion or something to that
23 effect. But that is a -- a far cry from seeking a
24 disallowance.

25 Q. What's the difference? If they weren't

1 going to include the cost at that point, didn't that
2 mean they could possibly disallow the cost?

3 A. Consistent with Staff's prior statements
4 in the earlier report, we took that to mean what
5 they -- an extension of what they had said before,
6 that the audit was taking them longer because they
7 were getting something different than they thought
8 they were going to get and that they were having to
9 seek alternative methods. But we read it to mean as
10 they weren't done yet, not that the remedy would be
11 disallowance.

12 Q. Are you aware of a meeting with Staff to
13 discuss those issues? Did Staff ask for a meeting?

14 A. To discuss -- I'm sorry. You'll have to
15 be more specific.

16 Q. The potential disallowance for cost
17 overruns.

18 A. We've had many meetings with Staff to
19 discuss the cost control system and cost overruns,
20 which is what it's intended to measure. Yeah, we've
21 had many meetings with Staff about that.

22 Q. In particular, the December 31st, 2009
23 report, did Staff ask for a meeting? Are you aware of
24 Staff asking for a meeting with KCPL to discuss the
25 report?

1 A. Yes. And Mr. Hyneman discusses that in
2 his -- I believe his surrebuttal testimony. And those
3 meetings did occur. What -- I believe it's a data
4 request Mr. Hyneman is referring to. And he
5 basically -- I don't remember if it was a data request
6 or letter now, but it's in Mr. Hyneman's testimony.

7 But it basically said -- the request was
8 give us your positions in response to the Staff audit
9 report. And our response was we're still formulating
10 our literal position statements for the hearing, but
11 we would be happy to meet with you to discuss the
12 audit report. And those meetings did take place. We
13 discussed the -- sorry -- cost control system. We
14 discussed the cost control system and the audit report
15 many times.

16 Q. So when did that meeting occur when you
17 specifically discussed the December 31st, 2009 audit
18 report?

19 A. There have been a -- a series of
20 meetings. And Mr. Hatfield put up a slide and I've
21 got the same information he provided there. There's
22 been literally dozens of meetings to --

23 Q. But --

24 A. -- discuss the --

25 Q. -- a meeting that specifically addressed

1 the December 31st, 2009 -- I understand you have
2 quarterly meetings, but I'm talking about a meeting
3 just to address the December 31st, 2009 audit report.

4 A. I'm not sure we ever discussed the
5 specifics of the audit report, but what we did discuss
6 was the unidentified costs and then explained to Staff
7 on numerous occasions how the cost control system
8 identified and explained so that that -- that plug
9 wouldn't be necessary.

10 Q. Now, are you aware of KCPL and GMO's
11 initial response to Staff's report regarding the
12 construction audit and prudence review?

13 A. Sorry. There have been several reports
14 over --

15 Q. well, I'm going to hand you this one.

16 A. Thank you. Thank you.

17 Q. I'm going to direct you to page 5. Now
18 here -- are you on page 5? It would be the first
19 paragraph, full paragraph, first sentence.

20 A. of similar concern paragraph?

21 Q. Yes. In here you state that Staff
22 unilaterally proposes that approximately 60 million --
23 and sorry if I get -- I don't think this is an HC
24 document -- of the Iatan AQCS cost will be examined in
25 conjunction with Staff's audit of Iatan 2. So here

1 weren't you aware that Staff was examining and going
2 to potentially disallow these costs?

3 A. It -- consistent with my prior answer, we
4 took this to mean and continue to take it to mean that
5 Staff just didn't believe it was done yet. Not that
6 it would seek to disallow based on unexplained or
7 unidentified costs, but that their review wasn't
8 finished yet. And this was actually led up to
9 April 2010 hearings that we talked about earlier.

10 Q. And again in that -- regarding that
11 April 2010 hearings, KCPL asked the Commission to rule
12 on its cost control system.

13 A. We did.

14 Q. So if you weren't concerned about Staff
15 potentially evaluating these costs -- the cost control
16 system, why would you have the Commission rule on it
17 back in April in a non-contested case?

18 A. We were concerned that Staff was alleging
19 we had violated a provision of the agreement. And
20 that concerned us a great deal and continues to.

21 Q. So you were concerned that Staff was
22 going to disallow?

23 A. No. Not at that time and that's not what
24 I said. What I said is we were concerned that Staff
25 was allegedly we were violating a provision of the

1 agreement. We took that very seriously.

2 Q. So if you weren't concerned that Staff
3 was going to potentially disallow cost overruns, why
4 would you be concerned about your cost control system?

5 A. Because they were alleging we violated an
6 agreement, a contract. And we take that very
7 seriously.

8 Q. So because --

9 A. We didn't know what Staff would
10 ultimately do.

11 Q. But were you seeking protection in
12 case -- to prevent Staff from making a disallowance?

13 A. Like I said, we didn't know what Staff
14 would do. We were protecting ourselves from what we
15 believed to be an unfair, unsupported allegation that
16 we violated a commitment in an agreement.

17 Q. So are you saying you weren't concerned
18 that costs could be potentially disallowed for
19 violating the stipulation and agreement?

20 A. We didn't know Staff would do that until
21 the November 3rd, 2010 audit report. But did we think
22 that maybe they might? I don't recall if those
23 conversations took place or not. But I can tell you
24 this was in response to Staff alleging we violated the
25 agreement and we didn't think that was correct and we

1 wanted a chance to clear the record.

2 Q. Also, in the December -- I mean
3 April 2010 hearing, KCPL asked the Commission to order
4 Staff to cease its audit activity on the Iatan
5 project. Do you remember that?

6 A. Yeah. We believed it should terminate as
7 part of last year's rate case.

8 Q. But why would you ask that outside of a
9 general -- in a non-contested case?

10 A. Well, we didn't know until then that
11 Staff was planning to just continue its audit of
12 Iatan 1 what appeared to be, from our perspective,
13 indefinitely. So we wanted guidance from the
14 Commission when is this audit is going to end.

15 Q. But didn't you just testify with
16 Mr. Schwarz earlier that Iatan is nearly closed on its
17 book? So it's not today fully closed so --

18 A. That topic -- that topic was discussed in
19 great length in the April 2010 hearings with a
20 distinction being doing an invoice, true-up type of
21 audit for expenditures, as I discussed with
22 Mr. Schwarz, incurred after some true-up date versus a
23 construction audit prudence review which could and
24 should be concluded in advance of that. That was, I
25 would say, the bulk of the discussion in those April

1 2010 hearings.

2 Q. So is it -- do you have an opinion
3 whether or not a construction audit and a prudence
4 review are independent of each other?

5 A. I really don't. The -- Dr. Nielsen is
6 the expert there. What was the subject of the April
7 2010 hearings and what I was just testifying to
8 doesn't necessarily parse those two words, but rather
9 looks at if you can look at the prudence of the
10 decisions and make a determination if a decision was
11 prudent and then later on true-up -- if there are any
12 late invoices that roll in after the true-up date or
13 something like that, you could look at those and true
14 that up. And that -- that's what we talked about back
15 in April of 2010.

16 Q. So do you think that a construction audit
17 and a prudence review could be separate? You could do
18 them independent -- well, do you think -- let me
19 strike that.

20 Let's go to page 9 of your rebuttal.
21 Around line 12 you indicate that the purpose of KCPL's
22 cost tracking system was to manage the cost of the
23 project. So if the system manages the cost of the
24 project, how does the system identify and explain the
25 cost?

1 A. I think simply it does both. And again,
2 Forrest Archibald and Dan Meyer are the experts in
3 this area, but we put a project -- a cost control
4 system in place to manage the cost of the project to
5 ensure it came in at the best price it could. I mean
6 that's -- that's the point of a cost control system.
7 But an aspect of that was identifying and explaining
8 cost overruns. So it did both I guess is the simple
9 answer to your question.

10 Q. And then you state on the same page
11 further down that no other utility construction
12 project has been required to have a similar cost
13 control system in place as KCPL has for the Iatan
14 projects.

15 Are you aware of any other utility
16 construction project that has language in the
17 stipulation and agreement such as the paragraph Q in
18 KCPL's stipulation and agreement?

19 A. I'm not. And as I said, we took that
20 commitment very seriously and we met it.

21 Q. So no other company has the same
22 stipulation Q in a stipulation and agreement regarding
23 their construction projects?

24 A. Not that I'm aware of.

25 Q. Thank you. Now, on page 10 in the top,

1 lines 1 through 3, you state, The Staff has reached
2 out to other utilities recommending KCPL's cost
3 control system.

4 what is the basis for that statement?

5 A. The basis for that statement are
6 conversations I had with Tim Rush where he was
7 approached by counsel for Ameren. And his impression
8 from those conversations with the counsel for Ameren
9 was that Staff had reached out to Ameren to adopt a
10 cost control system similar to ours and to talk to us
11 about that.

12 Q. Did you do any discovery to verify that
13 statement that Mr. Rush gave to you?

14 A. I'm not sure what would be required. I
15 didn't question the voracity of what Mr. Rush was
16 saying. I had no basis to believe that it wasn't
17 entirely true and completely accurate.

18 Q. So you didn't do any --

19 A. Did I ask --

20 Q. -- follow up with Staff?

21 A. Did I -- I didn't ask Ameren or Staff if
22 those conversations took place.

23 Q. Now, is it possible that other utilities
24 could have asked Staff what was wrong with KCPL's cost
25 control system so they could avoid similar problems?

1 A. I have no idea. Is it theoretically
2 possible? Sure. But I have no idea.

3 Q. Now, if another utility were to confront
4 Staff and ask them about your cost control system, do
5 you believe Staff would give the details of your cost
6 control system out without seeking your permission?

7 A. Numbers-wise would absolutely be HC. If
8 they wanted to talk about, okay, what was this cost,
9 what was that cost -- but how the system operated,
10 there's nothing confidential or proprietary about
11 that.

12 Q. Is your cost control system highly
13 confidential?

14 A. The -- the process? I don't think
15 there's anything confidential about the process
16 itself. Its contents would certainly be -- there are
17 aspects of that that could be confidential, but the
18 process itself isn't confidential.

19 Q. So the document that explains your cost
20 control system, is that highly confidential?

21 A. I'm not familiar enough with the contents
22 of the document to know what kind of details it gets
23 into, but I would say that the process itself is not
24 confidential.

25 Q. Now, I think it's been discussed through

1 openings and with the Commissioners that, you know,
2 you -- you agreed to stipulation Q in your stipulation
3 and agreement.

4 A. We signed the regulatory plan and there
5 are a lot of commitments in the regulatory plan.

6 Q. And through that regulatory plan you've
7 received favorable treatment, such as 150 million in
8 regulatory amortizations. That's correct?

9 A. I would say we received -- especially
10 with respect to the additional amortizations, we
11 received the cash we needed to protect our credit
12 rating, which all the parties, all the signatories to
13 the regulatory plan agreed was a benefit to us and our
14 customers.

15 Q. I'm going to ask you a hypothetical
16 question. If -- and it goes to contract. And I know
17 you're not here testifying as a lawyer, but in your
18 non-lawyer role, if a party to a contract fails to
19 comply with it, should that party suffer the
20 consequences for failing to live up to their end of
21 the bargain?

22 A. Sure. If a party is shown to breach a
23 contract, they're held accountable for that. But what
24 the appropriate remedy is a key point for the decision
25 maker. To turn your hypothetical into what we're

1 seeing here --

2 Q. I didn't -- I didn't -- I don't need to
3 go into that part. Thank you. That wasn't what my
4 question was.

5 when did KCPL first contact Staff to
6 discuss cost overruns?

7 A. I'm trying to think, because we met with
8 the Staff on a quarterly basis. My recollection was
9 that it was around the timing of the initial
10 reforecast and leading up to the reforecast. The
11 reforecast was finalized in April of 2008 and that
12 process took several months. So it would have been in
13 advance of that. So I would say late 2007, early
14 2008.

15 Q. Now, are you aware if Staff had to
16 contact KCPL to discuss significant cost changes being
17 planned before KCPL contacted Staff?

18 A. No, that's not my recollection. I'm
19 aware of the February 2008 letter from Mr. Dottheim,
20 but my recollection is conversations were taking place
21 and that that letter wasn't focused on that particular
22 issue.

23 Q. But that was an issue addressed in
24 Mr. Dottheim's February 28th letter?

25 A. I don't have a copy in front of me and

1 it's, like we said, a 2008 letter.

2 Q. well, I'll hand you a copy.

3 A. Thank you.

4 Q. Now, can you take a moment to review that
5 letter and let me know if that is the topic being
6 addressed?

7 A. Yes. I have the letter and Mr. Dottheim
8 enumerates six topics in the first paragraph that the
9 staff wants to talk about.

10 Q. Okay. why don't you read what those six
11 topics are?

12 A. Sure. Number one is the actual practice
13 respecting and content of notification of the
14 signatory parties of change factors or circumstances
15 relating to the adequacy and reasonableness of KCP&L's
16 resource plan; two, the decision to construct and
17 build Iatan 2 without completion of substantial
18 engineering design; three, the status of the
19 construction schedule and definitive cost estimate for
20 the completion of the Iatan 2 and 1 projects; four,
21 the cost and schedule controls that have resulted in
22 the expected cost and schedule of the Iatan 2 and 1
23 projects being unknown at this time; five, the
24 notification process related to KCPL's decision to
25 defer the La Cygne 1 scrubber and baghouse; and six,

1 the notification process related to KCPL's decision
2 that it would not proceed with the additional
3 100 megawatts of wind generation facilities in 2008.

4 Q. So can you agree that the cost controls
5 were going to be discussed in this meeting
6 Mr. Dottheim was requesting?

7 A. I don't see any of these related
8 specifically to the -- the cost control system. If
9 anything, there's one that talks about the -- the
10 control budget estimate and the reforecast process
11 that was -- was beginning.

12 Q. Now, if you go to the third page of the
13 document, maybe that will -- the boldface that says,
14 cost control process for construction expenditures,
15 does that state that the cost -- KCPL must develop and
16 have a cost control system in place that identifies
17 and explains cost overruns?

18 A. Sure. He quotes that paragraph Q we've
19 been talking about.

20 Q. Yes. So that was going to be a subject
21 matter in this meeting that staff was requesting?

22 A. Yeah. I mean I -- I think it is part of
23 the control budget estimate and the reforecasting. I
24 don't -- yeah, it's part of the process.

25 Q. Now, were you a participant in that

1 meeting?

2 A. I'm trying to recall because there were a
3 lot of the meetings around this time frame just given
4 the status of -- as Mr. Dottheim mentions in his
5 letter, the 2008 wind project and the status of what
6 we call phase 2 of La Cygne. So there were a series
7 of meetings that occurred after this. I attended many
8 of them, but I can't swear today that I attended every
9 single one.

10 Q. Okay. Now, does the Kansas City Power
11 and Light regulatory plan require it to notify the
12 staff and other parties in writing of significant
13 changes?

14 A. If there's a change in the resource plan,
15 yes.

16 Q. So if there's only a significant change
17 within the resource plan?

18 A. Yes.

19 Q. How did KCPL do this?

20 A. Yeah, we were in constant conversation.
21 There are two examples that came up during a process
22 and one the Commission opened a special proceeding to
23 look into one. And the two examples that were perhaps
24 changes to the resource plan and there were
25 differences of opinion about that.

1 The first is the 2008 wind project. That
2 project was not required under the regulatory plan, it
3 was not part of the resource plan. We had a
4 commitment to evaluate whether to do it and so we --
5 we evaluated whether to do it, we shared that
6 evaluation with the Staff and the other parties.

7 We shared our decision not to do it and
8 there were parties that took a position at the time
9 that that was a change of the resource plan. And then
10 that ultimately was a separate proceeding before the
11 Commission. But our position is it didn't change the
12 resource plan because the 2008 wind project was never
13 part of it.

14 The second example is La Cygne. The
15 environmental retrofit of La Cygne 1 was to be in two
16 phases; the first being the SCR, which has been done;
17 the second was the scrubber and baghouse. And that
18 has yet to be done and has been a conversation and I
19 answered questions about that yesterday.

20 And in our mind, that wasn't a change in
21 the resource plan because we still intend to do that
22 project and what we explained to the parties along the
23 way is what we were seeing in the marketplace wouldn't
24 permit us to do it in the time line set out in the
25 regulatory plan. But the resource plan didn't change

1 because we still intended to do it.

2 Q. Let's go to page 13 of your rebuttal on
3 lines 1 through 4. You state that KCPL explained how
4 staff could use the system to identify and explain
5 costs in excess of the control budget estimate. would
6 that result in staff -- in -- let me see.

7 How could staff use your system to
8 identify -- to be able to track these cost overruns?

9 A. Sure. As I explained earlier, the
10 mechanics of how you would walk through that I'm going
11 to leave to Forrest Archibald. He's our expert in
12 that area. But we had a series of meetings with staff
13 and at each of those meetings, they would ask
14 Mr. Archibald, How do I track this, and then he would
15 explain the columns they have to look at, the
16 documents they have to look at. And that would
17 typically be followed up with, Okay, then how do I
18 track that and the same process. I don't recall
19 Mr. Archibald ever not being able to answer one of
20 those questions.

21 Q. So then are you saying that Mr. Archibald
22 would have been the person at KCPL that would have
23 used the cost control system to give staff a complete
24 analysis on how they could perform that evaluation?

25 A. I'm saying Mr. Archibald explained to

1 them many times how it could be done and answered
2 their questions as to how it could be done, as did Dan
3 Meyer. So those two together.

4 Q. Have you ever seen a complete analysis
5 identifying all the cost overruns that KCPL is seeking
6 to include in rates?

7 A. In my mind, the K-Report that we call
8 it -- the cost report that we've provided on a
9 quarterly basis and then starting in 2010 on a monthly
10 basis, the cost report does just that.

11 Q. So it's your testimony that the K-Report
12 is where somebody would go to find all the cost
13 overruns and they would be identified and explained
14 within that K-Report?

15 A. Yeah. K-Report is one piece of paper.
16 It simplifies a very complex project. It can't --
17 that one piece of paper can't explain everything, but
18 what it does do is it walks you from the control
19 budget estimate December 2006 on left side all the way
20 across the reforecasts, accruals, expenditures so what
21 we've spent to date and gives you a pretty clear
22 summary, in my mind, of where the project is from a
23 cost overrun perspective.

24 But does that one piece of paper identify
25 and explain everything? No. I don't think one piece

1 of paper could.

2 Q. Okay. If it -- the K-Report doesn't
3 identify and explain, then what does it really explain
4 to somebody reviewing the K-Report?

5 A. Again, these are better questions for
6 Mr. Archibald and Mr. Meyer. But I would say the
7 K-Report identifies them and then the supporting
8 documentation explains it.

9 Q. So what supporting documentation then
10 explains the K-Report?

11 A. Sure. In response to one of my first
12 questions, the change orders, the purchase orders, the
13 contingency logs and then the reforecast binders are
14 probably the simplest, most concise place they exist.
15 But again I would defer the mechanics of walking
16 through that to Mr. Meyer and Mr. Archibald.

17 Q. Now, would you think that would be an
18 easy process to have to go and look at a K-Report and
19 then somehow go and find and identify a change order,
20 a contingency log, a purchase order in a reforecast
21 binder to identify one specific item of a cost
22 overrun?

23 A. I wouldn't expect auditing a five-year
24 project of this complexity and scale to be easy, so I
25 guess that was never my expectation.

1 Q. Do you know when KCPL allowed Staff to
2 start auditing Iatan 2?

3 A. I guess it depends what you mean by
4 audit. The quarterly reports we began providing in
5 the first quarter of 2006 contained information about
6 Iatan 2, what costs we'd incurred as of then, what was
7 going on at the project. So I would say KCP&L wasn't
8 in a position to allow or not allow Staff to do
9 anything, but we began providing information about
10 Iatan 2 at the inception of the project.

11 Q. Now, you were an attorney back in the '89
12 and '90 rate cases?

13 A. That's correct.

14 Q. Were you involved in any objections to
15 data requests when Staff was seeking to obtain
16 specific information on Iatan 2?

17 A. Yes, I was. And once Staff explained why
18 they needed it, we provided it. We initially thought
19 that Iatan 2 wasn't relevant because we weren't
20 seeking Iatan 2 dollars in that rate case, but Staff
21 explained why they needed it and we began providing
22 it.

23 Q. And that -- when was that? Was that
24 after the close of the rate case?

25 A. I don't recall that. I'm sorry.

1 Q. And when did the '89 and '90 rate case
2 end?

3 A. I guess I'm pausing because there -- I
4 mean, there was the Report and Order and it has the
5 date, but we continued to receive data requests in the
6 '89 case some -- for some period after that. So I
7 guess it depends what you mean by "end." In a lot of
8 respects, it never did. I think audit work just
9 continued into the 259 case and then into this case,
10 but that the Commission had a Report and Order and
11 rates went into effect so it just depends what you
12 mean by "end."

13 Q. So would the objections to the data
14 request for information on Iatan 2 happen after
15 parties entered into a stipulation and agreement to
16 resolve that case or --

17 A. Yeah. As I said before, I just don't
18 recall when in that process that that conversation
19 with Staff occurred.

20 Q. Do you know who at KCPL decided during
21 that rate case to not -- that that information was
22 irrelevant?

23 A. Yeah. I remember there being a
24 discussion among many people. And the question, just
25 as we just talked about, was how was that relevant to

1 this rate case? We're not seeking to recover any of
2 those dollars and so that was the basis for it. And
3 then when Staff explained why they needed it, we said,
4 Okay, here it is.

5 Q. Was that information not relevant to the
6 Iatan 2 audit or the common plant audit?

7 A. No. And that was exactly what Staff
8 explained. Staff explained why they needed it and we
9 provided it.

10 Q. So it never occurred to you when Staff
11 was auditing the Iatan 1, that they would need
12 information related to Iatan 2?

13 A. No. With all the information we were
14 providing in the quarterly reports and meeting with
15 Staff on a quarterly basis, as far as the -- the
16 technical confines of the 0089 rate case, we didn't
17 see Iatan 2 as relevant. But as I said, when Staff
18 explained why they needed that information, we
19 provided it.

20 Q. Do you know what date KCPL decided to let
21 Staff audit Iatan 2?

22 A. Again, we were never in a position to
23 let, allow, not allow Staff to do anything, but I
24 think you're asking me the same question again, if I
25 remember when that conversation occurred where they

1 explained what they needed and we began providing it.

2 And as I said before, I don't remember the date of
3 that.

4 Q. Now, when you're discussing these
5 quarterly meetings, Staff isn't issuing data requests
6 during those meetings, are they?

7 A. We frequently have take-aways that we
8 treat as informal data requests. We'll go over the
9 quarterly report, provide updates and they'll answer
10 questions. And we treat those questions as informal
11 data requests, absolutely. That happens frequently.

12 Q. So were you providing the information in
13 those quarterly reports -- quarterly meetings on Iatan
14 2?

15 A. Yes.

16 Q. Were you providing documentation?

17 A. Yes. I don't recall ever telling Staff
18 they couldn't have information related to Iatan 2 that
19 they asked for as part of those quarterly meetings. I
20 don't recall that ever occurring.

21 Q. So you were willing to give them
22 information within the quarterly meetings, but you
23 were not willing to give them information within the
24 context of the '89 and '90 rate cases?

25 A. For the reasons I just described. We

1 understand the audit and review process to be part of
2 the quarterly report and that would certainly include
3 Iatan 2 and did within the confines of the 0089 rate
4 case where no recovery associated with Iatan 2 was an
5 issue, we didn't think that was relevant. But when
6 Staff explained why they needed the information, we
7 provided it.

8 Q. Now, as a former practicing attorney,
9 these quarterly meetings, if they were informal data
10 requests, wouldn't it be a better practice to have a
11 formal data request and something in writing to
12 memorialize the information you are seeking for
13 disputes going forward?

14 A. Well, perhaps it could have been a better
15 process, but for our purposes when I say we treated it
16 as an informal data request, those were frequently ran
17 through our Casework system and so that documentation,
18 in large part, would exist.

19 But also I would preface that, and many
20 times it was they asked for information and that
21 information was provided in a subsequent meeting or
22 conversation. So I can't say that every piece of
23 information that they asked for and that we provided
24 in response would be captured in Caseworks.

25 Q. Now, on page 13, line 10, you state that,

1 No list exists nor could KCPL easily create one for
2 Staff.

3 So if this list that you're referring to
4 is so hard to create, how do you expect Staff to be
5 able to create one by going through KCPL's cost
6 control system?

7 A. Sure. I would go back to the earlier
8 answer to the question about the K-Report. The
9 K-Report itself, I don't see how it ever could -- one
10 piece of paper, the K-Report, explain and identify --
11 identify and explain every cost overrun. It was our
12 understanding that that was not the intent of the
13 commitment.

14 The intent of the commitment was to
15 design a system -- that's the word there and in the
16 heading it says process -- and we certainly did that.
17 But consolidating that down -- I think the K-Report
18 does it about as well it could be done, but
19 consolidating down to a single list, document that
20 identifies and explains something fairly complicated,
21 I don't think that's reasonable and not what we agreed
22 to or what the regulatory plan says.

23 Q. Do you think that information could be
24 easily put into a report?

25 A. I would say that the quarterly reports do

1 do that in large part. Attached to the back of every
2 quarterly report is a K-Report for that quarter. And
3 then within the text of the quarterly report is the
4 issues we were facing at that time. So that would --
5 that's certainly another part of the story.

6 Q. Now, does that K-Report address
7 contingencies?

8 A. Contingencies are listed on the K-Report.

9 Q. But that K-Report doesn't explain the
10 costs charged to the contingencies. It just provides
11 a number. Correct?

12 A. Correct. As I mentioned before, it's a
13 summary and you have to go to the back-up
14 documentation. And in response to that question, that
15 would be the contingency logs. But again, the details
16 of how to get to A to B are really better questions
17 for Mr. Archibald.

18 Q. Now, would KCP&L have the ability to
19 create a report to -- to comply with the stipulation
20 and agreement?

21 A. First, we did comply. The system
22 complies with our commitments under the regulatory
23 plan. Could we sit down and try and go through -- I
24 guess, frankly, again that's a better question for Dan
25 Meyer and Forrest Archibald. Based on my

1 understanding, I'm not sure how such a -- a list, so
2 to speak, has been created. And we've had
3 conversations about that.

4 And at one time we believed Staff was
5 going to tell us what they thought such a list would
6 look like, but we never got that information from
7 Staff. We asked Staff what that list would look like
8 and we haven't gotten that.

9 Q. But could KCPL produce the report?

10 A. I don't see how from my perspective, but
11 again, that's a better question for Forrest Archibald
12 and Dan Meyer.

13 Q. Okay. But through your testimony -- but
14 if you can't do it, how do you expect Staff to do it?

15 A. Well, what I'm saying that would -- I
16 don't see how we could do is a single document, a
17 piece of paper, a list that Staff asks for in a data
18 request that identifies and explains everything.
19 That -- that's the part I don't think we can do. Our
20 cost control system does identify and explain cost
21 overruns, which was our commitment and we met that.

22 Q. Does it -- can you produce a report
23 though? I'm not asking for a single list. I'm asking
24 for a report that would identify and explain.

25 MR. FISCHER: Asked and answered.

1 MS. OTT: It's a yes or no question.

2 JUDGE PRIDGIN: I'll overrule.

3 THE WITNESS: I think we've done that
4 from our perspective. I think the --

5 BY MS. OTT:

6 Q. where's this report then?

7 A. I would say it's the reforecast binders.
8 If you want a single report, confined set of documents
9 that does that, it's the reforecast binders.

10 Q. Do the reforecast binders track costs to
11 the control budget estimate?

12 A. Yeah. The reforecast, by definition, was
13 setting what we thought the cost would be as compared
14 to the control budget estimate, absolutely.

15 Q. Let's go to page 14 where you discuss
16 Staff Data Request 970.

17 MR. FISCHER: I'm sorry, Counsel. What
18 page?

19 MS. OTT: Fourteen.

20 MR. FISCHER: Thank you.

21 BY MS. OTT:

22 Q. Now, you're discussing the timing of Data
23 Request 970. Did it ever occur to you that Staff was
24 performing an audit quality control feature to ensure
25 that we had all the facts to support our opinions and

1 findings? That we were just doing an extra follow-up
2 and maybe that is why the timing of it to you seemed
3 unreasonable?

4 A. I only know the words of the data request
5 itself. I have no idea what was in Staff's mind when
6 they issued it.

7 Q. Has KCPL complained about Staff's
8 inability to complete its construction audit in the
9 time frame that KCPL believes is satisfactory?

10 A. I don't know that I would use the word
11 "complain," but that was something we asked to be
12 addressed in the April 2010 hearings. As I mentioned
13 before, we were being left with the impression that
14 the audits would go on indefinitely and we didn't
15 think that was reasonable.

16 Q. Has KCPL received all the audit reports
17 on -- on time from Staff as ordered?

18 A. I don't really -- I don't want to quibble
19 about it. Some may have been filed after midnight,
20 but we received the three audit reports: August
21 '09 -- or no, sorry, December 31st, '09; August 2010;
22 and then November 2010.

23 Q. Now, when the operations division here at
24 the Public Service Commission was the lead on a
25 construction audit, did KCPL ever fear that the audits

1 would not be complete?

2 A. I guess we didn't fear they wouldn't be
3 complete until they weren't. So I guess it -- from
4 our perspective, it -- timing-wise it didn't enter our
5 minds that the operations or services division who was
6 in charge, we didn't -- we didn't have a concern about
7 the audits not being complete until they weren't. Who
8 was doing them didn't factor into that.

9 Q. Do you know if anyone from Staff has
10 testified that the utilities operations have had their
11 scope of work restricted or their opinions altered?

12 A. That did come out in the April hearings
13 and it was a surprise to us. And then according to
14 the testimony, a surprise to Staff as well. I believe
15 Mr. Schallenberg testified that he wasn't aware that
16 the procedure had changed either.

17 And from our perspective, it doesn't
18 matter to us who's in charge of the audit as long as
19 it gets done in a timely manner. And I would agree
20 with Mr. Featherstone's testimony from yesterday that
21 the point is that the way an audit should be done and
22 the way it has been done in the past is that those two
23 groups have to work very closely together. That was
24 Mr. Featherstone's testimony and I agree with that
25 wholeheartedly, but that's not what we've experienced

1 on the Iatan project.

2 Q. Is it your opinion that the only way to
3 make a prudence disallowance is if the engineer makes
4 the adjustment?

5 A. I don't think that's an only way, but
6 when you're looking at engineering decisions, I think
7 it should start with the engineers.

8 Q. And what if you're looking at it from a
9 cost perspective?

10 A. From my perspective -- and I'm not an
11 expert in the field. We have other experts I hope you
12 question about these same things. But my
13 understanding is it's not as easy to separate costs in
14 engineering as what your question suggests. As Dan
15 Meyer's testimony says, most of the cost overruns are
16 attributable to engineering issues. And they're the
17 engineering issues that David Elliott and his team
18 looked at and said were okay.

19 So in my mind, I don't see how you can
20 separate that where you can have cost overruns
21 associated with engineering changes and those
22 engineering changes are okay, but despite that, you
23 have a cost overrun -- or a proposed disallowance not
24 based on the merits but rather simply subtracting
25 actuals from the control budget estimate.

1 Q. Could a management decision affect a cost
2 overrun?

3 A. Sure.

4 Q. What's the difference between Iatan 2 and
5 Iatan 1 change orders and their respective
6 contingencies?

7 A. I don't know. That's a question for
8 Forrest Archibald and Dan Meyer.

9 Q. Now, there's been some discussion on the
10 Wolf Creek case. Now, in the Wolf Creek case KCPL
11 created reconciliation packages to identify cost
12 overruns; is that true?

13 A. I don't recall if KCPL did specifically
14 or worked with Westar, but I know those packages
15 were -- were created at that time.

16 Q. Let's go to page 12 of your rebuttal.
17 And you discuss this July 2006 cost control meeting.
18 What -- I'm going to hand you a copy of the documents
19 handed out during that meeting. And --

20 A. Thank you.

21 Q. -- there's an attendance list on the
22 front page. Can you identify that you are the Curtis
23 Blanc that attended this meeting?

24 A. I am.

25 Q. Is that your handwriting?

1 A. Yes, it is.

2 Q. Okay. Can you show me where in these
3 documents where it says you'll identify and explain
4 the cost overruns? It may take you a minute to go
5 through it.

6 A. Sure. And again, I'm not the expert in
7 this area. It's Forrest Archibald, Dan Meyer and then
8 Steve Jones was instrumental in developing this
9 process so they are probably better witnesses to ask,
10 but I'll review the presentation documents.

11 Q. And if you would just identify what
12 documents you're looking at.

13 A. One is a PowerPoint presentation. The
14 title is KCPL Comprehensive Energy Plant and Cost
15 Control System. And the other one is a document
16 titled Comprehensive Energy Plan, Construction
17 Projects, Cost Control System. And I apologize but
18 the second document is a 30-page document.

19 Q. That's fine.

20 A. Okay. I think I've seen enough to answer
21 your question.

22 Q. Okay. So where does it discuss how cost
23 overruns would be identified?

24 A. I think the first instance I've come
25 across is on page 8 of the cost control system

1 document. Under 3.1, Cost Control, the second
2 paragraph says, KCP&L project's cost control system
3 involves continually monitoring the accumulation of
4 actual costs compared to the control budget so as to
5 determine whether the initial assumptions in the
6 project definition are still valid. The project team
7 will compile and analyze the actual cost information
8 and periodically prepare a forecasted cost at the
9 completion based on this analysis.

10 Q. So is that identifying the reforecast
11 binders you've been discussing?

12 A. That last sentence does, but in general
13 the paragraph says that we would do what we did, that
14 we'd implement a cost control system that goes back to
15 the control budget, the CBE, the December 2006 number.
16 And I think in two sentences that pretty concisely
17 says what we would do.

18 Q. But does that say that you'll identify
19 and explain the cost overruns?

20 A. Those words aren't there, but absolutely
21 that's part of the system and that's what it does.

22 Q. So you're saying that this paragraph
23 means that you'll identify and explain the cost
24 overruns?

25 A. Yes. And we did.

1 Q. Now, did KCPL set contingencies at the
2 time of this meeting to prevent cost overruns?

3 A. I'm sorry. At the time of what meeting?

4 Q. This July 2006 meeting.

5 A. No. There wouldn't have been
6 contingencies at that time. The control budget
7 estimate if we talked about before wasn't finalized
8 until December of 2006. So it would have been --
9 what, this was presented to staff in July of 2006. So
10 about six months later the control budget estimate was
11 set and that's where contingencies would be.

12 Q. So it wasn't until the control budget
13 estimate that KCPL knew or had a probability it would
14 have cost overruns?

15 A. I don't understand that question. I'm
16 sorry.

17 Q. When did KCPL know or potentially could
18 have had -- know it would have cost overruns?

19 A. Sure. In the time that led up to the
20 April 2008 reforecast. Basically the way the system
21 worked is we had our control budget estimate December
22 2006 and as that paragraph we just read from, the cost
23 control system says we continuously monitored costs as
24 they progressed. And then as soon as we became aware
25 that it looked like we might exceed the control budget

1 estimate, we started the reforecast process. And that
2 culminated in the April 2008 reforecast that we
3 presented to the Staff.

4 Q. So it wasn't until '08 -- April of '08
5 that you knew you were going to have cost overruns?

6 A. No. As I testified to earlier, that
7 reforecast was a several-month process. And so the
8 reforecast formally began, my recollection is, late
9 2007. And we would have had data leading up to that
10 to give us concern. So I would say mid to late 2007.

11 Q. And just to be clear, that KCPL is
12 seeking to recover the costs in which the KCC
13 disallowed?

14 A. Correct. And Brent Davis can testify as
15 to why those two decisions were prudent.

16 Q. Now, are you also seeking to recover the
17 costs that Dr. Nielsen found to be imprudent?

18 A. They are the same two decisions.

19 Q. Let's go to page 17 of your rebuttal.

20 JUDGE PRIDGIN: Ms. Ott, if I could
21 interrupt for just a second. Do you have an idea
22 about how much longer you'll be questioning Mr. Blanc?
23 I'm just looking for a chance to give the court
24 reporter to a break, but I don't want to cut you off.

25 MS. OTT: I have probably a fair amount

1 more.

2 JUDGE PRIDGIN: Okay. If -- she's been
3 going for about a couple hours. I was hoping for a
4 natural break, but --

5 MS. OTT: Sorry.

6 JUDGE PRIDGIN: No need to apologize. If
7 we could take about 15 minutes and then come back
8 with -- Ms. Ott, with your questions of Mr. Blanc.

9 MS. OTT: Okay.

10 JUDGE PRIDGIN: All right. Anything from
11 counsel before we go off record? Okay. Let's go off
12 the record. We'll resume at 10:45. Thank you.

13 (A recess was taken.)

14 JUDGE PRIDGIN: All right. We're back on
15 the record. Ms. Ott, I apologize for interrupting you
16 in the middle of your cross, but I thought -- I was
17 hoping to find a natural break and didn't find one so
18 I thought I better jump in and take a mid-morning
19 break.

20 Anything from counsel before Ms. Ott
21 resumes her cross-examination?

22 All right. Ms. Ott, when you're ready,
23 ma'am.

24 BY MS. OTT:

25 Q. Let's go to page 17 of your rebuttal.

1 A. Okay.

2 Q. Here you indicate you're familiar with
3 the Commission's disallowance in the wolf creek case?

4 A. Correct.

5 Q. Now, for construction of wolf creek, KCPL
6 used what we term as reconciliation packages -- I
7 think you identified that earlier -- to attempt to
8 explain the underlying reasons for cost overruns above
9 the definitive estimate. That's what you stated
10 earlier?

11 A. No. Your question earlier was if we
12 prepared reconciliation statements and I said yeah,
13 the reconciliations were part of the audit. But if
14 you look at the Commission's order in that decision,
15 it looked at a lot more than that. It was engineering
16 decisions.

17 And as I read the order, a lot of the
18 disallowances are associated with the delay of the
19 project. I think of the \$196 million that I say is
20 approximately 2 million here, 66 million of those are
21 extra manhours associated with the delay. And as you
22 recall, wolf creek was more than two years late. So I
23 think that was the driver for most of the
24 disallowances.

25 Q. Okay. I'm going to hand you a copy of

1 the wolf creek decision. And I'd like to direct you
2 to page 93. Kind of -- down in the bottom left-hand
3 corner there's a paragraph that starts, Although.
4 Instead of me reading the paragraph, I'm going to go
5 ahead and ask you to read it for me.

6 A. Okay. The although the Commission
7 agrees? That paragraph?

8 Q. Yes. And actually read the two -- that
9 and then the next one.

10 A. Okay. Although the Commission agrees
11 with the company's assertion that it may not be
12 possible to assign reasons for overruns with absolute
13 precision, the Commission believes that a system could
14 have been and should have been implemented that at
15 least attempted to classify the reasons for the
16 overruns at the time they were incurred.

17 After-the-fact estimates with wide
18 ranging accuracy, plugged numbers and pages of
19 unquantified explanations constitute insufficient
20 information from which a determination of
21 reasonableness can be made.

22 This is true in spite of Mr. Linderman's
23 assertion to the contrary. The Commission finds that
24 Mr. Linderman's testimony was often evasive and
25 unresponsive; therefore, the Commission is unable to

1 rely upon his testimony. The Commission finds the
2 reconciliation packages were further deficient as they
3 did not properly assess the extent to which cost
4 overruns were attributable to problems over which
5 management had control. Thus, company would have the
6 Commission believe that all cost overruns were wisely
7 and prudently incurred.

8 Q. Okay. Now, Mr. Blanc, there were
9 adjustments proposed by the Staff in the Wolf Creek
10 rate case that were less directly related to the
11 Staff's inability to audit Wolf Creek's case, were
12 there not?

13 A. I'm sorry. I'm -- I'm not as familiar
14 with Staff's proposed adjustments as to what the
15 Commission ultimately did. I don't know all of
16 Staff's proposed adjustments.

17 Q. Do you know whether the Commission made,
18 in the Wolf Creek rate case, what it termed as
19 traditional excess capacity adjustments?

20 A. Yes. Excess capacity was an issue there.
21 It's not an issue here. And I believe there was a
22 disallowance associated with excess capacity. And my
23 \$200 million would not reflect that because I'm trying
24 to do an apples-to-apples comparison on a prudence
25 disallowance.

1 Q. So then you're stating you did not assess
2 excess capacity adjustment within your chart or your
3 table on page 17?

4 A. No. I -- just as I testified a moment
5 ago, there were \$196 million I believe of kind of
6 specified prudence adjustments that are construction
7 related, project related. And I did not include the
8 excess capacity because that's not an issue here and
9 you wouldn't be comparing apples to apples if you
10 included it.

11 Q. Do you know how many dollars there were
12 disallowed in the wolf creek rate case?

13 A. Yeah. As my -- as I just testified and
14 my chart summarized, from a prudence perspective, it
15 was 196 million or I've got 200 rounded here. And
16 that was with respect to a project the definitive
17 estimate was \$1 billion and it came in at \$2.9 billion
18 so two -- more than two years late and three times the
19 budget.

20 Q. So you're saying -- then you're trying to
21 make an apples-to-apples comparison here?

22 A. Making an apples-to-apples comparison on
23 what the Commission ultimately did and what Staff's
24 proposing to do here.

25 Q. Is it your testimony that Iatan 2 was

1 completed on time?

2 A. Yeah. I would say yes, that the
3 regulatory plan did have a target date of June 1, 2010
4 and obviously we didn't meet that. It was August 26,
5 2010 is when it was in service. But our -- I'd say
6 the target date was just that, a target date. And
7 those are the words in the regulatory plan. And our
8 commitment and our public statements and everything
9 else was summer of 2010 and we did accomplish that.
10 August 26, 2010, summer 2010.

11 Q. Is it -- making it a target date, is that
12 important?

13 A. I think the word is -- target is just
14 that, it's the date we were shooting for. It's a
15 target date.

16 Q. Do you believe Iatan -- is it your
17 testimony that Iatan 2 was completed on budget?

18 A. As we've talked about, the control budget
19 estimate was 1.685 billion. We're forecasting it's
20 going to ultimately cost 1.948 billion and that's
21 15.6 percent more than the control budget estimate.

22 Q. Okay. Going back to your wolf
23 Creek/Iatan comparison, where in the stipulation and
24 agreement does it specify the cost overruns need not
25 be identified or explained based upon the comparison

1 to wolf creek?

2 A. I didn't follow that question. I'm
3 sorry.

4 Q. Okay. where in your agreement does it
5 specify that cost overruns need not be identified or
6 explained based upon the comparison to wolf creek?

7 A. I still don't understand the question.
8 we've quoted paragraph or section Q of the regulatory
9 plan a number of times. It doesn't mention wolf
10 creek. It obligates the company to develop a cost
11 control system that identifies and explains costs.
12 And we did that and we've talked about that a lot this
13 morning. But beyond that, I'm not sure what your
14 question is.

15 Q. well, your -- you were trying to compare
16 wolf creek and Iatan 2, so I was just trying to figure
17 out that, but --

18 A. If that's the question, I can certainly
19 respond to that.

20 Q. That's all right. You -- we'll move on.
21 Has KCPL written off the disallowances
22 ordered by the Commission in wolf creek?

23 A. I believe the accounting rules at that
24 time allowed for some phase-in of the write-off. And
25 I'm not sure if that's gone to zero at this point or

1 not. And there was also a change in tax law that
2 might have impacted it. So I don't know is the simple
3 answer.

4 Q. Okay. So --

5 A. But what I do know is that the accounting
6 standards today would require us to immediately write
7 off any disallowance on Iatan 2.

8 Q. What accounting standards are those?

9 A. FAS -- it's one of the FAS. I don't
10 remember if it's 90. FAS 90's a word -- is the one
11 that comes to mind, but again, that's not my area of
12 expertise. John Weissen is a witness in this case and
13 can testify to that, as Darain Ives could testify to
14 that.

15 Q. Is Mr. Weissen or Ives an Iatan witness?

16 A. Neither one is an Iatan witness, but
17 they're auditors for the company -- or sorry,
18 accountants for the company.

19 Q. But back -- you don't know whether or not
20 KCPL wrote off disallowances in the -- from the Wolf
21 Creek case?

22 A. My understanding is it was allowed to be
23 phased in over time, that write-off. And whether that
24 is what ultimately happened if that's gone to zero, I
25 don't -- I don't know that. But again Mr. Weissen and

1 Mr. Ives would.

2 Q. Now, on page 18 of your rebuttal you
3 discuss the KCC order. Who had the burden of proof in
4 that case?

5 A. In my mind, it would be similar to here,
6 that -- just as we talked about early on in the
7 proceeding, that -- that it's presumed prudent until
8 someone raises a serious doubt. In my mind, they're
9 similar standards. But as we discussed earlier, I'm
10 not here as a lawyer for the company.

11 Q. As a non-lawyer, are you aware that the
12 KCC has specific standards on prudence, a statute on
13 prudence?

14 A. My understanding -- and Dr. Nielsen is
15 the prudence expert, but my understanding is both
16 Commissions have to look at prudence. That's their
17 mandate. In Kansas they have a statute by which they
18 do that, but that just lists the factors and I don't
19 think it's an exclusive list necessarily, but it's --
20 it's basically the methodology by which they analyze
21 prudence.

22 Q. Now, you're familiar with Schiff Hardin.
23 Correct?

24 A. I am.

25 Q. Okay. Is Schiff Hardin a cost overrun,

1 their --

2 A. Is Schiff Hardin a cost overrun? I'm not
3 sure I understand.

4 Q. Are they considered a cost overrun in
5 your -- in the budget for Iatan?

6 A. The fees we have paid Schiff Hardin?

7 Q. Yes.

8 A. Again, how that's accounted and how
9 that's tracked through, as we've discussed many times,
10 is a better question for Mr. Archibald and Mr. Meyer.
11 what you would have to compare is what was assumed in
12 the initial control budget estimate -- and I don't
13 know what that number on a line item for them is --
14 versus the anticipated cost. But that -- that's a
15 better question for them just because I don't have
16 that level of detail.

17 Q. So you don't have an idea of whether or
18 not their -- their line item is considered a cost
19 overrun?

20 A. The piece I'm missing that I don't know
21 is what the assumption was, what the line item in the
22 initial -- the December 2006 control budget estimate.
23 I don't know what that assumed for Schiff Hardin. And
24 that -- that's the piece you would need to know.

25 Q. So you don't know?

1 A. Correct.

2 Q. Now, I believe yesterday you mentioned
3 that you have previously reviewed Schiff invoices; is
4 that true?

5 A. I did. I reviewed the legal component of
6 Schiff invoices while I was in the law department --
7 or I should say I participated in the review.

8 Q. Who all participated in the review of the
9 Schiff invoices?

10 A. From the law department perspective
11 looking at the legal invoices, it was me and Jerry
12 Reynolds and then from time to time Bill Riggins, the
13 general counsel.

14 Q. Can you describe how you reviewed the
15 Schiff invoices?

16 A. Sure. Basically just went through and
17 looked at the time entries. Basically from my
18 perspective, no different than we review any other law
19 firm invoices we get. Go through and review the time
20 entries and the description of those entries.

21 And then if a question arose, I would
22 talk to Jerry Reynolds because he worked with them
23 more closely on a day-to-day basis than I did and
24 talked to him about what they were working on at that
25 time, if that seemed like a reasonable amount of time

1 for that project. And then so we would discuss it and
2 move on.

3 Q. Did you ever have those discussions with
4 Mr. Reynolds regarding any of the Schiff invoices?

5 A. That's what I was just testifying to,
6 yes.

7 Q. So that happened?

8 A. If there was an entry that I wasn't
9 familiar with, I would speak to Jerry Reynolds and
10 say, Are you familiar with this project? Were they
11 working on this? was this a reasonable amount of
12 time? That was part of the process.

13 Q. Generally, what was the time period that
14 you would have been reviewing them from the date on
15 the actual invoices?

16 A. It varied over time. So I --
17 definitively I couldn't tell you, but I would
18 acknowledge that sometimes there were a couple of
19 months' gap and that's often why those conversations
20 had to take place, that I couldn't recall what they
21 were working on a particular day and that's why I
22 would talk to others.

23 Q. So was it generally like a two-month
24 delay?

25 A. I don't recall specifically, but two,

1 three months seems reasonable for what was occurring.

2 Q. And what was the time period that you
3 would have been reviewing the legal invoices?

4 A. Through June 30th of 2009. That's when I
5 left the law department.

6 Q. When would you have -- when would you
7 have started reviewing them?

8 A. I have to stop and think. I'm not sure
9 when the date started because Jerry Reynolds from the
10 law department perspective had that role at the
11 beginning of the Schiff Hardin relationship and then I
12 was added to that process later. But I would guess it
13 would have been mid-2008, but that -- that's
14 admittedly a guess.

15 Q. Is it your testimony that Schiff only
16 provided legal services and -- for the Iatan project?

17 A. No. Not at all. As I responded in -- to
18 a Commissioner question yesterday, they provided a
19 broad array of services. And I explained those in my
20 testimony, as does Bill Downey. They supported the
21 Iatan projects in a number of ways.

22 Q. Now, on the Schiff invoices would they
23 denote whether or not it was directly related to legal
24 expenses or rather if it was not related to legal
25 expenses?

1 A. That designation wouldn't appear on the
2 invoices, but what you would have is -- we talked
3 about yesterday Jay Wilson and Dan Meyer's invoices
4 would be attached. And those would all be project
5 control so that -- those would be I guess a non-issue.

6 And as far as the lawyers, you would have
7 to look at the descriptions and see what they were
8 working on. And as an attachment, CDB2010-2 to my
9 testimony, we went back in response to Staff's
10 allegations and did a breakdown and looked at the work
11 they had done and the hours and who had done it and
12 went through the process of doing just that,
13 categorizing what was legal, what was nonlegal, what
14 was contract administration, what was project
15 controls. So you'd have to look at the descriptions.

16 Q. And then you -- so what schedule did you
17 say that was that you performed that?

18 A. CDB2010-2. It's attached to my -- my
19 rebuttal or my surrebuttal. It is attached to my
20 rebuttal.

21 Q. What was the cost control process for
22 Schiff?

23 A. Things the invoice -- if I understand
24 your question correctly, how did we review their
25 invoices, it's the invoice review process we just

1 talked about and we discussed yesterday in response to
2 Commissioner Kenney's questions. The law department
3 would review the legal aspects of their bills and
4 procurement with the project would review the bills in
5 total and the non-legal aspects.

6 Q. And were there any controls in place that
7 limited the hours that Schiff employees could work on
8 the project?

9 A. There wasn't a formal ceiling saying you
10 may not work more than so many hours. I mean
11 something like that didn't exist and I don't think it
12 would make sense. But what was in place is our people
13 were working with them on a day-to-day basis and would
14 have known if they were working the hours that they
15 claimed to be working and if those hours were
16 productive. We were working with them in real-time
17 over the life of the project.

18 Q. So when you're working day to day, that
19 meant the Schiff employees were actually there onsite
20 at Iatan?

21 A. Especially the project control people.
22 Many of them were. And then the lawyers on an
23 as-needed basis were. So they were often at Iatan, I
24 would say.

25 Q. So were there any controls since -- for

1 the individuals in Chicago on how much work they were
2 performing?

3 A. Should be the process I just described.
4 we knew what they were working on because we'd asked
5 them to work on it. And, for example, when I was
6 reviewing an invoice, if an attorney in Chicago was
7 working on a project I wasn't familiar with or the
8 time didn't look right, I would talk to Jerry Reynolds
9 or the lawyer that was working with them on that and
10 we would confer. But that would be the same process
11 for whether they were working in Chicago or Kansas
12 City.

13 Q. Did you ever have a dispute with Schiff
14 Hardin on the amount of work that they were billing to
15 you?

16 A. No. As I said, we had those discussions,
17 but there was never an unresolved issue. I was always
18 comfortable with the explanation of -- or we were
19 comfortable, I should say, the law department, Jerry
20 Reynolds and I were comfortable that they were doing
21 the work they said they were doing and their work was
22 productive. They weren't wasting time doing it.

23 Q. So none of your conversations with
24 Mr. Reynolds or in the law department ever led you to
25 contact somebody at Schiff Hardin to question --

1 A. Not --

2 Q. -- a particular item on the invoice?

3 A. Not that I'm aware of. I never did.

4 Q. Now, when you did your analysis that's in
5 your schedule, did you use the edited invoices that
6 were provided to Staff or did you use the unredacted
7 invoices?

8 A. I believe what you're referring to is the
9 invoices that had attorney/client privileged
10 information removed that the Regulatory Law Judge
11 looked at as well. And no, I saw the attorney/client
12 communications because I was the client.

13 Q. So you did not use the edited invoices?

14 A. No. My invoices were not redacted, no.

15 Q. Now, could Schiff perform work without
16 prior approval from KCP&L?

17 A. I guess I'm -- the word about prior
18 approval and I think it goes to what I said earlier.
19 They worked with us on a day-to-day basis so it really
20 wasn't realistic and it cert-- it wasn't the process,
21 to answer your question, but nor I do think it would
22 be realistic for them to -- to put a process in place
23 where they had to come to us and say, I think need to
24 look at this letter. Is it okay if I bill time
25 looking at this letter? And then have them do that.

1 That isn't how it worked, but I don't
2 think that would have been reasonable. We were aware
3 on a daily basis what they were working on and it was
4 under our direction. But there wasn't a prior
5 approval for what they could do or couldn't do.

6 Q. Do you know of any other construction
7 project where 1 percent of its costs are for legal
8 fees?

9 A. Again, as we discussed a couple of
10 questions ago, it's not purely legal fees. But
11 1 percent -- really less than 1 percent if you're
12 looking at the Iatan projects in total for contract
13 negotiation, contract management, cost control
14 support, project schedule support. Dan Meyer will
15 testify and has testified that in his experience in
16 the industry, less than 1 percent of project cost for
17 that level of services is a very good deal.

18 Q. So when you're referring to the 1 percent
19 being legal fees of the -- of the project, are you
20 grouping in all the legal fees or just the Schiff
21 legal fees?

22 A. What the 1 percent refers to is all fees
23 paid -- all fees and expenses paid to Schiff Hardin in
24 support of the Iatan 2 projects is less than
25 1 percent.

1 Q. And that's at risk of getting into highly
2 confidential number -- it's not. So -- so you have
3 paid over 20 million just for Schiff?

4 A. That's correct. In the broad support for
5 the projects over the past five years, that's correct.
6 And it's less than 1 percent of the project cost.

7 Q. So is it your testimony that customers
8 should pay for legal costs that are not supported by a
9 paid invoice?

10 A. I certainly haven't said that, no.

11 Q. Do you -- so you don't think customers
12 should have to pay for legal costs that are not
13 supported by a paid invoice?

14 A. I guess I don't understand your question.
15 If we haven't paid an invoice, we wouldn't seek
16 recovery. I mean if a cost hasn't been incurred, we
17 wouldn't seek to recover it. So I'm not sure what
18 your question is.

19 Q. Did KCPL use a competitive process to
20 acquire its auditor, Ernst & Young?

21 A. I don't know. I wasn't involved with
22 procurement of Ernst & Young services, but I don't
23 believe so.

24 Q. You don't believe a competitive process
25 was used? Is that --

1 A. I don't believe so, but I don't know
2 that.

3 Q. Now, are you familiar with all of the
4 Schiff employees and contractors who worked on the
5 Iatan project?

6 A. Only the ones I worked directly with.

7 Q. And who were they?

8 A. I worked directly with Ken Roberts,
9 Carrie Okizaki, Eric Gould, Mandy Schermer. And then
10 as far as the -- the Schiff Hardin employees, that
11 would be it. But then Jay Wilson who we talked about
12 yesterday as a -- the cost control -- or sorry, the
13 schedule expert, I -- I worked with him and his
14 colleagues. And then Dan Meyer, I've worked with him
15 as well. And he's the project cost expert.

16 Q. Now, did Mr. Roberts provide both legal
17 and nonlegal services?

18 A. Without -- my recollection -- and we're
19 talking about legal services or services over five
20 years, is that Mr. Roberts was almost exclusively
21 legal. But there may have been some -- some type of
22 project oversight, but I would think that would be a
23 relatively small amount. I would assume Mr. Roberts
24 would be primarily legal.

25 Q. How about Ms. Okizaki? would she have

1 done legal and nonlegal work?

2 A. She would have been, I would say,
3 primarily legal as well, but more general project
4 support than Mr. Roberts.

5 Q. How about Mr. Gould?

6 A. Mr. Gould is not a lawyer. He's a Schiff
7 Hardee -- Schiff Hardee -- Schiff Hardin employee, but
8 he's a non-lawyer so he wouldn't be providing legal
9 services per se. He would largely be project support.

10 Q. Okay. And how about Ms. Schermer?

11 A. Ms. Schermer is -- I would put her --
12 going down the spectrum of Mr. Roberts was primarily
13 legal with a little project support, Ms. Okizaki was
14 slightly more project support, and Mandy Schermer yet
15 again is slightly more project support.

16 Q. And then would -- Mr. Wilson and
17 Mr. Meyer would have only done project support?

18 A. Correct.

19 Q. Do you know what a reasonable hourly rate
20 for paralegal in Kansas City is?

21 A. I guess I'm -- I don't know what
22 paralegals in Kansas City charge for their services,
23 no.

24 Q. Do you know what Schiff was billing
25 Kansas City Power and Light for paralegal services?

1 A. I did at the time when I was reviewing
2 the invoices because on each invoice it would be a
3 time entry and then a total dollar figure so you could
4 divide to get that. So I knew that at the time I was
5 reviewing the invoices, but right now I can't recall
6 what their paralegal billing rate was.

7 Q. If I showed you an invoice, would it
8 refresh your memory?

9 A. Yes.

10 Q. I think if you go to page 14, it
11 identifies -- and I'm probably going to butcher her
12 first name -- Zuma Dyke as a paralegal.

13 A. I see that.

14 Q. And then if you flip to page 44, it says
15 her billing rate is \$230 an hour.

16 A. Sorry. Where? I see her.

17 Q. The second column -- I think if you go to
18 the page 2, it says hours and then the third column of
19 numbers would be the total amount.

20 A. That's exactly what I was trying to
21 figure -- the columns aren't labeled here, but yes, I
22 believe that's correct.

23 Q. So for this particular invoice, she
24 billed over \$33,000 in paralegal services?

25 A. That's correct.

1 Q. And are you the one that approved --
2 approved this invoice?

3 A. I'm looking at the date. June 30, 2008.
4 As I said, I would have gotten involved about that
5 time so -- as I said, I don't remember the exact time.
6 So this may have been one of the first invoices. It
7 would have meshed with the time I started reviewing
8 the invoices for legal services.

9 And as I mentioned before, that's not one
10 of the Schiff Hardin team that I worked regularly with
11 so that wouldn't have been part of my review. My
12 review, as I discussed, pertained to what I knew about
13 what Schiff Hardin was doing which would pertain to
14 the team members we just talked about.

15 Q. So that would have been Mr. Reynolds who
16 would have approved that?

17 A. Correct.

18 Q. And he's no -- no longer with KCP&L?

19 A. That's correct.

20 Q. Now, do you know if KCPL agreed to pay
21 Ms. Dyke's salary of -- or hourly rate of \$230 for the
22 work she was charging to the Iatan project?

23 A. We paid it so, yes, that's agreeing to
24 pay it.

25 Q. Now, are you familiar with Strategic

1 Talent Solutions?

2 A. Only vaguely.

3 Q. Did you ever read their May 2007

4 Construction Project Effectiveness Report?

5 A. Only -- not contemporaneously. But I did

6 review it as information that was being provided to

7 the staff.

8 Q. I'm going to hand you a copy of it. And

9 I'd like to direct you to what has been Bates stamped

10 KCPLLP0000012, page 12.

11 MS. OTT: This is highly confidential,

12 what I'm going to have to read so we might need to go

13 in-camera.

14 JUDGE PRIDGIN: All right. Let me ask

15 counsel if you can check around the room. Is there

16 anyone who needs to be excused before we go into HC?

17 Going once, going twice.

18 MR. FISCHER: I think we're okay.

19 JUDGE PRIDGIN: If you'll give me just a

20 moment before we can continue.

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

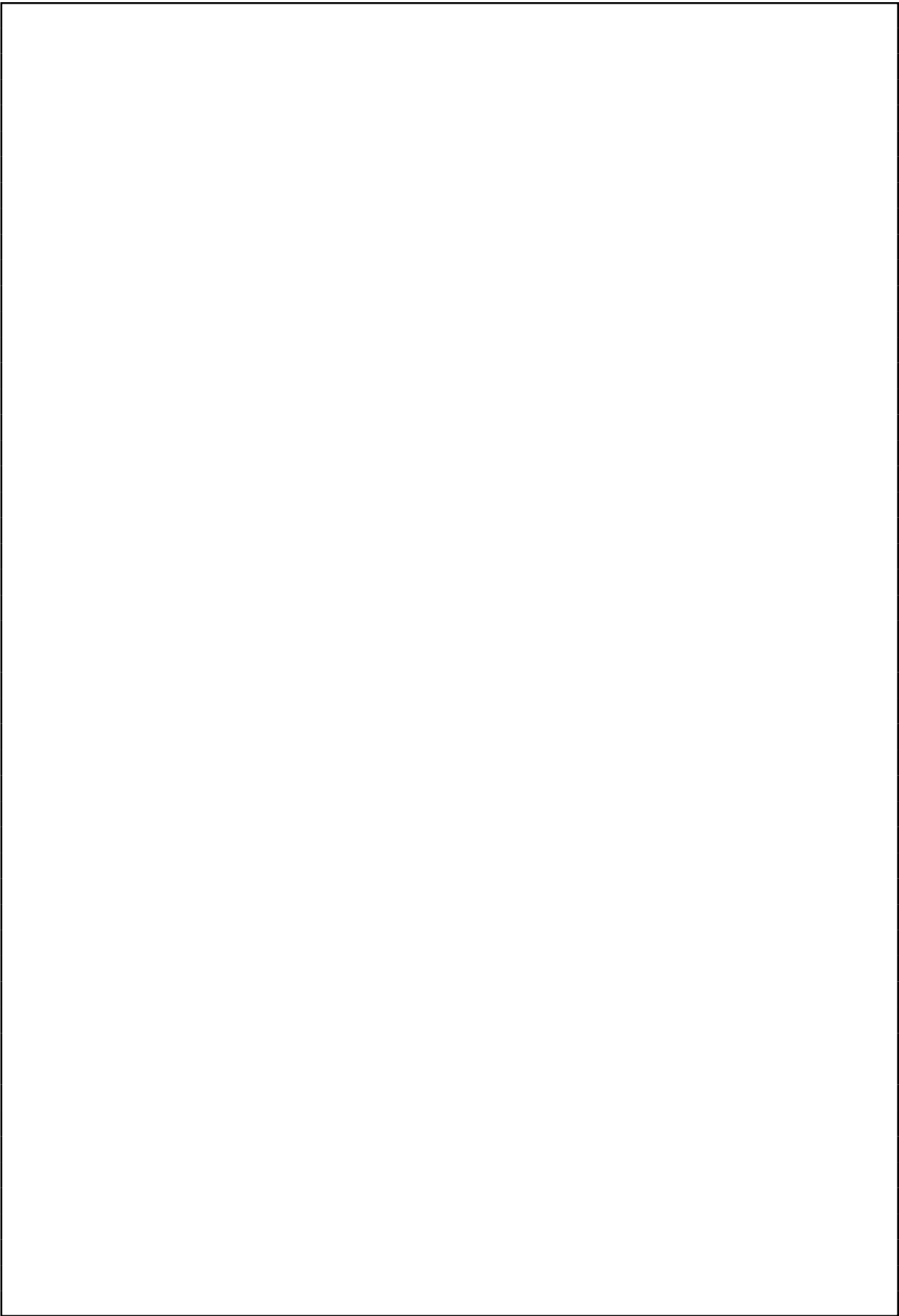
22 in-camera session was held, which is contained in

23 volume 16, pages 509 to 510 of the transcript.)

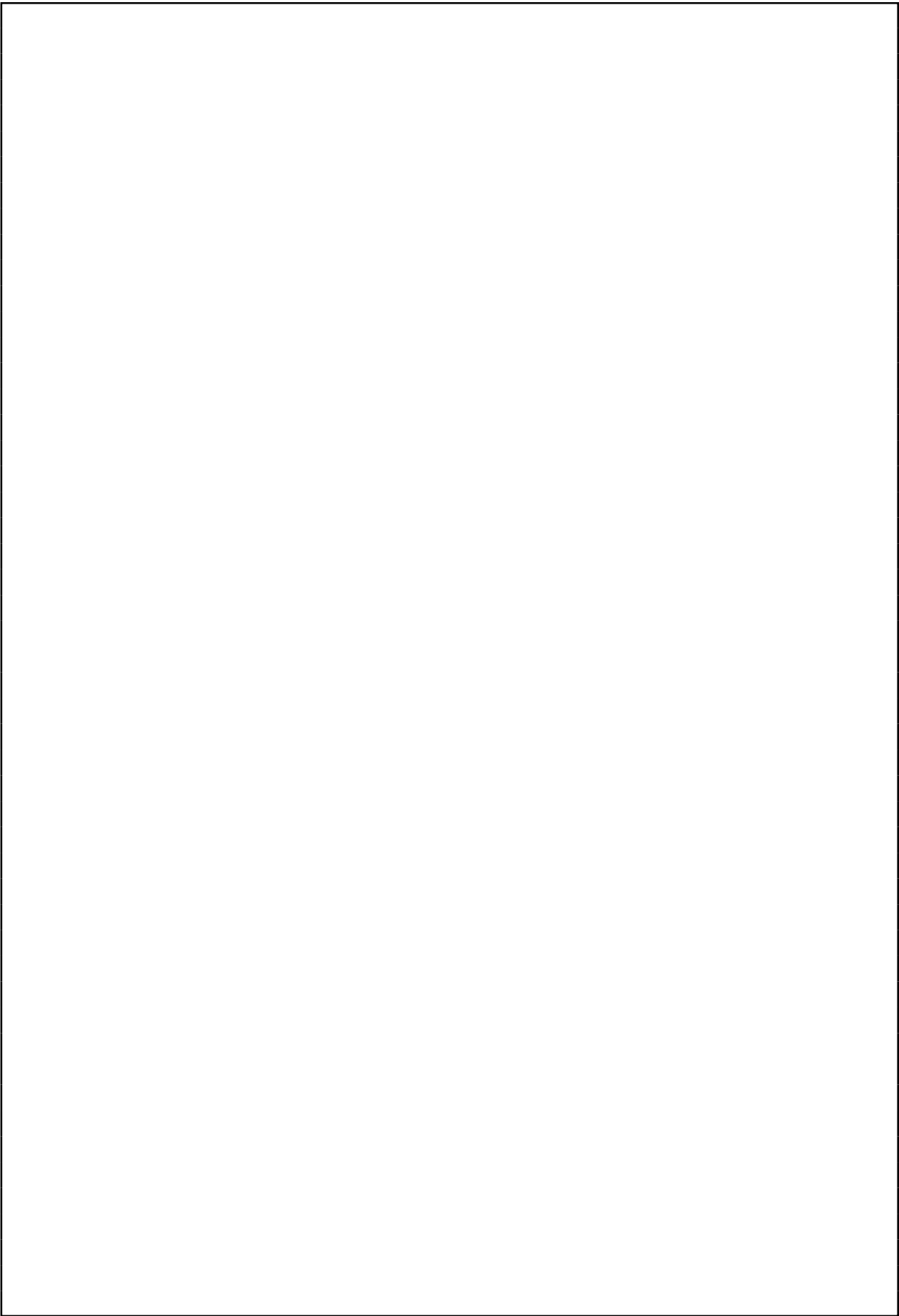
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1 JUDGE PRIDGIN: All right. The in-camera
2 session has ended. Ms. Ott, when you're ready.

3 CURTIS BLANC testified as follows:

4 BY MS. OTT:

5 Q. Now, Mr. Blanc, is it KCPL's position
6 that Schiff was independent from the leadership team
7 on the construction project?

8 A. I guess Schiff's whole -- Schiff Hardin's
9 role was many faceted and you have to go to the
10 specific members of the team. They supported the
11 Iatan projects but part of that role was advising the
12 Executive Oversight Committee on -- in as blunt a way
13 as they could, what they saw going right and wrong
14 with the project.

15 And that's exactly what's captured in
16 this paragraph you had me read and is the definition
17 of prudent management. It's May '07, very early on in
18 the project. We brought in this group because we had
19 concerns that the team wasn't meshing as well as it
20 could. And so we saw an issue and we addressed it.
21 And that's what's captured in this report.

22 Q. Okay. My question wasn't related to the
23 report so -- my question was whether or not throughout
24 the project did Schiff Hardin have control over KCPL's
25 management?

1 A. No. Absolutely not. They didn't have
2 control. Your question is if they were independent.
3 Schiff Hardin did not control KCP&L management.

4 But your question is were they
5 independent of the Project Leadership Team. And the
6 role they played in advising the Executive Oversight
7 Committee, that -- that part was key and that was
8 independent of the project team. If they weren't
9 independent, they wouldn't be in a position to advise
10 the Executive Oversight Committee if they saw issues.
11 And that was a key part of their role is helping us
12 identify issues before they caused project problems.

13 Q. Do you know who Mr. Carl Morado is?

14 A. I've heard the name, but I'm not familiar
15 with him or his work.

16 Q. So you don't know what type of services
17 he provided to KCPL?

18 A. No. The other project team witnesses
19 would be able to answer the questions, but I never
20 worked with Mr. Morado or was familiar with the
21 services he provided.

22 Q. Now, are you familiar with the audit
23 Ernst & Young performed?

24 A. I'm -- I believe Ernst & Young has a
25 couple -- at least a couple of documents. One's a

1 risk assessment and there might have been an audit
2 subsequent to that, so I'm not familiar with the
3 document or not sure what document you're referring
4 to.

5 Q. Marked 2007 risk assessment -- phase 1
6 risk assessment report.

7 A. Yeah. I've seen it, yeah.

8 Q. Okay. Now, what was Ernst & Young's role
9 with the Iatan project?

10 A. Again, that goes back before -- I'm not a
11 project person and that's certainly a question better
12 left for the project team and particularly probably
13 Mr. Downey for that question as far as why Ernst &
14 Young was brought in and what their role was. But
15 from my perspective, they're an auditing firm so I
16 assume they were providing some kind of audit and
17 maybe oversight, but that's a better question for the
18 project team.

19 MS. OTT: This is going to be HC, so --

20 JUDGE PRIDGIN: Just a minute, please.

21 Let me have counsel verify -- I don't think anybody
22 has entered or exited that would alarm the parties.

23 All right. Give me just a moment, please.

24 (REPORTER'S NOTE: At this point, an
25 in-camera session was held, which is contained in

1 volume 16, pages 515 to 516 of the transcript.)

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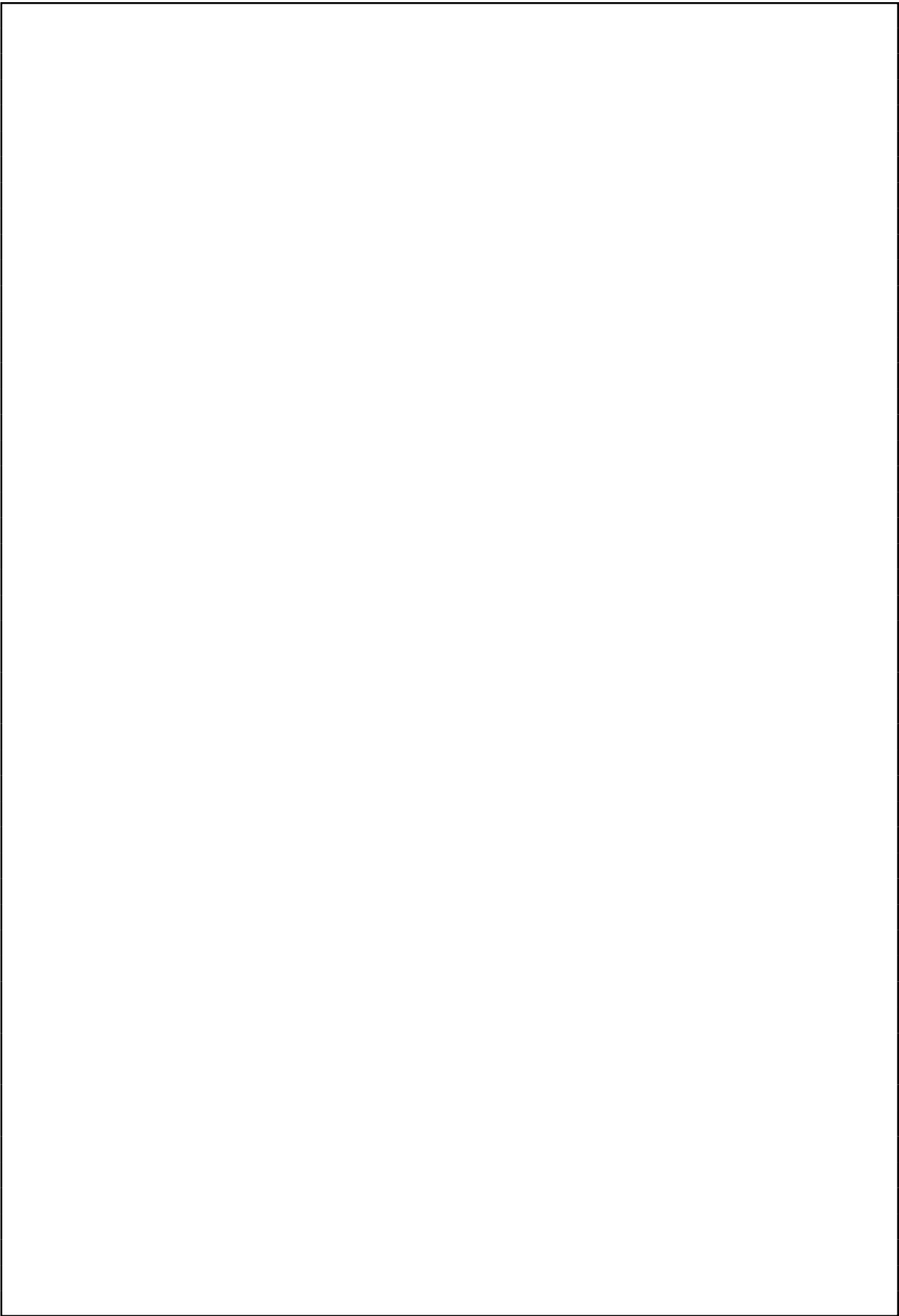
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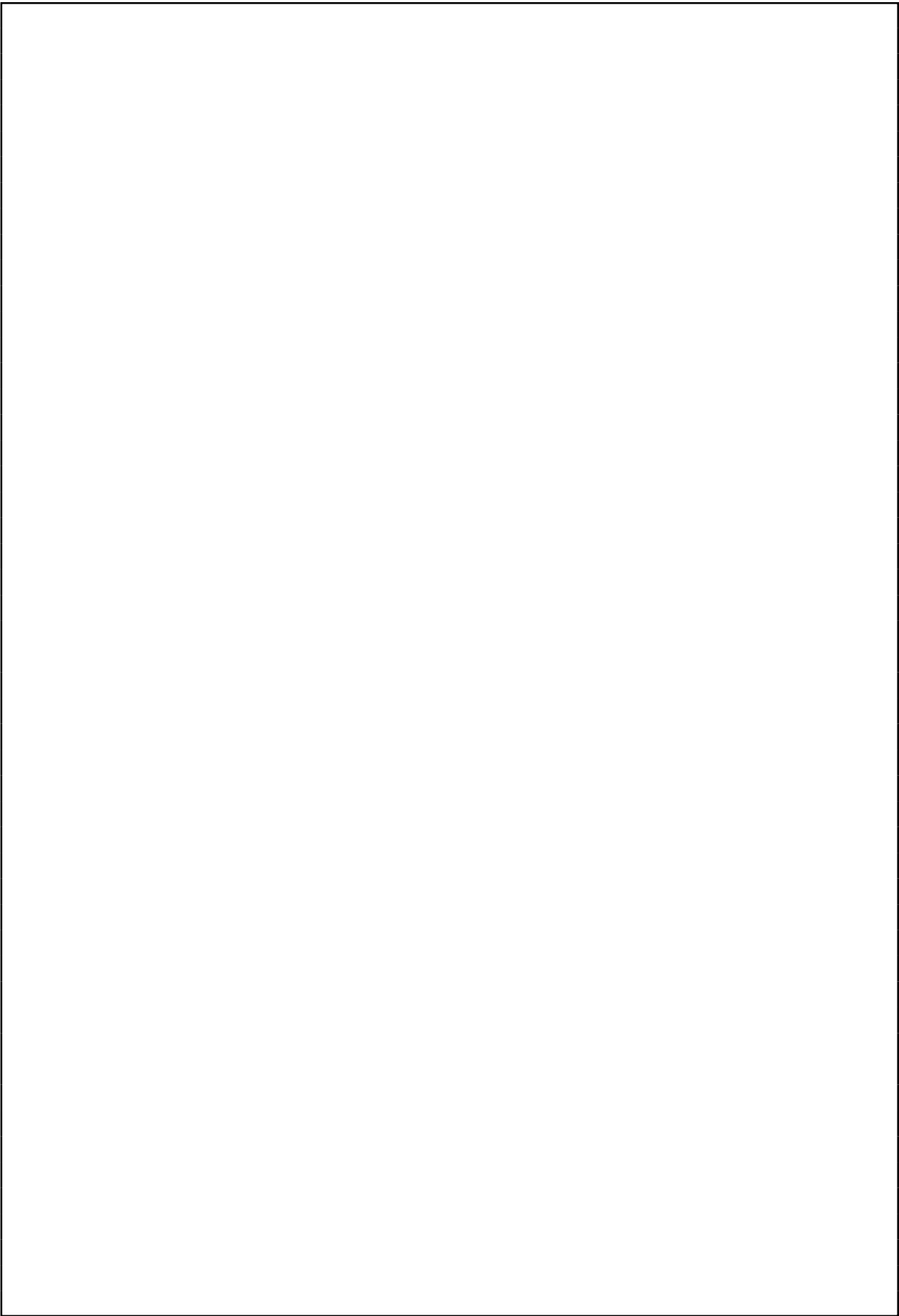
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1 JUDGE PRIDGIN: All right. The in-camera
2 session's over. We're back in public record.

3 CURTIS BLANC testified as follows:

4 BY MS. OTT:

5 Q. Do you believe Ernst & Young was
6 qualified to the extent that Staff could rely on their
7 work?

8 A. I'm not sure I understand the question.

9 Q. Is Ernst & Young a qualified auditor?

10 A. Again, as I said before, what their exact
11 role was is a better question, but is Ernest & Young a
12 reputable company that does good work? Absolutely.

13 Q. Would it be prudent for Staff to rely on
14 their work?

15 A. I think yes, in part. But this is really
16 just the beginning. I think the next step that has to
17 happen is what was done in response to this criticism.
18 I think it's wo-- would be appropriate for Staff to
19 acknowledge that Ernst & Young had this concern, but
20 then it would need to go the next step and say, Okay,
21 KCP&L, what did you do in response to that concern.

22 Q. Now, you were in the legal department for
23 a while and you said you reviewed invoices. Has KCP&L
24 ever received a volume discount for legal services?

25 A. I've never been in the role of

1 negotiating law firm fees so I just don't know that.

2 The general counsel has traditionally done that.

3 Q. Are you aware of KCP&L ever receiving a
4 volume discount from a legal firm?

5 A. Seems that maybe we have from Spencer,
6 Fane is a firm that comes to mind, but I don't know
7 how that arose or how that came to be.

8 Q. And was that volume discount related to
9 Iatan work?

10 A. I don't know the specific -- specifics of
11 that. Spencer, Fane, I typically would not have
12 reviewed their bills. They didn't provide regulatory
13 services to KCP&L. They were largely our
14 environmental law firm and did environmental law work.
15 So I'm not as familiar with their invoices or the
16 company's arrangement with that firm.

17 Q. Okay. I'm going to hand you a copy of an
18 invoice. And as someone who has reviewed invoices
19 before, you can tell me if maybe this would reflect
20 the question I asked. So you are correct it is
21 Spencer, Fane. And you see a volume discount noted on
22 the invoice. Correct?

23 A. Yes. And by math that looks like it
24 would be 5 percent.

25 Q. And also identified on this invoice is

1 related to the Iatan 1 project, the handwritten
2 notations?

3 A. That is what -- the handwritten notation
4 says Iatan 1, but as I said, I haven't reviewed the
5 invoice or are familiar with the work they did.

6 Q. why didn't KCP&L seek a volume discount
7 with Schiff Hardin?

8 A. I don't know whether they did or didn't
9 pursue it. I just have -- I wasn't involved with the
10 hiring of Schiff Hardin so I don't know if that
11 discussion occurred or not.

12 Q. who hired Schiff Hardin?

13 A. It would have been the general counsel,
14 but on a job as broad as this, I assume the Executive
15 Oversight Committee or the company leadership team
16 would have been involved given the significance of the
17 project. It would have been a broadly discussed
18 decision.

19 Q. so that would have been Mr. Riggins that
20 would have --

21 A. Yeah, he was general counsel. But I
22 think, as I said, given the significance of the
23 decision, it would have been discussed more broadly.

24 Q. Did KCP&L ever seek -- or in the middle
25 of the project when they realized the amount of hours,

1 tens of thousands of hours, that Schiff Hardin was
2 billing KCP&L, to then say we've been -- you're
3 obviously doing a lot of work on this project, to seek
4 a volume discount?

5 A. AS I said, I don't -- I don't know. I
6 wasn't involved in any discussions like that, but I
7 wouldn't expect to be involved in that.

8 Q. Let's go to I think 40 of your rebuttal.
9 That's right. I think. Now, you indicate that KCP&L
10 has corrected some of the inappropriate charges
11 identified by Staff. Is that --

12 A. Yes.

13 Q. I'm going to hand you a copy of Staff
14 Data Request 971. Now, Data Request 971 says, For
15 Iatan 1 did KCPL or GMO make any correcting entry --
16 entries or adjustment entries based on Staff's
17 December 31, 2010 audit report? If so, please provide
18 a list of each adjustment, the amount and a detailed
19 description of why the adjustment order was made.

20 And can you read what the response says?

21 A. It says, No correcting or adjusting
22 entries were made based on Staff's December 31st, 2010
23 audit reports.

24 Q. And I believe that date has actually been
25 corrected to 2009 because there wasn't a Staff

1 December 31st, 2010 report. It was 2009. Does that
2 sound about right to you?

3 A. That's correct. The data request, both
4 the question and the answer say 2010, but you're
5 right. There isn't a report with that date.

6 Q. So would you agree that this response is
7 indicating that KCPL did not make any corrections to
8 its books and records based upon the December 31st,
9 2009 audit report?

10 A. Based on the audit report, that's a true
11 statement. My understanding is the corrections that
12 were made were in advance of that. As Staff pointed
13 out something that they thought we did incorrectly, we
14 corrected it at the time. We didn't wait until the
15 report and do it in response to the report, which is
16 what I read the DR request and answer to be responsive
17 to.

18 Q. Can you identify what -- what charges
19 were corrected --

20 A. I know for --

21 Q. -- prior to the report?

22 A. Yes. I know, for example, there was a --
23 a meal that was incorrectly billed to the project and
24 that was removed from the project. That's the one
25 example that comes to mind. More examples than that,

1 you would have to talk to the accounting staff because
2 I'm just not that familiar, but that's the one example
3 that comes to mind.

4 Q. So you're only aware of one change that
5 was corrected?

6 A. Sure. Staff pointed out that they
7 thought a meal shouldn't be billed to the project and
8 we looked into it and agreed and fixed that. We
9 corrected that error.

10 Q. Is that particular meal the only
11 inappropriate charge that Staff pointed out in its
12 report?

13 A. No, Staff has a list attached to the
14 report. And why I pause is many of them were
15 addressed. When we filed this case, we were trying to
16 avoid having to argue about this issue so what we did
17 is we removed executive expense reports, which seemed
18 to be the focus of Staff's criticism not only from the
19 test year, the 2009 test year in the case but also
20 from what had been billed to Iatan 2, what had been
21 billed to the project. So in that sweeping movement,
22 so to speak, I believe we likely addressed all of
23 Staff's specified inappropriate charges.

24 Q. How about the Staff's inappropriate
25 charges to Iatan 1?

1 A. I know there were lots of discussions
2 with Staff, but I don't recall sitting here if there
3 were specific entries that would reflect any changes
4 with respect to Iatan 1. I just -- I don't know that.

5 Q. Were you interviewed by Pegasus
6 Consulting?

7 A. I'm pausing at the word "interviewed." I
8 spoke with the members of the Pegasus team on a number
9 of occasions so I guess the answer's probably yes.

10 Q. And you're familiar with who Dr. Nielsen
11 is?

12 A. I am.

13 Q. And how -- how do you know him?

14 A. Basically the company hired Pegasus as an
15 outside expert basically to -- to look at how we were
16 managing the project, if we were managing the Iatan
17 project in a prudent manner based on how prudence is
18 generally understood to be used in the industry and
19 what other projects are doing. And so Dr. Nielsen's
20 group Pegasus came in to do just that.

21 Q. So did Dr. Nielsen provide records
22 based -- based upon his findings to KCP&L?

23 A. The only records I'm aware of are the
24 pre-filed written testimony he provided.

25 Q. So he didn't do an evaluation separate

1 from pre-filed testimony?

2 A. I'm pausing to think if there was a
3 written report or something separate from his
4 testimony. I don't recall a separate written report.

5 Q. So you weren't officially interviewed by
6 Dr. Nielsen then? I'm just -- you said you had
7 conversations with him.

8 A. We discussed the project and he asked me
9 questions about the project, so I -- if that's an
10 interview, then yes.

11 Q. What types of questions did he ask you
12 about the project?

13 A. It's been some time ago. It would have
14 been -- generally I would have been answering
15 questions from my perspective, which is the regulatory
16 perspective. And it would have been how the
17 regulatory plan came to be, what the regulatory plan
18 commitments were, what we had done. It would have
19 been -- it would have been from my perspective for the
20 project, so limited to the regulatory side.

21 Q. Were there other individuals present
22 during that conversation with Dr. Nielsen?

23 A. There were -- there were several
24 conversations, not -- not a single one. And I would
25 say yeah, there were various people. I seem to recall

1 there were one-on-one conversations and there were
2 conversations within a group. I'd say both occurred.

3 Q. Do you recall any of the other
4 individuals that would have been in the group
5 conversations?

6 A. Sure. I believe from a regulatory
7 perspective, Mr. Giles might have participated in some
8 of those conversations. Members of the project team
9 participated in some of those conversations.

10 Q. And who would that be?

11 A. Brent Davis comes to mind as being
12 involved in some of the conversations.

13 Q. Anyone else?

14 A. That's all I can recall specifically.

15 Q. Were you given any instructions regarding
16 the level of the cooperation with the -- regarding
17 conversations with Dr. Nielsen?

18 A. Yeah, no. The understanding was full
19 disclosure, be completely open with Dr. Nielsen. And
20 to ensure that he had the same access to the same
21 information that staff had access to.

22 Q. Now, was -- were you ever represented by
23 an attorney during those conversations with
24 Dr. Nielsen?

25 A. No. I believe given the timing of those

1 conversations, I was counsel for the company at the
2 time.

3 Q. So when you were present with Mr. Davis,
4 were you acting as his counsel?

5 A. No. Just giving historical aspects of
6 the regulatory plan.

7 Q. And did you provide any documents to
8 Dr. Nielsen during those conversations?

9 A. Not during the conversations. But given
10 my role as regulatory counsel, my role in the data
11 request process with Staff, I provided a lot of
12 information or lot of documents to Dr. Nielsen, but it
13 was in the form of what had been provided to Staff on
14 this project, make sure he gets that as well.

15 Q. So everything -- was everything that was
16 provided to Staff provided to Dr. Nielsen or were
17 there select documents?

18 A. No. To my knowledge, he received
19 everything Staff received.

20 Q. Was he given any information that Staff
21 wasn't provided?

22 A. Not that I'm aware of, no. The goal
23 was -- or one of the goals was given that same
24 information, could a prudence evaluation be done. And
25 if it was done, what would be the conclusion of that

1 evaluation.

2 Q. And I kind of -- I'm almost done, but I
3 want to go back and clarify a few things that I'm not
4 100 percent sure if I understand. So you indicated
5 that these reforecast binders could identify and
6 explain the cost overruns. Now, for Iatan 1 does the
7 cost reforecast binders consist of R&Os?

8 A. R&Os would have been a big part of it.
9 And again, as we discussed, a lot of these questions,
10 the mechanics of how the cost control system work are
11 really better questions for Dan Meyer and Forrest
12 Archibald. But the cost reforecast for Iatan 1 was
13 largely built around the R&Os. If that's the
14 question, then yes.

15 Q. Can R&Os be tracked to the actual cost in
16 the control budget estimate for June 30th, 2010?

17 A. Again, a better question for Dan Meyer
18 and Forrest Archibald, but what you have to keep in
19 mind is the R&Os were to identify risks and
20 opportunities, things that were on the horizon, not
21 things that actually -- expenditures that were
22 actually incurred.

23 so the answer is probably no, but nor
24 would they be intended to do that, that basically it
25 was looking out and identifying things that might

1 happen and how we could respond to that. So it
2 wouldn't show up as a budget overrun until the expense
3 was actually incurred, if it was at all. A lot of the
4 R&Os never materialized.

5 Q. So your answer was no, that they cannot
6 be tracked to the June 30th, 2010?

7 A. You couldn't just look at the R&Os and do
8 that is my understanding. But again, better question
9 for Dan Meyer and Forrest Archibald.

10 Q. Now, for Iatan 2 does the cost reforecast
11 binder consist of R&Os and CPs or cost projection
12 folders?

13 A. That -- that is part of it just as it was
14 for Iatan 1. But my understanding is also that
15 Iatan 2 didn't -- the reforecast for Iatan 2,
16 particularly the subsequent ones, didn't revolve
17 around R&Os to the extent Iatan 1 did. But again, the
18 details of that are better left to Dan Meyer and
19 Forrest Archibald who actually conducted the
20 reforecast.

21 Q. Now, can CPs be tracked to actual costs
22 in the control budget estimate at June 30th, 2010?

23 A. Again, I'm more familiar with the R&Os
24 that's -- the mechanics of how it works is better left
25 to Dan Meyer and Forrest Archibald.

1 Q. So you don't have an answer to that?

2 A. I don't. I know the system can do it,
3 but can you look at that particular document and do
4 it? I don't know the answer to that.

5 Q. Do you know if these reforecast binders
6 track internal budget transfers to actual costs?

7 A. I believe they would because indirects or
8 internal costs were part of the reforecast process.

9 Q. How about internal budget transfers?

10 A. Internal budget transfers. See if you
11 could define that for me.

12 Q. What do you think it means to you?

13 A. I don't know. That's why I asked. I'm
14 sorry.

15 Q. Then never mind. Now I want to go back
16 to the document I handed you earlier, the Cost Control
17 System Manual. And this is highly confidential.

18 JUDGE PRIDGIN: All right. Give me just
19 a moment.

20 MS. OTT: Well, it may not go into --

21 MR. SCHWARZ: Which document is that?

22 THE WITNESS: Cost Control System.

23 COMMISSIONER KENNEY: Is this all
24 attached to his testimony?

25 THE WITNESS: No.

1 COMMISSIONER KENNEY: where is this?

2 MS. OTT: It's just a document I handed
3 him. And I don't think it will actually be HC.

4 THE WITNESS: I believe Steve Jones'
5 testimony.

6 JUDGE PRIDGIN: we'll stay public unless
7 you inform me we need to go in-camera.

8 BY MS. OTT:

9 Q. Looking at paragraph 3.1 --

10 MR. HATFIELD: Jaime, I'm sorry to
11 interrupt you. Commissioner, the document I believe
12 she has is attached to Steve Jones' testimony as
13 schedule I believe 1. Sorry, Jaime.

14 COMMISSIONER KENNEY: Thank you.

15 BY MS. OTT:

16 Q. Can you identify anywhere in this
17 paragraph where it states that KCPL will track actual
18 costs to the control budget estimate and identify and
19 explain any cost overrun?

20 A. well, we read this language we went
21 through before and why -- while the words "identify
22 and explain" don't appear, that is the obvious meaning
23 of these paragraphs; that we would have to control
24 budget estimate. And we developed a system that would
25 be based on the control budget estimate and track to

1 it.

2 Q. But where does it say cost overruns?

3 A. That word does not appear, but anything
4 in excess of the control budget estimate, that is how
5 the regulatory plan defines a cost overrun. So by
6 definition, that's a cost overrun.

7 Q. Does -- can you point to where it says it
8 will explain or track cost overruns?

9 A. I mean we can reread the language and
10 I -- I believe it does that. And there's also the
11 final paragraph of that section, which is on the
12 following page, page 9. It says, The project team
13 will periodically update the reforecasted costs,
14 contingency usage, cash flow and monthly budgets.
15 That's tracking project costs to the control budget
16 estimate.

17 Q. Actual costs or project costs -- budgeted
18 costs, sorry?

19 A. It's all part of the same system. You
20 have actual and then forecasted costs. The actual
21 costs you manage as you go, but you also forecast
22 costs to identify potential issues and deal with them
23 as they arise.

24 Q. would you think that a key component of
25 the cost control system in regards to the Kansas City

1 Power and Light regulatory plan would at least
2 describe and explain in the cost control system the
3 cost overruns?

4 A. We talked about this quite a bit this
5 morning. It -- that was a component and it does do
6 that. The commitment in the regulatory plan was to
7 put in a system that identifies and explains cost
8 overruns and the system does just that.

9 Q. Does cost control system mention the
10 regulatory plan?

11 A. I don't know. I can read the document
12 and see if it refers to the regulatory plan. I don't
13 recall that it does, but it -- it satisfies the
14 commitment whether it uses the words "regulatory plan"
15 or not.

16 Q. I mean if the document is attached to
17 testimony, it will speak for itself. You don't need
18 to read through it.

19 MS. OTT: I don't have any further
20 questions.

21 JUDGE PRIDGIN: All right, Ms. Ott.
22 Thank you. Let me see if we have any Bench questions.
23 Commissioner Jarrett?

24 COMMISSIONER JARRETT: I don't have any
25 questions for Mr. Blanc. Thank you

1 JUDGE PRIDGIN: Thank you. Commissioner
2 Gunn?

3 QUESTIONS BY COMMISSIONER GUNN:

4 Q. I just have a couple. And I apologize if
5 they were -- we were upstairs in agenda so I apologize
6 if they have already been answered. So how was -- how
7 was Schiff Hardin selected or hired? Was it an RFP
8 process or was it a -- these guys are the experts in
9 this?

10 A. It was the latter. There wasn't a formal
11 RFP process, but my understanding -- as I said, I
12 didn't participate in the hiring of the firm but my
13 understanding is basically looked at who could do this
14 kind of work and Schiff Hardin came up as kind of the
15 imminent firm in this area. And as we talked about
16 yesterday, because they already had a team in place
17 and because their approach meshed with our approach.

18 Q. What -- what office did they work out of?
19 Because they don't have an office in Kansas City, do
20 they?

21 A. They do not. They -- a lot of the folks
22 were in Kansas City, but they also worked out of the
23 Chicago office. But in acknowledgment that they were
24 an out-of-town firm, they didn't bill us for travel
25 time. All the time they spent waiting in airports or

1 sitting on planes, we were never billed for that time.

2 And they did that intentionally to level the playing

3 field, so to speak, with local firms.

4 Q. Was there any adjustment to rates to
5 reflect Kansas City rates or were they Chicago rates,
6 do you know?

7 A. I would say they were neither. They were
8 construction expert rates, geographic-- geographically
9 irrelevant.

10 Q. So a paralegal in construction law makes
11 \$230 an hour?

12 A. Well, for -- that's a fair point. For a
13 paralegal service by Kansas City standards, that --
14 that does seem high and that -- that is a Chicago
15 rate.

16 Q. It's pretty high for a Kansas City
17 lawyer. So I mean was -- so when -- were these rates
18 just kind of taken as this is what the rates were or
19 were the rates -- were the rates negotiated?

20 A. Well, the -- first of all, the rates
21 weren't special to KCP&L. And the extent that they
22 were higher than the rates Schiff Hardin is paying
23 their other clients, these are Schiff Hardin rates and
24 the market sets those largely. Market looks at
25 services a law firm can provide and judges if they're

1 worth it or not.

2 Q. But you didn't look at any other law
3 firms through an RFP process, did you?

4 A. Not through an RFP process, but you
5 wouldn't have to do an RFP process to know generally
6 what other firms charge.

7 Q. We're talking about \$20 million.
8 Ultimately you guys paid this law firm \$20 million for
9 the services that they were doing?

10 A. Yeah. And --

11 Q. And there was no -- Let me finish the
12 question.

13 A. You bet.

14 Q. There -- there doesn't appear to be any
15 negotiation on rates, there doesn't appear to be any
16 negotiation on volume discount. You knew how long the
17 project was going to last. There had to be a budget
18 put together for what you were going to pay this
19 entity. And you guys just picked who you thought won
20 it. Now, I'm not saying that that was a bad choice,
21 but I just want to make it -- asking the clear
22 questions.

23 You did not try to negotiate down rates,
24 you did not try to get other firms that -- in -- and
25 there was no competitive process in order to hire the

1 firms. And so let me -- I'll ask that question.
2 There was no competitive process to hire this firm and
3 there was no appearance to negotiate lower rates based
4 on either geographic location or other competitive
5 factors?

6 A. They're just going to have to parse out
7 what I know and I don't know. I do know there was not
8 an RFP process, but because I wasn't involved directly
9 in hiring them or negotiating, I don't know any
10 discussions around discounted rates. I don't know
11 that. But I do know that they didn't charge us for
12 any of their travel time.

13 Q. All right. So even though -- so you
14 don't get -- you don't get paid for sitting a half
15 hour in -- in Midway airport flying to Kansas City,
16 but you're still getting to charge \$230 hour for a
17 paralegal?

18 A. For work that's being performed on the
19 project in support of the project, yeah.

20 Q. Okay. Now, you -- you were directly
21 involved in reviewing some of those invoices. Right?

22 A. Yes, I was particularly with the members
23 of the Schiff Hardin team that I worked directly with.

24 Q. Now, did I hear you right -- and it may
25 have been yesterday that you -- you did not

1 disallow -- let me -- let me ask the question this
2 way: Did you disallow individual time entries that
3 you can recall?

4 A. No. There were times that I had
5 questions just because I wasn't familiar with the work
6 they were doing or why it would take as long as the
7 bill indicated, but I explored that with the lawyer
8 that was actually working with them on that project
9 and those were always resolved.

10 Q. To your --to your knowledge, were any
11 time entries for the entire \$20 million -- because I'm
12 assuming -- well, let me back up. Were all the
13 invoices submitted -- was everything done on a time
14 entry basis? So you received invoices on an hourly
15 basis and time entries for people whether they were
16 lawyers or whether they were other -- other employees?

17 A. Sure. Standard law firm practice, yeah.

18 Q. So there were no flat fees, no just -- if
19 someone acted in a consultant role, project management
20 kind of role, they were -- they were treated as a
21 lawyer, they -- they did -- they billed in certain
22 time increments and presented those time entries to
23 you on the invoices?

24 A. Yeah. As far as I know. Certainly with
25 the respect to the portions of the invoice I was

1 responsible for reviewing, absolutely, time entries.

2 Q. And there was not a single time entry in
3 that entire \$20 million -- or approximately
4 \$20 million that was ever disallowed?

5 A. No. There were ones that arose
6 questions, but those questions were always addressed.

7 Q. And that -- and those were paid?

8 A. Yes.

9 Q. That number paid?

10 A. Sure.

11 Q. So there were no -- not only were there
12 no ones that were disallowed, there were no
13 adjustments to any of the time entries where you
14 looked and said, you know, Really did it take some
15 person nine hours to do this work? And so -- and a
16 lawyer came back and said -- or Schiff came back and
17 said, You know, you're right, it really -- we'll write
18 it down to seven hours. There -- there was none of
19 that that you know of?

20 A. No. Those were the discussions that
21 happened internally, but there was -- I was always
22 comfortable with the explanation I received that, oh,
23 yeah, this came up or it was more complex than they
24 originally thought and that's why it took longer.

25 Q. Right. So no adjustments were made?

1 A. No. Not that I'm aware of, no.

2 Q. And -- and these are fees that you are --
3 that are separate from rate case expense. Right?
4 These will be included in project cost? These would
5 not be considered rate case expense. Correct?

6 A. The vast majority. There would be a very
7 small portion that they've done in support of the rate
8 cases, but that would be an extremely small portion of
9 that number.

10 Q. So there -- they -- they have continued
11 to give support -- is it -- and I don't -- I don't
12 want to get into any privileged information, but is
13 it -- is it legal strategy or is it -- is it gathering
14 information for other --

15 A. A simple example, Ken Roberts is a
16 witness in the case.

17 Q. Okay.

18 A. And that -- that's a rate case expense.
19 His time as a witness in the case.

20 Q. Got it. Okay. I want to go just real
21 quick to the cost control system.

22 A. Okay.

23 Q. To your knowledge, was this developed
24 kind of out of whole cloth or was it a kind of a brand
25 new model for doing cost control system or was it --

1 was it a boilerplate cost control system that was
2 modified for the Iatan plant?

3 A. Sure. There was -- Steve Jones, a
4 witness in this case, was responsible for
5 developing -- developing it and he's probably the best
6 witness to ask. But I think it's probably a little
7 bit of both. My understanding is we didn't start
8 recreating the wheel, but we also developed it to be
9 specific to this project and our commitments under the
10 regulatory plan.

11 Q. And only as to your knowledge, if -- if
12 that cost control system -- if portions of that cost
13 control system had been used before, do you know
14 whether Staff has had -- had ever talked about the
15 adequacy of those portions that were used in previous
16 cases? Only if you know.

17 A. Yeah, I don't remember Staff ever asking
18 questions along those lines is why I'm pausing.

19 Q. Let me ask you this: In -- in -- in
20 your involvement in other rate cases, have you ever
21 had a blanket disallowance, either a percentage or
22 hard dollar number, based upon inadequate cost control
23 systems in -- that you can recall?

24 A. No.

25 Q. To your -- to your knowledge was there

1 ever a line item by line item determination from all
2 the disallowances as to their individual prudence
3 or -- or ever? Or was there -- was there just the
4 blanket disapproval disallowance because of the cost
5 control system inadequacies?

6 A. My experience has been it's been issue by
7 issue, whereas, we describe a decision or act by a
8 decision or act. That it's never been a blanket
9 holistic, whatever word you want to ascribe to it.
10 It's never been that broadly sweeping. It's
11 identifying something specific that was imprudent and
12 then quantifying the impact of that imprudency.

13 Q. Okay. Just to go back -- and I may
14 have -- you -- you were billed on a monthly basis
15 from -- from Schiff?

16 A. That's correct.

17 Q. And so the review process took a month
18 and then was there any lag in payment? would there --
19 would -- was it a pretty standard review process where
20 you would review them and then they would get out and
21 that happened on a monthly basis?

22 A. Yeah. The -- the review process was very
23 standard. The payment part I don't know just because
24 I don't know how long it took accounting to process
25 and get the -- I don't know -- wire transfer or check

1 out. I just don't know that.

2 Q. So you'd get an invoice and you would
3 review it, send it down to your accounting department
4 saying, Okay to pay and then whatever process they had
5 took however long it took?

6 A. Yes.

7 Q. Okay. And that was done every month or
8 was it -- was -- was there -- were there any delays?

9 A. No. It was done -- in response to
10 receiving the invoices over the five years, I can
11 think of a couple of occasions where maybe two
12 invoices came in together that maybe the first one was
13 running a little late and two months came in together,
14 but that would be the only exception I could think of.

15 Q. Were there -- were there -- there were
16 increased payments at the end of the year where --
17 where you would have certain work that was -- that
18 either because of the KCP&L's books closing or because
19 Schiff Hardin wanting to get end of the year invoices
20 where you would receive maybe two invoices in November
21 or -- or earlier than once a month?

22 A. There were times we received more than
23 one invoice in a month but I don't think that was the
24 reason. I think when we did, it was because it was
25 either separate scopes of work or something different

1 going on. I don't recall getting multiple monthly
2 invoices for the purpose of getting -- getting
3 expenses paid within a particular time.

4 Q. Okay. Just really, really quickly, can
5 you give me the best people to talk about the cost
6 control system, the best -- if it's more than the
7 previous person you -- you mentioned?

8 A. Absolutely. There are, in my mind, four
9 and it just depends on what aspect of it you want to
10 talk about. As far as what was negotiated at the time
11 the regulatory plan came to be, what the parties
12 talked about and what that language meant at the time,
13 that would be Chris Giles. He negotiated that on
14 behalf of the company.

15 Q. Okay.

16 A. If you want to talk about the day to day
17 and the trenches, how the cost control system worked
18 and what we did with it on a day-to-day basis, that
19 would be Forrest Archibald. If you want to talk about
20 how our cost control system compares to the rest of
21 the industry across the US and historically, that
22 would be Dan Meyer.

23 Q. Okay. Who else -- who else reviewed
24 invoices? You only did a portion of the Schiff Hardin
25 invoices. Correct? Who else did?

1 A. It depends on what was going on in the
2 invoice. It was subject matter driven basically.
3 That -- Jerry Reynolds, who was also a lawyer in the
4 law department oversaw the contract work and a lot of
5 the work they did was contract work. So he would
6 review the portion. I reviewed the portion that
7 pertained regulatory stuff, for lack of a better term.
8 And then procurement --

9 Q. "Stuff" is a scientific term in this
10 Commission so it's okay.

11 A. And then procurement and then the project
12 team would look at the portions that dealt with the
13 actual -- the project support piece.

14 Q. Was your review the only review that was
15 done or did it go to Mr. Riggins before it was sent on
16 to pay?

17 A. Typically that -- that's what would work.
18 It would go through me for me for my portion and
19 Reynolds for his portion. And then if we had -- if
20 there were questions we couldn't resolve, which did
21 happen from time to time, then he would be the next
22 step. And it would go to Bill Riggins as general
23 counsel and he would have the final say if we went to
24 Schiff with anything in particular.

25 Q. But that was not a necessary part of the

1 review process? If you didn't -- if you looked at the
2 review and you didn't have any questions, it just got
3 sent right to accounting. You didn't have to go --

4 A. No. I think it would still go through --

5 Q. It would -- okay.

6 A. I think it would still go through

7 Riggins, but it would just -- if we had a

8 recommendation or not or questions or not.

9 Q. Okay. Do you know if -- do you know if
10 there was a second independent review done at that
11 level or was your -- if you didn't have any questions
12 on it, it basically was a proforma kind of approval?

13 A. I don't know if it was proforma. I don't
14 know --

15 Q. You don't know?

16 A. -- to what extent Mr. Riggins looked at
17 them or not. I -- I don't know that.

18 Q. That's fair.

19 COMMISSIONER GUNN: That's all I have.

20 Thanks. I appreciate that.

21 JUDGE PRIDGIN: Commissioner Gunn, thank
22 you.

23 Commissioner Kenney?

24 QUESTIONS BY COMMISSIONER KENNEY:

25 Q. Might be in danger of beating a dead

1 horse, but just bear with me because this is
2 intriguing to me. And I want to ask first about the
3 Comprehensive Energy Plan, Construction Projects, Cost
4 Control System. It's a HC document, but I'm not going
5 to ask about the contents of it. This document is --
6 was drafted specifically in response to the
7 Comprehensive Energy Plan. Correct?

8 A. Absolutely.

9 Q. Okay. And you said Chris Giles
10 negotiated the regulatory plan with Staff or he was
11 primarily responsible for negotiating the contents of
12 that?

13 A. Correct. From the company's perspective,
14 he was our principal negotiator.

15 Q. Okay. Is he a lawyer?

16 A. No, he's not.

17 Q. Paragraph Q is the paragraph of the
18 regulatory plan that's gotten all the attention.

19 A. Absolutely.

20 Q. And I probably asked you some of these
21 questions yesterday about whether the terms identify
22 and verify -- or the terms of paragraph Q, whether
23 they were discussed and what those terms meant. Was
24 it ever discussed that Staff would review the cost
25 control system plan and approve it or did Staff have

1 any involvement in drafting the cost control plan at
2 all?

3 A. Not in drafting it, but the understanding
4 was that they would provide it to them and expect
5 input from them. And we provided -- provided this
6 document -- the cost control system document to Staff
7 in July of 2006 and met with them to go over it.

8 Q. All right. Who attended those meetings?

9 A. I believe -- yeah, Ms. Ott gave me the
10 sign-up sheet for that. It's -- there's a July 11th,
11 2006 meeting and I have a copy of that sign-in sheet.
12 And there are -- it's a list of who's there, but
13 what's interesting to me, the people who ultimately
14 audited the project and are making these arguments
15 weren't in attendance at this meeting. According to a
16 sign-in sheet, Bob Schallenberg wasn't there, Chuck
17 Hyneman wasn't there nor was Mr. Majors.

18 Q. Who from our Staff was there?

19 A. Lena Mantle, Wess Henderson, Cary
20 Featherstone, Steve Dottheim, Steve Traxler, David
21 Elliott, Rus-- sorry, he's OPC. Dan Beck, Warren
22 Wood, who was with the Staff at that time.

23 Q. Okay.

24 A. That's --

25 Q. Is this -- is this attached to something

1 or is this something that was requested in discovery?

2 MR. FISCHER: Judge, I -- I would like to
3 reserve a exhibit number for this because I think --
4 there's been so much discussion, we'd love to have
5 this in the record.

6 JUDGE PRIDGIN: That's certainly fine,
7 Mr. Fischer.

8 BY COMMISSIONER KENNEY:

9 Q. Did you attend those meetings?

10 A. Yeah. I'm on the list, yes.

11 Q. You're on the -- okay. Did you -- was
12 that the only meeting that was had with respect to
13 that document?

14 A. Oh, no. This was just the first meeting
15 where we presented it to Staff and went over it with
16 them.

17 Q. How many of those meetings were there, do
18 you know?

19 A. Well, how many meetings did we talk about
20 the cost control system?

21 Q. Well, I guess -- let me back up. Was
22 that meeting convened specifically to discuss the cost
23 control system?

24 A. Yes.

25 Q. And I'm assuming it was a draft cost

1 control system at that time; you were seeking input.

2 Right?

3 A. Correct. Or it was -- it was a draft and
4 it was an explanation this is how we intend to do it.

5 Q. And how many more meetings were had
6 specifically to discuss the cost control system?

7 A. The cost control system, I would say
8 there were many meetings about that, but I would just
9 parse as far as changing the draft language, there --
10 there weren't subsequent meetings about the language
11 of the document because we didn't get feedback
12 indicating that the text should be changed.

13 Q. Okay.

14 A. But what there -- there were many
15 meetings after that to describe how the system would
16 work, how you would track costs and then with the
17 reforecast, of course, how that worked.

18 Q. How many of those meetings occurred?

19 A. At very minimum on a quarterly basis we
20 met with staff and the cost control and the cost of
21 the project was a discussion every time. And the
22 quarterly meetings go back to the first quarter of
23 2006.

24 Q. All right.

25 A. And then with each reforecast meeting,

1 each reforecast we met with the Staff. And then
2 separate and apart from that, Staff requested I'm not
3 sure how many -- I think roughly a dozen times. He
4 can probably testify to it, but to meet specifically
5 with Forrest Archibald, our cost engineer, to go over
6 how it was working. So there have been many meetings
7 about it.

8 Q. Let me make sure I understand the timing.
9 The comprehensive -- the stipulation and agreement is
10 the Comprehensive Energy Plan. I just want to make
11 sure we're using the same terms. Right?

12 A. Yes.

13 Q. Okay. The Comprehensive Energy Plan was
14 executed in May of '05?

15 A. Yes. And approved in August of '05.

16 Q. And then this document, cost control
17 system document, was finally drafted by July of '06?

18 A. Correct.

19 Q. All right. And prior to July of '06,
20 when that July 11th meeting occurred, had Staff had
21 any opportunity to provide input into its development?

22 A. I -- I don't know. That would --
23 Mr. Giles was in my role at that time so he would be a
24 better witness to ask. I just -- I don't know about
25 the level of discussions. I attended this meeting

1 where it was presented, but discussions that might
2 have occurred before that I'm just -- I'm not familiar
3 with.

4 Q. So at that July 11th, 2006 meeting, this
5 document was substantially completed at that point?

6 A. Yeah. I -- I'm not aware of any
7 changes --

8 Q. That occurred after that?

9 A. -- that occurred, right.

10 Q. So this as we look at it as Schedule
11 SJ2010-1 is how it was presented at the July 11th,
12 2006 meeting?

13 A. Yes. That's my understanding.

14 Q. And that's how it's existed throughout
15 the life of the regulatory -- the Comprehensive Energy
16 Plan?

17 A. Yes.

18 Q. All right. And do you know if at the
19 meeting that you attended or if at any subsequent
20 meetings there was ever discussion of -- well, let me
21 ask a different question.

22 Somewhere in here it talks about how cost
23 overruns above the definitive estimate will be
24 identified and explained. And if that's something you
25 all discussed earlier, I apologize. We were in

1 agenda.

2 A. We touched upon it, but that's fine,
3 Commissioner. It's -- Section 3 is project control,
4 Section 3.1 is cost control. And that's on page 8.

5 Q. Yeah. Does it specifically speak to cost
6 overruns being identified and explained?

7 A. I would say yes. I mean the words
8 "identify and explain" don't appear, but what it
9 says -- and it's relatively brief, it's just five
10 paragraphs. But it says that we're going to set a
11 definitive estimate -- control budget estimate.

12 Q. Right.

13 A. We're going to monitor it continuously
14 and we're going to track to it and there's going to be
15 a documentation process around that and we're going to
16 provide that information.

17 Q. So 3 point -- do we need to go in-camera
18 now?

19 MR. FISCHER: No.

20 BY COMMISSIONER KENNEY:

21 Q. No. 3.0, project controls; 3.1 --

22 A. Cost control.

23 Q. -- cost control. Those are the five
24 paragraphs, one, two, three, four -- where's the fifth
25 paragraph? Is it on the next page? So it's -- or is

1 it all these down to change order management?

2 A. Exactly. Down to change order
3 management. And I mean it goes on and it's all -- I
4 mean this whole document --

5 Q. Everything under 3.0 though is what
6 you're thinking speaks directly to identifying and
7 explaining cost overruns?

8 A. I'd say -- I mean the whole document
9 can -- explains the system.

10 Q. Okay.

11 A. But to your specific question, if you --
12 I can direct you to a part of the agreement that
13 speaks very directly to it, it would be those five
14 paragraphs.

15 Q. Were there ever any discussions prior to
16 I guess implementation of this document about what
17 staff's expectations were with respect to identifying
18 and explaining cost overruns either at the July 11th
19 meeting or a subsequent meeting?

20 A. The only expectations I remember being
21 discussed up until I would say July of 2010 but prior
22 to that was the expectation that you could track to
23 the control budget estimate. And we were on the same
24 page that that was the point of the system to be able
25 to track to the control budget estimate.

1 Q. Control budget estimate was going to be
2 the baseline against which everything would be
3 measured?

4 A. Exactly.

5 Q. Okay. All right. Where was the -- I'm
6 going to switch gears now. The Strategic Talent
7 Effectiveness document that Ms. Ott was referring to,
8 what that document? Where is that attached to? What
9 is that document?

10 A. I'm not sure if it's attached to anyone's
11 testimony.

12 Q. Is it part of a data request or discovery
13 request?

14 A. Yeah, it was provided.

15 Q. I'd like to see it since you guys talked
16 about it.

17 MS. OTT: We can mark it as an exhibit
18 and put it into the record.

19 JUDGE PRIDGIN: That's certainly fine.
20 Thank you.

21 BY COMMISSIONER KENNEY:

22 Q. So let me -- now I'm going to beat the
23 dead horse and talk about Schiff Hardin. \$230 an hour
24 for a paralegal seems exorbitant. And I reviewed your
25 testimony and you worked at -- you worked at Shook,

1 Hardy?

2 A. Uh-huh.

3 Q. And then Vinson and Elkins, DC; is that
4 right?

5 A. Yes. Correct.

6 Q. What do the paralegals at those two firms
7 charge, if you remember?

8 A. I don't recall paralegal rates. Sorry.

9 Q. When were you there?

10 A. I left Vincent and Elkins in 2005, I
11 believe.

12 Q. What was your hourly rate when you left?

13 A. 325 an hour.

14 Q. Okay. So \$100 -- so 325 in 2005 for DC
15 rates. I guess I can't really do an apples-to-apples
16 comparison so I won't even try. \$230 an hour, does
17 that strike you as reasonable based upon what you know
18 having worked at Shook, Hardy and Vinson and Elkins
19 for paralegal work?

20 A. I'd say it depends on how the firm's
21 using their paralegal and how good the paralegals are.
22 I've met with some paralegals that save a lot of
23 lawyer time. And if that paralegal is saving a lot of
24 lawyer time, I would argue that's a savings in the
25 long run.

1 Q. Was there an engagement letter in terms
2 of representation with -- between KCP&L and Schiff
3 Hardin?

4 A. Again, I wasn't involved in hiring them,
5 but yeah, I would expect so. We typically have an
6 engagement letter with law firms and I wouldn't think
7 this would be an exception.

8 Q. Have you seen it?

9 A. Not that I can recall. It seems that I
10 have. I just -- I don't want to --

11 Q. Did Staff ask for it as a DR and would it
12 be a privileged? Would the engagement letter and the
13 terms of representation be a privileged document?

14 MR. FISCHER: Commissioner, it's my
15 understanding we did provide that to the -- to the
16 Staff.

17 COMMISSIONER KENNEY: All right. Is it
18 the engagement letter and terms of representation or
19 any documents that set forth the relationship between
20 Kansas City and Power and Light and Schiff Hardin?
21 And we don't have to find it now. I just want to know
22 if it's available. I would like to see it eventually,
23 but not right this very second.

24 BY COMMISSIONER KENNEY:

25 Q. What's Mr. Roberts' hourly rate, if you

1 know?

2 A. I believe that's in Staff's report. I
3 don't have that ahead of me, but they -- in Staff's
4 report they have his hourly rate. And my recollection
5 is 550.

6 Q. It's around here somewhere.

7 A. My recollection is 550, but Mr. Roberts
8 will be on the stand.

9 Q. He's in Chicago. Right?

10 A. Correct.

11 Q. Okay. All right. So the 20 -- the
12 upwards of \$20 million we're talking about is from
13 what point through what point?

14 A. From the beginning of the project. And
15 that's I think the really important point to keep in
16 context is both the scope of the work they were doing,
17 the quality of work and over the time frame.

18 Q. Well, and that's what I want to get at
19 because that's what I want to see the -- the terms of
20 the representation and the engagement letter I'm
21 assuming sets forth the scope of the work for they're
22 being retained --

23 A. Uh-huh.

24 Q. -- and it sets forth who's going to be
25 working on the project?

1 A. That's what I would anticipate.

2 Q. How bills are paid?

3 A. Yeah. That's what I would anticipate.

4 Q. Okay. And so when -- when were they
5 retained? Was it in 2005 or 2006?

6 A. They began -- they -- they began
7 providing services to the company back in 2005 is my
8 recollection. But the -- like I said, I'm not
9 familiar with the engagement letter so I don't know
10 what the date of that would be.

11 Q. Are you aware of whether Schiff Hardin
12 had had any prior relationship with Kansas City Power
13 and Light or had performed any prior legal services?

14 A. No, not that I'm aware of.

15 Q. So this was a new relationship?

16 A. Yes. As far as I know.

17 Q. Okay. And was Mr. Roberts always the
18 partner in charge of the file as far as you know?

19 A. Yes. As far as I know.

20 Q. Okay. And who -- all right. Never mind.

21 MS. OTT: Judge, for clarity, the
22 document you're looking for is attached to Chuck
23 Hyneman's surrebuttal testimony as Schedule 11 or 1-1.

24 COMMISSIONER KENNEY: What is it exactly
25 that's attached to his testimony?

1 MS. OTT: The contract for legal
2 services.

3 COMMISSIONER KENNEY: Okay.

4 JUDGE PRIDGIN: Thank you.

5 BY COMMISSIONER KENNEY:

6 Q. Okay. So Ernst & Young and this
7 Strategic Talent Effectiveness entity had some
8 criticisms of Schiff's relationship with the project
9 team; is that right?

10 A. Yeah. Basically I believe it could be
11 summarized as their conclusions were Schiff was
12 communicating too bluntly with the project team.

13 Q. And it sounded like -- and I want to look
14 at the Strategic Talent Effectiveness. The words that
15 you read seem more harsh than Ernst & Young's
16 criticism does. Is that fair?

17 A. I think that's fair. I think Ernst &
18 Young document basically says Schiff Hardin's
19 extremely competent, extremely well qualified, they
20 just need to work on communicating with the project
21 team better.

22 Q. And you said the Strategic Talent
23 Effectiveness, is this -- is that a consulting firm or
24 something? What is that?

25 A. Yeah. Strategic Talent Solutions is a

1 consultant.

2 Q. Talent Solutions. And they were hired in
3 May of '07?

4 A. No. This report is dated May of '07.

5 Q. were they hired specifically to come in
6 and assess Schiff Hardin's relationship with the
7 project management team?

8 A. No. The company had a pre-existing
9 relationship with Strategic Talent Solutions.

10 Q. well, what precipitated asking Strategic
11 Talent Solutions to do an assessment of Schiff
12 Hardin's relationship with the project management
13 team?

14 A. I wasn't directly involved that decision.
15 That would be a great question for Bill Downey who I
16 believe was. But my -- my understanding is that the
17 company recognized that communication could be
18 improved between those two groups and we wanted to
19 assess what needed to be done about it to improve the
20 communication.

21 And the report's dated May 2007, which is
22 pretty early on in the project. So we were trying to
23 address an issue before it became a problem that
24 affected the project.

25 Q. well, how did you become aware that

1 communication was an issue? How did the company
2 become aware?

3 A. Again, that's a better question for
4 Mr. Downey.

5 Q. So -- and I think you said that the --
6 that the question that should be asked is what did the
7 company do in response to Ernst & Young's criticism.
8 So what did the company do in response to Ernst &
9 Young's criticism?

10 A. Basically we -- we got the players
11 together and figured out why it wasn't working, why
12 were they having a hard time communicating. And to
13 simplify it, I would put it down to it was a bedside
14 manner issue. That Schiff recognized their role was
15 to give us direct, honest, open criticism but how
16 that's delivered has an impact on how it's received.
17 So there was a discussion about how to deliver that in
18 a less confrontational manner and that was done.

19 Q. And who participated in those
20 discussions?

21 A. It would have been the -- the Schiff
22 Hardin team and the project team at that time.

23 Q. Did you participate in those discussions?

24 A. No, I was not directly involved in the
25 project.

1 Q. Okay. And do you know if the
2 relationship improved from that point forward and
3 there were no more problems?

4 A. My understanding is the relationship
5 improved a lot after that.

6 Q. And did -- was there a need to have ever
7 have Ernst & Young or Strategic Talent Solutions do
8 any further assessment to determine whether the
9 communication problems has been solved?

10 A. That -- that's a great question. There
11 were subsequent audits done and this was -- this issue
12 never came up again.

13 Q. I just want to make sure I understand.
14 In the time that you were reviewing bills and that
15 you're aware, there were never any adjustments made to
16 the bills?

17 A. I -- I didn't recommend any with respect
18 to Schiff Hardin. Using this same process --

19 Q. Great client to have.

20 A. Well, no. With respect to other law
21 firms, there were other instances that came up where I
22 wasn't aware that this partner was working on this
23 matter and so we're not going to pay that time. So
24 that is part of the process and that came up. But
25 that didn't happen on a Schiff Hardin bill.

1 Q. All right.

2 A. At least that I recommended. What
3 Mr. Riggins ultimately did, I don't know, but I didn't
4 recommend any.

5 COMMISSIONER KENNEY: All right. I don't
6 have any other questions. Thanks.

7 JUDGE PRIDGIN: Commissioner Gunn?

8 QUESTIONS BY COMMISSIONER GUNN:

9 Q. Yeah. I just have a couple and I might
10 have to go HC for a couple but I don't right now.

11 Were there fee increases that you were
12 aware of from the time that the engagement with Schiff
13 Hardin was made through the project?

14 A. There were. And then those rates were
15 frozen. I believe they froze their rates in 2009.
16 Mr. Roberts would maybe be better able to answer that.
17 But they froze their rates and new business, for
18 example, that Schiff Hardin gets is billed at a higher
19 rate than what we're paying today.

20 Q. And do you know what the increase was?
21 Was it an across the board increase or was it a
22 percentage increase?

23 A. I don't recall if it was across the board
24 or percentage increase. I know one of the issues or
25 one of the raises were attributable to one of the

1 lawyers working on the project went from associate to
2 partner during that time frame so her rates increased,
3 but that wouldn't have been an across the board
4 percentage.

5 COMMISSIONER GUNN: I'm going to need to
6 go to HC.

7 JUDGE PRIDGIN: Give me just a moment,
8 please.

9 COMMISSIONER GUNN: I think. Because
10 it's an HC document, it's marked.

11 JUDGE PRIDGIN: Just one moment, please.

12 (REPORTER'S NOTE: At this point, an
13 in-camera session was held, which is contained in
14 volume 16, pages 565 through 568 of the transcript.)

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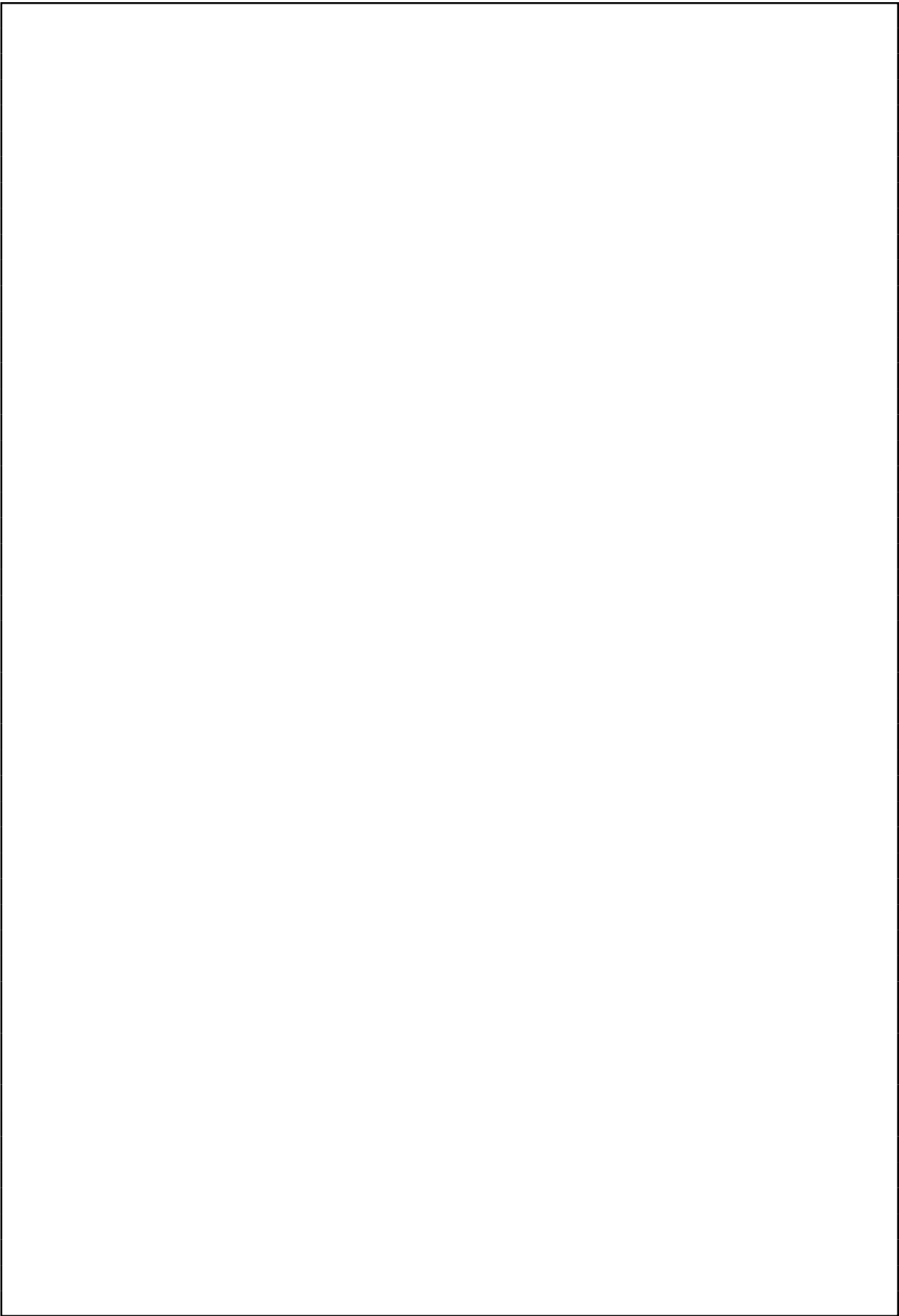
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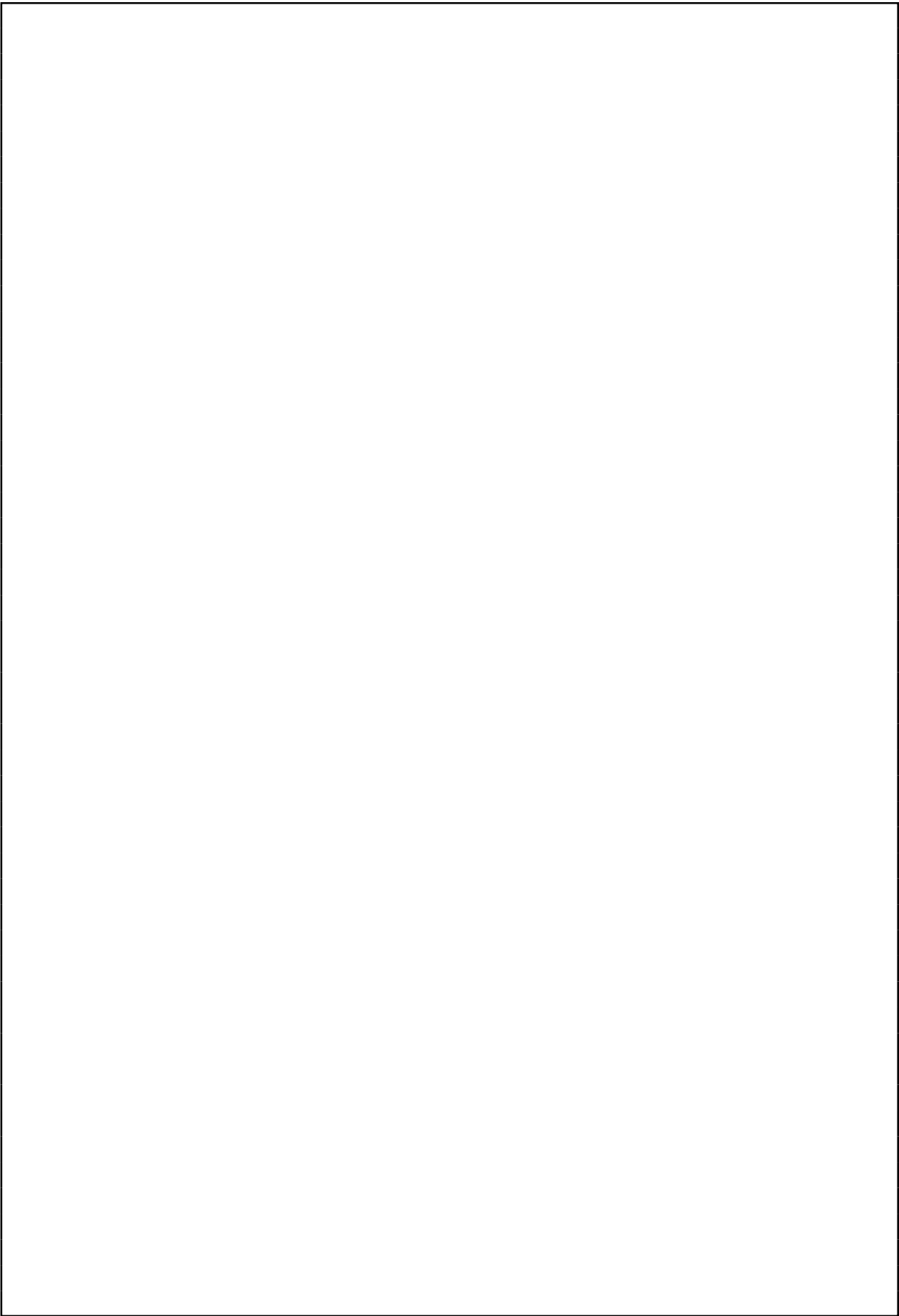
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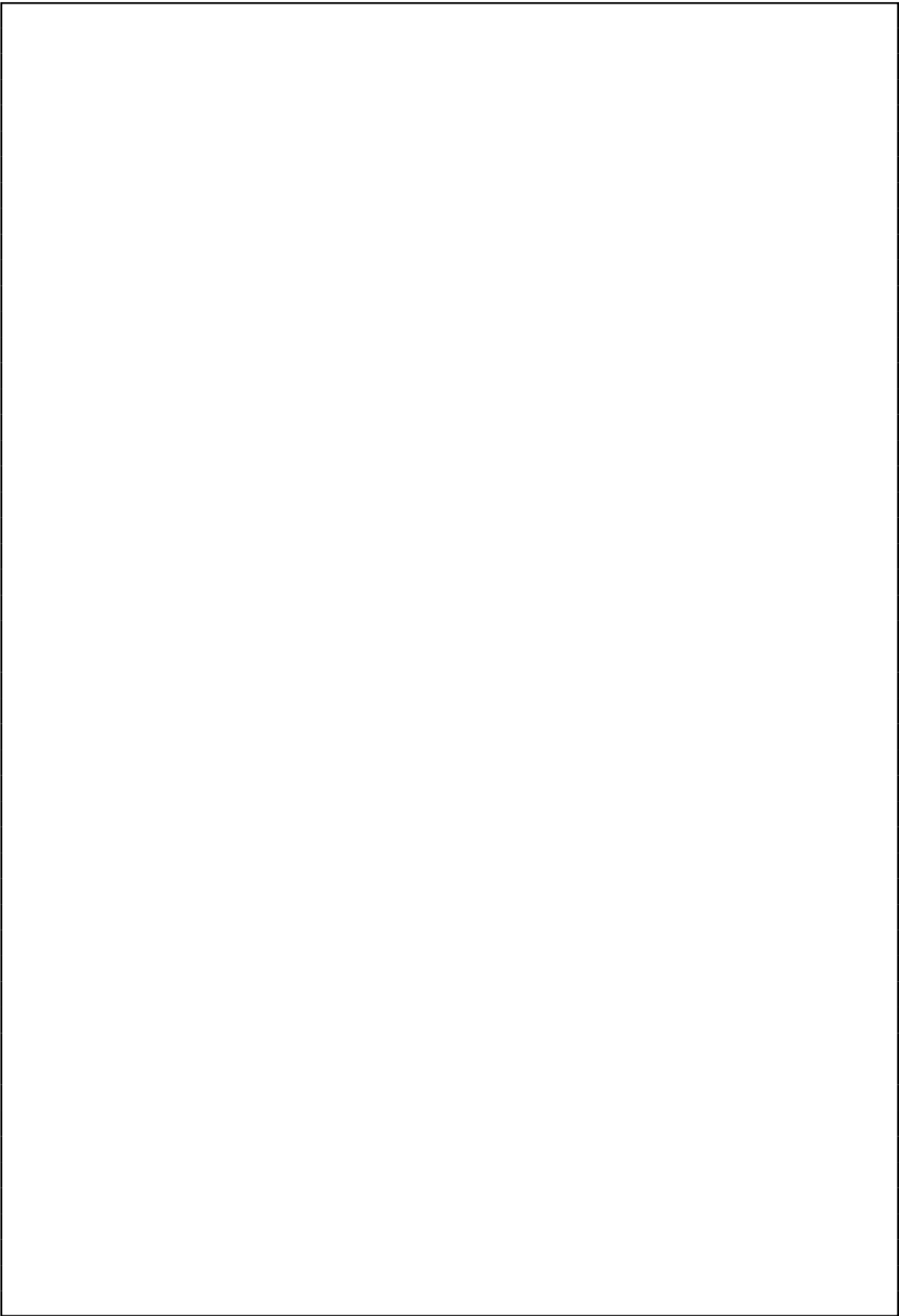


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1 JUDGE PRIDGIN: All right. We're back in
2 public.

3 CURTIS BLANC testified as follows:

4 BY COMMISSIONER GUNN:

5 Q. I mean you can see where it's concerning?

6 A. No. And I understand. But I think as we
7 described, a paralegal that's good saves lawyer time
8 and that saves money.

9 Q. Sure. But if you can do paralegal time
10 at the agreed upon rate and now you have a different
11 rate, there -- and there's no explanation for that --
12 and I don't know on some of this, yeah, you may be --
13 can paralegal work be done by a first-year associate
14 who is at substantially less than -- than the --
15 the -- the rate that she was paid?

16 And I also don't know whether those rates
17 could have been negotiated down because there was
18 no -- I don't know that there was any negotiation
19 process in the rates. And I don't have anybody that I
20 can ask -- the person that's responsible for it, I
21 don't have anybody that I can ask.

22 I mean I will tell you that in my
23 experience when you're talking about a potential
24 \$20 million bill, that you have a competitive process.
25 Because you're going to -- and at the end of the day,

1 you might all know who's going to win the competitive
2 process, you might know that there's only one person
3 out there that can do this job, but you don't know
4 that there's not somebody else that can do it that
5 can't do it a whole lot cheaper.

6 A. No, and I would agree that \$20 million is
7 a lot of money. But what Dan Meyer in particular will
8 tell you is that looking at the industry for that
9 level of services, less than 1 percent of the project
10 cost is a really good deal.

11 Q. And you know what? I don't necessarily
12 disagree with you. But I don't know that it can't --
13 couldn't have been less than 1 percent of the total
14 project costs. I don't know that because there was no
15 competitive process.

16 And I don't know that because I honestly
17 I -- I find -- I find it -- I -- I find it am-- I mean
18 out of the hundreds of time entries that you -- that
19 were reviewed -- and it's not fair to say that none of
20 them were adjusted because you only know a portion --
21 you only know a portion. But I find it amazing that
22 out of the hundreds of -- of time entries that were
23 done, that there were zero adjustments made. Not
24 even -- not even -- not even one.

25 I mean, you know, in experiences in

1 private practice, that has become somewhat of a
2 general counsel's job is to take a look at these
3 bills. And what concerns me is, is that the decision
4 was made that because it's going to go into project
5 costs, that there wasn't -- there didn't need to be a
6 level of scrutiny on these things because they were
7 being pumped right into -- they were going to be
8 passed along to the rates.

9 And while less than 1 percent might be a
10 really good deal, I don't know -- I don't know whether
11 that's the best deal that the consumers could have
12 gotten.

13 A. Right. I didn't say and certainly didn't
14 mean to say that there was no scrutiny because it was
15 a project cost. That's not -- not my testimony or
16 position. That's not what occurred.

17 Q. And I don't mean to imply that. I don't
18 mean to imply that these -- I don't even mean to imply
19 that these are imprudent. I certainly don't. What
20 I -- what I'm saying and it's devolved and I apologize
21 for that, is, is that you can see how this raises a
22 question for us or for me in -- in particular.

23 And so I'm going to have other questions
24 for -- for all -- for the other lawyers and the other
25 people that reviewed in-- invoices out there. They

1 should probably be prepared to help me answer some of
2 these questions.

3 A. Sure. And Mr. Roberts can explain how
4 Schiff Hardin sets its rates.

5 Q. Absolutely. Right. And Mr. Roberts will
6 probably be asked those questions, I'll be
7 anticipating. But I don't have anything else. I
8 appreciate -- I appreciate the exchange.

9 JUDGE PRIDGIN: All right. Any further
10 Bench questions?

11 This appears to be a good time to break
12 for lunch. I'm showing 12:30, if we could reassemble
13 at 1:30. Is there anything from counsel before we go
14 off the record? All right. Hearing nothing, we will
15 stand in recess until 1:30.

16 (A recess was taken.)

17 JUDGE PRIDGIN: All right. Good
18 afternoon. We're back on the record. When we
19 adjourned for lunch, I believe Mr. Blanc was on the
20 stand. The Bench had finished questions and we were
21 back to recross.

22 MR. SCHWARZ: I have no questions on
23 recross. Thank you, Judge.

24 MR. MILLS: I have a few.

25 JUDGE PRIDGIN: Okay. Mr. Mills does.

1 Anything else before we begin recross? Okay.

2 Mr. Mills, when you're ready.

3 MR. MILLS: Let me check something
4 quickly.

5 JUDGE PRIDGIN: Sure.

6 MS. OTT: And actually I -- we were going
7 to mark two documents as exhibits and I had copies
8 made. So if we want to do that right now while he's
9 clarifying something.

10 JUDGE PRIDGIN: That's fine.

11 MS. OTT: I guess it would be Staff
12 Exhibit 248.

13 JUDGE PRIDGIN: Let me check my list. I
14 believe that's correct.

15 MS. OTT: would be the July 11th, 2006
16 meeting on cost control. And it's -- contains three
17 documents, the attendance list, the Comprehensive
18 Energy Plan, Construction Projects, Cost Control
19 System, which is highly confidential, as well as the
20 KCPL Comprehensive Energy Plan, Cost Control System,
21 July 11th, 2006 PowerPoint presentation.

22 JUDGE PRIDGIN: Okay.

23 MS. OTT: And then I guess 249 would be
24 the Strategic Talent Solutions May 2007 report highly
25 confidential.

1 JUDGE PRIDGIN: Ms. Ott, what you just
2 handed me is 248?

3 MS. OTT: Yes.

4 (KCP&L Exhibit Nos. 248-HC and 249-HC
5 were marked for identification.)

6 JUDGE PRIDGIN: All right. Anything
7 further before Mr. Mills has questions for Mr. Blanc?

8 All right. Mr. Mills, when you're ready,
9 sir.

10 RECROSS-EXAMINATION BY MR. MILLS:

11 Q. And I just have a few questions. You
12 were asked some questions from the Bench about a
13 paralegal at Schiff Hardin that billed at a rate of
14 \$230 an hour. Do you recall that?

15 A. I don't remember the exact figure. I
16 might have that up here, but I remember questioning
17 about a paralegal's rates.

18 Q. And there was some concern about how high
19 the rates were?

20 A. There were questions about the rates.

21 Q. Did you do any analysis to find out if
22 that \$230 an hour paralegal was saving a lot of lawyer
23 time?

24 A. As I described, that wasn't part of my --
25 my part of the bill review process wasn't to evaluate

1 whether the hourly rates was reasonable. It was to
2 evaluate the work performed and if it was done in an
3 efficient manner.

4 Q. And my question is not as to the rate,
5 but my question is did you do any analysis to
6 determine whether that particular paralegal was saving
7 a lot of lawyer time?

8 A. No. I was trying to be responsive to
9 that. I personally did not, but that wasn't part of
10 my role. I wouldn't expect to. I -- the review I did
11 was in response to my interaction with the project and
12 more specifically my interaction with the Schiff
13 Hardin team. I didn't work with that paralegal. I
14 don't think I worked with any Schiff Hardin paralegal,
15 so I wouldn't have a personal basis to do that kind of
16 analysis.

17 Q. Okay. Now, did I hear you correctly that
18 you -- that you have recommended to bills from --
19 recommended adjustments to bills from other law firms
20 during your employment at KCP&L?

21 A. Yes.

22 Q. Okay. And which law firms?

23 A. The example that comes to mind first was
24 a -- it was a Duane Morris bill. And I looked at it
25 and there was a time entry for work that I didn't

1 believe we had asked for and from a partner that I
2 didn't recognize who that was.

3 And I -- similar to the process we
4 described here, I went around to the other lawyers
5 that interacted with him and said, Do you have any
6 knowledge of this? And the answer was no. And
7 because my concerns weren't satisfied, we went to
8 Duane Morris and asked them. And it turns out it was
9 an error and it was removed from the bill.

10 Q. And what kind of work was Duane Morris
11 doing?

12 A. In that case, it was part of the Iatan
13 project. We looked at them as a -- as potentially
14 supplementing or replacing -- we looked at Duane
15 Morris to see if they could do the kind of work that
16 Schiff Hardin was doing just in our due diligence for
17 law firm services. And then in addition to that, they
18 provided some legal service with respect to the
19 engagement of Pegasus.

20 Q. Okay. Now, and I'm going to try to ask
21 this question in a way so as not to get into highly
22 confidential information, but it's in reference to
23 the -- in part, in reference to the contract that --
24 that's in evidence with -- with Schiff Hardin.

25 And my question is, is the -- do you know

1 and did you do any research to find out whether the
2 \$230 an hour paralegal is more experienced or better
3 in some way than the paralegal that Commissioners
4 asked you about on the -- the contract form with
5 Schiff Hardin?

6 A. As I explained, I didn't work directly
7 with any of the paralegals. In conversations with the
8 Schiff Hardin team, my understanding is the paralegal
9 with the higher billing rate is substantially more
10 experienced, but that -- those are members of Ken
11 Roberts' team and he would be able to answer that
12 directly. But my understanding is there's a
13 significance difference in their experience.

14 Q. And when did you have that conversation?

15 A. Just over the course of these hearings.

16 Q. Okay. And I believe when you were having
17 discussions with either Commissioner Gunn or
18 Commissioner Kenney, you recommend that they ask Dan
19 Meyer about the reasonableness of Schiff Hardin's
20 charges in this case?

21 A. Yes. That's correct.

22 Q. Who does Dan Meyer work for?

23 A. Dan Meyer works with Schiff Hardin, but
24 he's got 40 years of experience in the construction
25 industry and what --

1 Q. You've answered my question.

2 A. Okay.

3 MR. MILLS: Thank you. That's all I
4 have.

5 JUDGE PRIDGIN: Mr. Mills, thank you.

6 Ms. Ott?

7 RE-CROSS-EXAMINATION BY MS. OTT:

8 Q. Yes. Going back to -- the Commissioners
9 were discussing the Ernst & Young and Strategic Talent
10 Solutions audit report. You made comments that you
11 took the findings and attempted to correct them. Is
12 it your opinion that in an audit when you receive
13 negative -- or feedback that suggests you implement or
14 correct a problem, is that a positive thing to you?

15 A. I'd say it's part of prudent management.
16 And the Kansas Commission's order basically recognized
17 that as well, that -- I guess there are two prongs
18 there. The first is whether you should do an audit,
19 whether you should do that self-assessment. And
20 absolutely that self-assessment is part of prudent
21 management. But then what you do in response to that
22 is also important. So both are important, to do the
23 audit and then respond to the audit findings. Both
24 are important.

25 Q. But is having something negative or that

1 needs corrective action in an audit report something
2 that's positive to you?

3 A. As I said, it depends what the response
4 is. If they pointed out something and we didn't do
5 anything, that -- that would be negative. But to
6 point out something that we could be doing better and
7 then to do it better, yes, that's positive. That's a
8 prudent good project management.

9 Q. But wouldn't it be positive to not have
10 those comments in an audit report in the first place,
11 that you shouldn't have to have corrective action,
12 that it should have been implemented prior to an
13 audit?

14 A. If the standard were perfection, that
15 would probably be a fair assessment, but the standard
16 isn't perfection. The standard is prudence.

17 Q. So are you saying it's okay to be
18 imprudent until somebody finds something wrong and
19 then you correct it and then that's prudent?

20 A. That's not what I'm saying at all. I'm
21 saying I don't think perfect is a reasonable
22 expectation for anyone and it's not the standard for a
23 disallowance. What I'm saying is that when someone
24 points out you're not perfect, that improvements could
25 be made, it's prudent management to look for those and

1 make those changes.

2 Q. In going back to discussions on the
3 Schiff Hardin contract and the contract had set fees
4 and there was a subsequent fee increase, who approved
5 the rate -- the rates increase for Schiff Hardin
6 employees?

7 A. Sure. It would be the general counsel.
8 That's typically how it works with engagement of law
9 firms. That's communication between the law firm and
10 the general counsel.

11 Q. So that would have been Mr. Riggins who
12 would have approved those in-- the increases?

13 A. Correct.

14 Q. And is there any documentation that
15 states that Mr. Riggins approved those increases?

16 A. I guess not that I'm aware of, but that's
17 not my understanding of how the process typically
18 works. The process, as I understand it, is typically
19 that's a conversation had -- and not specific to
20 Schiff, but most law firms is that there's a partner
21 in charge, basically someone at the law firm that's
22 responsible for the relationship with the client and
23 then on the client side it's the general counsel.

24 And then those two have a conversation.
25 The partner in charge and the general counsel have a

1 conversation about how the service is going, what the
2 rates are going to be in the coming year. So it's a
3 conversation. I'm not aware of --neither of the firms
4 I've worked for had an amended engagement letter on an
5 annual basis or any formal documentation like that.

6 Q. So after these oral conversations in
7 which people may or may not have agreed to allow
8 Schiff Hardin to increase their rates, there was
9 nothing memorialized to say, Pursuant to our
10 conversation, we've agreed to the following changes?

11 A. Well, not that I'm aware of. But one of
12 the parties to each of those conversations is a
13 witness in this case. Ken Roberts was the partner in
14 charge for Schiff Hardin and in charge of that
15 relationship and he is the one that had those
16 conversations with the company.

17 Q. But Mr. Riggins isn't here.

18 A. But one of the parties to the
19 conversation is.

20 Q. Well, there's always two sides to every
21 story.

22 Now, going back to the audits, the STS,
23 did either of them, STS or Ernst & Young, request to
24 do a follow-up visit -- a follow-up audit to see if
25 you were implementing their recommended changes?

1 A. Yeah, Ernst & Young had a series of
2 reviews or audits over the project. I mean their
3 involvement was broader than just the single report.
4 And this issue never came up again. And they
5 certainly were aware of what their findings were in
6 this report and I have no doubt that had it continued
7 to be an issue, they would have raised it again. And
8 same with STS.

9 Q. Did STS do a follow-up report?

10 A. Not that I'm aware of. I know they were
11 involved and worked with the project team, but I -- I
12 don't recall a subsequent written report. But again,
13 if the issue had persisted, I have no doubt they would
14 have raised it.

15 Q. If they weren't doing a subsequent
16 report, how would they have raised the issue?

17 A. My point is I think they would have done
18 a subsequent report had it been an issue.

19 Q. They made more than one recommendation in
20 that report, did they not? Or was it --

21 A. We only looked at that one paragraph and
22 I'm just not that familiar with the report.

23 Q. Okay. Well --

24 A. But my --

25 Q. Are you aware if STS made monthly reports

1 on the executive oversight committee?

2 A. I don't know. I wasn't on the executive
3 oversight committee at that time. Mr. Downey was and
4 can talk about may have been presented.

5 MS. OTT: I don't have anything further.

6 JUDGE PRIDGIN: Excuse me, Ms. Ott.

7 Thank you.

8 Any redirect?

9 MR. FISCHER: Yes, Judge. Thank you.

10 REDIRECT EXAMINATION BY MR. FISCHER:

11 Q. Mr. Blanc, we've covered a lot of ground
12 this morning. I'd like to go through a few of the
13 questions and ask you to address a few points.

14 First, I think in cross-examination by
15 Ms. Ott, there was some questions about this -- this
16 two-pronged analysis related to what a regulatory
17 agency needs to find before they can make a prudence
18 disallowance. Do you recall a question or two about
19 that?

20 A. I do.

21 Q. I believe you cited a Wolf Creek Supreme
22 Court decision. And I just wanted to ask you, could
23 that have been in Kansas rather than Missouri?

24 A. No, you're correct. The Supreme Court
25 decision is a Kansas Supreme Court decision. In

1 Missouri the Commission had an order. And there is a
2 Supreme Court decision, but it wasn't Wolf Creek, it
3 was a different matter.

4 Q. I'd like to show you a copy of the
5 Staff's November 3rd audit report where they discuss
6 the Associated Natural Gas case.

7 A. And that's the case I was referring to
8 when I said Wolf Creek Supreme Court case. That was
9 incorrectly referenced to Kansas.

10 Q. I'd like to ask you to read into the
11 record what the Staff says is the -- the analysis of
12 the Associated Natural Gas case.

13 A. Sure. On page 10 of their report, line 1
14 to line 4 says, ultimately the Court held in
15 Associated Natural Gas that, quote, In order to
16 disallow a utility's recovery of costs from its
17 ratepayers, a regulatory agency must find both; that
18 one, the utility acted imprudently; two, such
19 imprudence resulted in harm to the utility's
20 ratepayers, end quote. And then there's the citation.

21 Q. Okay. Thank you. Is that the two-step
22 analysis that you were discussing?

23 A. Yes, it was.

24 Q. I believe Ms. Ott also asked you about
25 the Kansas Corporation Commission decision. Do you

1 recall that?

2 A. Yes, I do.

3 Q. And I believe she asked you to identify
4 the two specific prudence adjustments that were made
5 in that case. Do you recall that?

6 A. Yes, I recall that.

7 Q. Were there other prudence adjustments
8 that were suggested by other parties or the Staff in
9 that case?

10 A. Yes, there were.

11 Q. And did the Commission adopt those
12 adjustments?

13 A. No. The Commission rejected those and
14 just found with respect to those two acts -- those two
15 decisions or actions that we talked about.

16 Q. Was Mr. Drabinski one of the witnesses in
17 that case?

18 A. Yes, he was. He was the KCC Staff's
19 witness.

20 Q. Was there a similar cost overrun
21 adjustment in that case like there is one proposed by
22 the Staff here in Missouri?

23 A. No. Absolutely not.

24 Q. Did the Commission address the idea that
25 there had been a cost overrun and, therefore, there

1 should be additional scrutiny?

2 A. It was one of the factors we talked about
3 that Kansas applies was how the ultimate cost to the
4 project compares with the definitive estimate or
5 control budget estimate of the project. And I quote
6 that part of the Commission's decision in my
7 testimony. It's on page 22 of the Commission's order
8 itself.

9 And it basically says, Given an
10 anticipated cost overrun of 18 percent -- it was more
11 in that case because we thought it would be more. But
12 given that, that given -- the quote is, quote, Given
13 the magnitude of the project, the time line under
14 which the project was constructed and the range
15 permitted for a definitive type of cost estimate, the
16 Commission finds that this factor does not indicate
17 imprudence on the part of KCP&L.

18 So being over 18 percent is not a sign of
19 imprudence is what Kansas held.

20 Q. I believe you were asked a couple
21 questions by Ms. Ott regarding whether KCP&L had
22 identified and explained cost overruns. And I think
23 she may have used in that conversation a list. Has
24 the company filed some testimony that identifies in
25 pie chart form, in graph forms that would be helpful

1 in looking at that -- that issue?

2 A. Yeah. Dan Meyer in his pre-filed written
3 testimony in this case -- basically once we understood
4 what Staff's position to be, Dan Meyer basically said,
5 okay, could it be done. And those pie charts
6 represent that. It categorizes, identifies the cost
7 overruns and explains the different categories.

8 Q. Does that testimony go into a lot of
9 depth?

10 A. Oh, it does.

11 Q. You were also asked some questions by
12 Commissioner Gunn regarding I think what he called a
13 blanket disallowance for cost overruns. Did -- did
14 Staff ever tell KCP&L that they intended to make a
15 blanket disallowance for cost overruns prior to the
16 filing of their audit report?

17 A. No. We were not aware -- as I explained,
18 that we were not aware until the November 2010 audit
19 report that Staff was proposing to disallow everything
20 over the control budget estimate.

21 Q. Do you recall an order by the Commission
22 suggesting that the Staff should identify with
23 particularity the disallowances they -- they would be
24 proposing?

25 A. Yeah. A construction audit order in the

1 0089 case, our last rate case dated April 15th,
2 2009 -- get the quote right. The order in paragraph 2
3 says, The Staff of the Missouri Public Service
4 Commission is directed to provide a specific rationale
5 for each and every disallowance recommended in the
6 construction audits and prudence reviews.

7 Q. Was the December 30, 2009 audit report --
8 did it include a plug disallowance for cost overruns?

9 A. The December 31st, 2009 audit report?

10 Q. Yes.

11 A. No, it did not.

12 Q. Did it include an adjustment for
13 liquidated damages related to the Alstom settlement in
14 unit 1?

15 A. No, it did not.

16 Q. Did you hear -- there was a question
17 about -- from Commissioner Gunn, I believe it was
18 about previous precedence regarding cost overrun
19 adjustments. Do you recall that conversation?

20 A. I do.

21 Q. Did you hear Cary Featherstone testify
22 yesterday that the Public Service Commission has never
23 adopted a cost overrun adjustment being -- similar to
24 the one being proposed by Staff?

25 A. I did hear him say that.

1 Q. Did you also hear him testify that the
2 Staff has never previously proposed such an
3 adjustment?

4 A. I did hear that as well.

5 Q. Do you know of any Commission in the
6 country, to your personal knowledge, that has adopted
7 something similar to that adjustment?

8 A. No. My understanding is that the
9 two-step process we've talked about that's in the
10 Supreme Court decision both in Missouri and then for
11 Wolf Creek for Kansas is -- is how it's typically
12 applied, that you have that two-step process.

13 Q. I think Ms. Ott also asked you some
14 questions about why you called that adjustment a plug
15 adjustment. Could you elaborate on your answer there?
16 Why did -- why did you call it a plug?

17 A. Sure. If you -- you can look at Staff's
18 Schedule 1-1 and that largely gets to the point. I
19 mean I call it a plug because it's not supported, it's
20 not substantiated. As they show on the last three
21 lines under note A of their report, it's simply
22 subtraction.

23 They took what we had spent as of
24 June 30, 2009 and subtracted the control budget
25 estimate to come up with one number. And then to

1 avoid double counting their specific disallowances,
2 they subtracted that. But it's not supported or
3 specified. They just did subtraction and said this is
4 unidentified and should be disallowed.

5 Q. Does the Staff report include any
6 evidence of imprudence related to those cost overruns?

7 A. No.

8 Q. If -- if the Staff would continue that
9 approach as it goes through the true-up, what would
10 you expect to happen to that cost overrun adjustment?

11 A. Yeah, that's a concern of the company's
12 that if it becomes simply an exercise of
13 subtraction -- they started with what we had spent as
14 of June 30, 2010 and if that goes out to our current
15 projected cost of 1.948 billion and they subtract,
16 that unsupported plug will just -- will become larger.

17 Q. I think you had some conversations with
18 Commissioner Kenney regarding the cost control system
19 and whether it was developed specifically to address
20 the -- what is now being called the paragraph Q
21 provision in the regulatory plan stipulation. Do you
22 recall that?

23 A. I do.

24 Q. Was that cost control system used for
25 other purposes besides just meeting the regulatory

1 obligation?

2 A. Sure. The cost -- we would need a cost
3 control system to manage the cost, but this one was
4 designed with that requirement in mind. And as I
5 responded to a question from Ms. Ott, it was designed
6 to do both, to be able to manage the cost of the
7 project, which I believe it did well, and then also to
8 satisfy our obligations in the regulatory plan. It
9 was designed to do both.

10 Q. Ms. Ott put in front of you an exhibit
11 or -- I'm not sure it's been identified as an exhibit,
12 but it had the cost control meeting attendance list
13 and then the KCP&L Comprehensive Energy Plan, Cost
14 Control System dated July 11, 2006, and then also the
15 Comprehensive Energy Plan, Construction Projects, Cost
16 Control System attached to it. Do you recall that?

17 A. I do.

18 Q. I'd like to ask you to -- you've already
19 noted, I guess, that the auditors that did the cost
20 overrun adjustments are not listed on the -- on the
21 attendance list. Was that -- was that your testimony?

22 A. Yeah. That's correct. As I understand
23 it, the three auditors sponsoring all the
24 disallowances are primarily Mr. Hyneman and Mr. Majors
25 and then also Mr. Schallenberg. And none of those

1 three individuals are on the attendance sheet and I do
2 not recall them being there.

3 Q. Were -- were the engineers that have been
4 involved in this process in attendance at this
5 meeting?

6 A. Yeah. The sign-in sheet reflects that
7 both Dave Elliott and Dan Beck were present.

8 Q. And it also notes Warren Wood. Who was
9 Warren Wood?

10 A. And that's a good point. He was the head
11 of that group at that time and he was in attendance
12 and was very involved. I recall him visiting the site
13 very early on in construction because he wanted to see
14 the underground piping before it was covered up. That
15 was one of the first things they did at the project
16 was to dig trenches and put in piping and he wanted to
17 make sure he saw that before it was closed up. So
18 that was very early on in the project that they got
19 involved.

20 Q. Do you recall any -- any negative
21 reaction to the cost control system as it was
22 presented in that meeting from the Staff or from the
23 engineers?

24 A. No. I remember questions about how it
25 would work. We responded to those questions. But no

1 suggestions that the language should be changed, no
2 suggestions that it was an inadequate.

3 Q. And this was in 2006; is that right?

4 A. It was July 11, 2006 is the date on the
5 sign-in sheet and I believe that to be correct.

6 Q. I'd like to ask you to turn to page 8 and
7 9 of that cost control system that you discussed with
8 Ms. Ott and Commissioner Gunn. 3.1 is the paragraph
9 number.

10 A. I'm there.

11 Q. Okay. The first part of that I think you
12 talked about was the last paragraph. And then you --
13 I believe you also went over and pointed out the -- on
14 the following page the paragraph that begins, The
15 project team will periodically update the forecasted
16 cost, contingency usage, cash flow and monthly
17 budgets. Is that -- do you recall that --

18 A. Yes, I do.

19 Q. -- discussion?

20 A. That's on page 9.

21 Q. What does that paragraph mean to you?

22 A. Well, basically it says that we will do
23 what, in fact, we ended up doing. That we would
24 monitor the costs and if we saw an issue, that we
25 would reforecast the cost. And that's -- that's what

1 happened.

2 Q. And that was identified in 2006, is that
3 correct, that you were going to be doing periodic
4 reforecasts?

5 A. In July of 2006 is when we presented that
6 to the Staff, correct.

7 Q. Okay. Then the following paragraph is
8 entitled Change Order Management. What does that
9 paragraph describe?

10 A. I think the -- reading the first sentence
11 describes it that -- the reason for it pretty well.
12 It says, All complex construction projects experience
13 scope changes and revisions to the original cost
14 estimate.

15 And that's exactly the purpose is that we
16 recognize that there would be change orders,
17 especially given the level of engineering that we knew
18 at the time of the control budget and that there
19 needed to be a process in place to track and manage
20 and control those changes as they occurred.

21 Q. Is that the change orders that
22 Mr. Elliott reviewed in his analysis in this case?

23 A. Yes, they are. He visited the site and
24 not only reviewed the change orders, but maybe more
25 importantly, discussed them with the project team and

1 made sure he understood why the changes that were
2 being made were being made.

3 Q. I'd like to refer you to the -- the
4 attachments that are found to this document,
5 particularly page 26 of 30.

6 A. Okay.

7 Q. Is that an example of what a form change
8 order documentation form would look like?

9 A. It is. It's a template. It says, Change
10 order documentation, and shows how we would document
11 change orders.

12 Q. So it has a -- am I correct that it has a
13 point here where they would include the description of
14 the requested change?

15 A. Yes, it does. That's one of the boxes
16 there. And it says, Issue identification, alternative
17 analysis and then the ultimate recommendation.

18 Q. And then there are some dollar figures
19 over here on the side. Does that indicate that it --
20 the quantification of the change would be also listed
21 on the change order?

22 A. Correct.

23 Q. And is it correct that Mr. Elliott would
24 have reviewed 647 of these?

25 A. Yeah. The exact figure I believe is in

1 Brent Davis's testimony, but I think that's about
2 right. I know he reviewed all change orders over
3 \$50,000. And when he had questions, he went over them
4 with the project team. And he was up at the project
5 at times monthly to do exactly that.

6 Q. Do you know if the Commission Staff
7 auditors reviewed each and every one of those change
8 orders that Mr. Elliott reviewed or --

9 A. They -- they had access to them, they had
10 them. I don't know if they reviewed them or not. I
11 know what they didn't do is they didn't go to the site
12 and discuss them with the project team as Dave Elliott
13 did.

14 Q. Do you know whether they attended any of
15 the meetings with Dave Elliott and the Kansas City
16 Power and Light construction personnel?

17 A. My understanding is no. Brent Davis
18 attended each of those meetings and he's a witness in
19 this case, but my understanding from him having
20 attended all those meetings is that it was only the
21 engineering staff; that the auditors weren't there.

22 Q. Ms. Ott also asked you -- well, before we
23 leave that subject, there was some -- some questions
24 from the Bench I believe about the number of meetings
25 that the KCP&L folks had with the Staff regarding the

1 cost control system. Do you recall that?

2 A. I do.

3 Q. Do you recall Exhibit 66, which I -- I
4 passed out during the opening that included a list of
5 all of these meetings?

6 A. I do.

7 Q. And I believe Mr. Forrest Archibald may
8 also address that topic in his testimony?

9 A. He does. And the difference there would
10 be we had the quarterly meetings which we've talked
11 about and then we had meetings after each of the
12 reforecasts that we talked about to go after those and
13 I can speak to those. I attended nearly, if not all,
14 of them.

15 But then there were also a series of cost
16 control specific meetings that they had with Forrest
17 Archibald where they would ask him how do I calculate
18 this, can you walk me through that and he did that.
19 And I attended some of these meetings, but not all,
20 but I know there were many of them.

21 Q. Do you recall how -- approximately how
22 many quarterly meetings we had to talk about the cost
23 control system and the K-Reports?

24 A. Sure. The -- the quarterly meetings
25 started after the first report, which was the first

1 quarter of '06. So that would be 19. But, however,
2 the cost control system we talked about wasn't put in
3 place until July of '06. So you'd take away those
4 first two quarters, so 17 quarterly report meetings.

5 The -- going over that K-Report we've
6 talked about was an integral part, that each of the
7 quarterly meetings we walked through the K-Report and
8 gave a status of the cost of the project. That was
9 always a focus of the meetings.

10 Q. Well, the Exhibit 66 seems to have even
11 more meetings listed specifically. And -- but that
12 will speak for itself in terms of the numbers, I
13 think.

14 A. And those are the issue-specific meetings
15 with Mr. Archibald. I'm awa-- personally aware of
16 some of them, but not all of them.

17 Q. Okay. Ms. Ott also asked you about
18 specific wolf Creek decision disallowances. Do you
19 recall that?

20 A. I do.

21 MR. FISCHER: Judge, I'd like to have an
22 exhibit marked.

23 JUDGE PRIDGIN: We'd be up to 68.

24 (KCP&L Exhibit No. 68 was marked for
25 identification.)

1 JUDGE PRIDGIN: Mr. Fischer, that would
2 be 68?

3 MR. FISCHER: Yes.

4 JUDGE PRIDGIN: Thank you.

5 BY MR. FISCHER:

6 Q. Mr. Blanc, I'd ask you if -- if -- what
7 this exhibit appears to be?

8 A. This exhibit I guess comports with my
9 understanding of how the Commission calculated its
10 prudence analysis or its prudence disallowance, I
11 should say, in the Wolf Creek decision. The \$196
12 million I mentioned earlier is at bottom, it's the
13 total, as is the \$66 million manhour figure I
14 mentioned in earlier testimony. It's the first one on
15 the list and I believe the largest of the group.

16 Q. So these are the specific prudence
17 disallowances that you were referring to in your --
18 your surrebuttal testimony when you rounded it to
19 200 million?

20 A. Correct.

21 Q. When you reviewed that particular Report
22 and Order and looking at these adjustments, did it
23 appear that many of these were sponsored by the Staff
24 engineer John Rankin?

25 A. Yes. That's my understanding.

1 Q. while we're talking about wolf Creek, you
2 were asked about the reconciliation package adjustment
3 by Ms. Ott. Do you recall that?

4 A. Yes, I was.

5 Q. I'd like to ask you to look at page 346
6 of the Commission's Report and Order that's reflected
7 in 28 PSC or Missouri PSC new series at page 346 where
8 it discusses how that -- how that particular issue was
9 resolved. Let me give you the copy I have.

10 A. I was going to say my page numbers are
11 different on the one provided by Staff.

12 COMMISSIONER GUNN: Going old school
13 there.

14 MR. FISCHER: Yeah, the books.

15 BY MR. FISCHER:

16 Q. would you just read in the record the
17 first sentence that's been highlighted?

18 A. Sure. On page 346 it says, first full
19 paragraph, first sentence, For the foregoing reasons,
20 the Commission is rejecting Staff's proposed
21 disallowances in its rebuttal and surrebuttal cases as
22 they pertain to the reconciliation packages.

23 Q. Okay. Thank you. And again, there -- in
24 that particular case did you find any -- any Staff
25 adjustment that was proposed that's similar to the

1 plug disallowance in this case?

2 A. Absolutely not. And I have a table on
3 page 17 of my rebuttal that basically goes through
4 that. Wolf Creek was initially projected to cost --
5 the control budget estimate was \$1 billion. It ended
6 up costing 2.9 billion, so three times the original
7 budget. So Staff would have had to have proposed and
8 the Commission would have had to have adopted a
9 disallowance of \$2 billion based on prudence.

10 And then that's not what happened. The
11 Commission ultimately disallowed 200 million, which is
12 7 percent of the project cost or 11 percent of the
13 overrun. And that's --

14 MR. SCHWARZ: Move to strike,
15 speculation. I don't --

16 JUDGE PRIDGIN: Go ahead, Mr. Schwarz.

17 MR. SCHWARZ: The -- the only basis for
18 comparison between what might have happened in the
19 Wolf Creek case and Staff's position in this case
20 would require that the Wolf Creek order recite that
21 all of the cost overruns in Wolf Creek were
22 unexplained.

23 The testimony thus far, which is
24 apparently drawn from the Report and Order in Wolf
25 Creek, indicates that KCP&L in that case produced

1 specific packets to explain cost overruns since it
2 would appear that there are no unexplained cost
3 overruns in Wolf Creek and -- and the testimony just
4 given assumes that the entirety of the cost overruns
5 in Wolf Creek is unexplained. And I would suggest
6 that that is refuted both by the report -- by a
7 comparison of the Report and Order in that case to the
8 evidence in this case.

9 MR. FISCHER: I didn't hear a legal
10 objection to that in that recitation, Judge. I think
11 he's --

12 MR. SCHWARZ: No, I move to strike
13 because the testimony had already come out.

14 JUDGE PRIDGIN: Okay. I'm --
15 Mr. Fischer, do you have a response before I rule?

16 MR. FISCHER: Well, of course, Judge, I
17 think he -- Mr. Blanc is really just reciting what's
18 already in his surrebuttal testimony regarding the
19 comparison of the Wolf Creek decisions, the
20 disallowances that were made in that particular case
21 which Ja-- which Ms. Ott asked about this morning and
22 how it compares with the numbers that are being
23 proposed in this particular case.

24 If you look on his -- his surrebuttal
25 testimony, he has a very illustrative example of how

1 that compares. And that's all he's -- he's
2 elaborating on.

3 JUDGE PRIDGIN: All right. All right.
4 I'll overrule.

5 BY MR. FISCHER:

6 Q. Mr. Blanc, you were also asked some
7 questions I think from Ms. Ott regarding wasn't KCP&L
8 the only utility to enter into a regulatory plan that
9 required a cost control system that identifies and
10 explains cost overruns. Do you remember that
11 question?

12 A. I do.

13 Q. And then she went on to ask, well,
14 shouldn't KCP&L suffer the consequences? Do you
15 remember that?

16 A. I do.

17 Q. Does the stipulation in the regulatory
18 plan case identify in any way the consequences?

19 MS. OTT: I'm going to object. That's
20 mischaracterizing my question. My question was based
21 on a hypothetical and not on what should happen to
22 KCP&L.

23 BY MR. FISCHER:

24 Q. well, let me change it to a hypothetical.
25 Assuming that there was a stipulation and agreement

1 that had that kind of provision in it, should
2 hypothetically a utility suffer the consequences when
3 there's nothing in the stipulation that identifies
4 what those consequences are?

5 A. No. That would violate, in my mind, the
6 two-step process that's required by law. And if you
7 were to go there, that would have to be laid out very
8 specifically in the agreement that if this prese-- if
9 this provision is breached, this is the remedy.

10 The regulatory plan doesn't do that. And
11 we believe we have satisfied that commitment, but even
12 if you concluded we did not, disallowing a 97 million
13 dol-- \$93 million plug number wouldn't be an
14 appropriate remedy.

15 Q. From your perspective, what is it when
16 Staff suggests that is the appropriate remedy? Is
17 that a unilateral decision by Staff that we didn't
18 agree to?

19 A. Sure. It's their position. We never
20 understood that to be the requirement of the
21 agreement.

22 Q. In your discussions with the Staff,
23 have -- have they identified a cost control system
24 that in their -- from their perspective would be
25 adequate?

1 A. No, they haven't. We have certainly been
2 in talks with them since we saw the November report
3 basically asking what kind of list would satisfy what
4 they're asking for. And we haven't gotten an
5 explanation of what that list would look for, what we
6 would need to prepare in their mind to satisfy the
7 obligation.

8 Q. Have they suggested that you look at any
9 other utility's cost control system?

10 A. No.

11 Q. Ms. Ott also I think discussed with you a
12 letter that was dated in February of 2008 that was
13 sent by Mr. Dottheim to counsel to the company
14 requesting a meeting to talk about the reforecast
15 process, among other things.

16 A. I do recall that, yes.

17 Q. Had the company previously provided in
18 any quarterly reports notice to the Staff that this
19 reforecast process was going to occur?

20 A. Yes, it did. I believe in the -- at
21 least the earliest I'm aware of is in the immediately
22 preceding quarterly report which would have come out
23 ahead of that, we indicated that it looked like a
24 reforecast would be necessary.

25 Q. Do you know if Mr. Downey or Mr. Giles

1 invited the Staff to participate in that reforecast
2 process?

3 A. Yes, they did. And they're both
4 witnesses and can testify to those conversations. But
5 Mr. Downey contacted Mr. Henderson and Mr. Giles
6 contacted Mr. Schallenberg and asked them -- told them
7 we were about to embark on this reforecast process and
8 asked if Staff would be willing to participate to make
9 sure they understood what we were doing, that we were
10 doing it right for a lack of a better term. They were
11 asked to participate in the process.

12 Q. And did they take you up on that offer?

13 A. No, they did not.

14 Q. Besides the company, who -- who else
15 could use the cost control system that has been
16 developed in this case for their work?

17 A. Sure. Mr. Drabinski used the cost
18 control system for his audit in support of the work he
19 did for the Kansas Staff. Mr. Nielsen did it as part
20 of his prudence analysis of the project. Mr. Meyer
21 did it for his -- to support the pie charts we
22 discussed earlier that's in his pre-filed testimony to
23 categorize, identify and explain the cost overruns.

24 And then I would say that with respect to
25 the 17 allegedly imprudent acts that are on Schedule 1

1 of Staff's report, that they used the cost control
2 system to identify and explain those particular cost
3 overruns.

4 Q. There were also some questions from
5 Ms. Ott regarding whether KCPL would -- I think she
6 used the term let the PSC Staff audit. Do you recall
7 that?

8 A. I do.

9 Q. When did the engineering Staff begin
10 their work in their audit of Iatan?

11 A. As I described earlier, from the very
12 beginning. Warren Wood when he was head of the
13 engineering staff, was up at the site literally in the
14 trenches when they were turning ground and putting in
15 the very, very first drainage pipes for the plant. So
16 he was there from the very beginning and that -- that
17 continued throughout. I think the engineering folks
18 were up there monthly at times, but at least at
19 significant points in the project.

20 Q. Do you recall that there's testimony that
21 they were there 20 times?

22 A. I think that's correct. Brent Davis
23 basically worked with them and interacted with them
24 when they were up there so he could go through
25 specifically when they were there, what they talked

1 about, but I believe that number is correct.

2 Q. Do you recall any testimony in the
3 preliminary audit case I think we've called it, or
4 it's probably EO-2010-329 that the auditors -- the
5 rate case auditors began their rate case audit after
6 the April 15th, 2009 order requiring them to complete
7 the audit by June of 2009?

8 A. That's my understanding. The outcome of
9 the depositions in that case and then the hearing
10 itself and the order I think showed that auditing
11 staff didn't start their audit until after they were
12 ordered to do so.

13 Q. Do you know how many times the rate case
14 auditors have been to Iatan, by chance?

15 A. I believe Mr. Schallenberg was there
16 once. I know Mr. Hyneman was there once to measure
17 the distance from a parking lot. I'm not aware if
18 Mr. Majors was there. So I'm aware of one visit, but
19 it would be single digits.

20 Q. There was also a discussion with Ms. Ott
21 about KCPL withholding documents. Do you recall that?

22 A. I do recall that.

23 Q. Did any documents that were redacted or
24 withheld include any change orders?

25 A. No.

1 Q. Any purchase orders?

2 A. No.

3 Q. Any risk and opportunity analysis sheets?

4 A. No. Unless there was a legal opinion
5 associated with it with respect to our rights, but as
6 far as the R&Os, no.

7 Q. Was anything related to the cost control
8 system withheld from the staff that you know of?

9 A. Not that I'm aware of, no.

10 Q. There was also an early question from
11 Mr. Schwarz about La Cygne. Do you recall that
12 discussion?

13 A. I do.

14 Q. And I think he was asking would KCPL
15 consider building a new plant if it was determined La
16 Cygne wasn't the best option. Do you recall that
17 discussion?

18 A. Yes, I do.

19 Q. Would it be prudent for management to
20 build a new plant, from your perspective, if it knew
21 that the policy of the state would be to disallow all
22 costs above the initial preliminary estimate even if
23 there's no evidence of imprudence?

24 A. No. Without evidence of imprudence, it
25 would be inherently risky for a company to make any

1 investment.

2 Q. well, just in closing, there was a couple
3 questions about Schiff Hardin. Has KCPL been
4 generally pleased with Schiff Hardin's work, to your
5 knowledge?

6 A. Yes, we have.

7 Q. Did you feel like you received sufficient
8 bang for the buck from that firm?

9 A. Absolutely. From our own perspective, I
10 think the team that we talked about and then the
11 philosophical approach that basically was make sure
12 you have the information to avoid the train wreck
13 before it happens. Because your contracts might give
14 you the right to try and fix the train wreck, but by
15 then it's already happened and the damage is done and
16 damage to the project is significant.

17 And then bas-- that's been our
18 experience. And then Dan Meyer will testify that
19 given the scope of work they did and the quality that
20 they did, that less than 1 percent is extremely
21 reasonable.

22 MR. FISCHER: Judge, I would conclude by
23 asking for the admission of Exhibit 68. And I'm not
24 sure that we marked the KCPL cost control meeting
25 attendance list with the attachments. I'd like to

1 make that an exhibit if it hasn't already been.

2 MS. OTT: It's Staff Exhibit 248.

3 JUDGE PRIDGIN: Let me go through these
4 one at a time. I think, first of all, Mr. Fischer
5 you've offered Exhibit 68?

6 MR. FISCHER: Yes.

7 JUDGE PRIDGIN: All right. Are there any
8 objections to that?

9 Okay. Hearing none, Exhibit 68 is
10 admitted.

11 (KCP&L Exhibit No. 68 was received into
12 evidence.)

13 JUDGE PRIDGIN: And then, Mr. Fischer, I
14 believe Ms. Ott had labeled as Exhibit 248-HC a
15 July 11th, 2006 --

16 MR. FISCHER: I would ask that it be
17 admitted if it hasn't already.

18 JUDGE PRIDGIN: -- list of attendees to a
19 meeting and then it's an HC report from Kansas City
20 Power and Light. And KCP&L has moved for that to be
21 admitted. Is there any objection to 248-HC?

22 MR. MILLS: Judge, I ask that you reserve
23 ruling until the parties have a chance to get a copy
24 of that and look at it.

25 JUDGE PRIDGIN: I will do so. So 68 is

1 admitted. I will withhold ruling for now on 248-HC.

2 MR. FISCHER: That's all I have, Judge.

3 JUDGE PRIDGIN: Mr. Blanc, thank you very
4 much.

5 MS. OTT: would that be the same for 249?
6 I've provided copies to the Bench but not to all the
7 parties.

8 JUDGE PRIDGIN: That's fine. I don't
9 believe 249 has been offered, but I would be glad to
10 reserve ruling on that waiting on the copies.

11 All right. Are we ready to move on to
12 Mr. Davis?

13 MR. FISCHER: Yes, sir.

14 JUDGE PRIDGIN: All right. Mr. Davis, if
15 you'll come forward and be sworn, please.

16 MS. OTT: Can I have about five minutes
17 to reorganize for Mr. Davis?

18 JUDGE PRIDGIN: That's fine. Let's go
19 off the record briefly for five minutes.

20 (A recess was taken.)

21 JUDGE PRIDGIN: All right. We're back on
22 the record. Let me -- Mister -- is there anything
23 else from counsel? Mr. Davis has taken the stand and
24 he needs to be sworn. Is there anything else from
25 counsel before Mr. Davis takes his oath?

1 All right. Hearing nothing, Mr. Davis,
2 if you'll raise your right hand to be sworn, please.

3 (Witness sworn.)

4 (KCP&L Exhibit Nos. 18-NP, 18-HC, 19-NP,
5 19-HC, 20-NP and 20-HC were marked for
6 identification.)

7 JUDGE PRIDGIN: Thank you so much, sir.
8 Anything before he stands cross? All right. He's
9 ready to stand cross.

10 MR. FISCHER: Yes. Yes, he is.

11 JUDGE PRIDGIN: All right. Let me see.
12 Ms. Ott, you'll have cross-examination?

13 MS.OTT: Yes.

14 JUDGE PRIDGIN: Mr. Schwarz?

15 MR. SCHWARZ: Yes.

16 JUDGE PRIDGIN: Mr. Mills, will you have
17 any?

18 MR. MILLS: I will not. Thank you.

19 JUDGE PRIDGIN: All right. Mr. Schwarz,
20 it's to you.

21 MR. SCHWARZ: Good afternoon.

22 THE WITNESS: Sir, I did have one
23 correction.

24 MR. FISCHER: I do have some direct I can
25 do just to correct any mistakes.

1 JUDGE PRIDGIN: Yes, sir. If you don't
2 mind.

3 BRENT DAVIS, having been sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. FISCHER:

5 Q. Please state your name and address for
6 the record -- your business address.

7 A. Brent Davis, 1200 Main Street, Kansas
8 City, Missouri.

9 Q. Are you the same Brent Davis who caused
10 to be filed in this case certain direct, rebuttal and
11 surrebuttal testimony, which for your information has
12 been marked as KCP&L Exhibit 18-HC and NP for the
13 direct, 19-HC and NP for the rebuttal, and 20-HC and
14 NP for the surrebuttal?

15 A. Yes.

16 Q. Do you have any corrections or other
17 modifications you need to make to your testimony or
18 exhibits?

19 A. I do have one correction to my rebuttal
20 testimony, page 61.

21 Q. Okay. Please --

22 A. Line 5 in the middle of the line there's
23 the word "low" there. That should be "high" instead
24 of "low." It should be "repacking the high pressure
25 section."

1 Q. If I were to ask you the same -- are
2 there any other corrections that you need to make?

3 A. Not that I'm aware of.

4 Q. If I were to ask you the same questions
5 that are contained in your testimony today, would your
6 answers be the same?

7 A. Yes, they would.

8 Q. And are they true and accurate to the
9 best of your knowledge and belief?

10 A. Yes, they are.

11 Q. And are your schedules and exhibits -- do
12 they depict what they're intended to show?

13 A. Yes. I believe so.

14 MR. FISCHER: I would I guess move -- or
15 tender him for cross and move for admission once it's
16 appropriate, once he's done with his testimony.

17 JUDGE PRIDGIN: All right. and I guess
18 I'll see now if there's any objection to --

19 Mr. Fischer, you'd be offering 18 --

20 MR. FISCHER: 19 and 20-HC and NP
21 versions.

22 JUDGE PRIDGIN: Of both NP and HC.
23 First, let me see if there's any objection to those
24 coming into evidence?

25 All right. Hearing none, Exhibits 18, 19

1 and 20, they're all NP and HC, are admitted into
2 evidence.

3 (KCP&L Exhibit Nos. 18-NP, 18-HC, 19-NP,
4 19-HC, 20-NP and 20-HC were received into evidence.)

5 JUDGE PRIDGIN: And anything further
6 before he stands cross? All right. Hearing nothing,
7 Mr. Schwarz?

8 CROSS-EXAMINATION BY MR. SCHWARZ:

9 Q. Good afternoon, Mr. Davis.

10 A. Good afternoon, Mr. Schwarz.

11 Q. Your physical presence is even more
12 impressive than your screen presence. I just want you
13 to know.

14 A. Thank you.

15 Q. I want to start off with just some
16 general questions. What is a supercritical coal
17 electric generating plant?

18 A. Supercritical refers to the pressures in
19 the temperatures that that unit operates at. To give
20 you some numbers, the pressure's about 3,600 PSI
21 temperature of 1080. Those two numbers combined
22 compared to a subcritical plant result in about a
23 10 percent more efficient plant than a normal
24 subcritical facility.

25 Q. Thank you. About how many are there in

1 the -- of them are there in the world? Hundreds?

2 A. I -- I -- I would estimate that -- we
3 have one or two on our system; one being La Cygne 1,
4 previous to Iatan 2.

5 Q. Do you know how many -- are they common
6 throughout the world?

7 A. Supercritical technology has been around
8 for a while. The La Cygne 1 was one of the earlier
9 ones in the early '70s. The technology's been refined
10 over the last 30 years.

11 Q. Is it safe to say that they're more
12 complex than combustion turbines for generating
13 electricity?

14 A. Yes. Coal-fired generation is more
15 complex than combustion turbines.

16 Q. And is that reflected in the cost?
17 What's the relative cost between a combustion turbine
18 and a -- and a coal plant, do you know?

19 A. My information on that's a little dated,
20 but simple cycle combustion turbine is a fraction of
21 the capital cost of a supercritical plant.

22 Q. Thank you. I'd like to next move on to
23 some terms that I think are related to scheduling in
24 construction projects. What does sequencing mean to
25 you in terms of construction?

1 A. Sequencing is basically what jobs need to
2 occur first, particularly in regard to the critical
3 path. On a schedule, that's very important. You got
4 to obviously have the foundation in before you can set
5 a piece of equipment on top of it.

6 Q. So whoever is supposed to provide slot A
7 has to be done before somebody can put tab B into it?

8 A. That's correct.

9 Q. What is compression?

10 A. Compression is when that person that
11 got -- missed that slot A date didn't make their date
12 and ultimately affected that B person. And if you
13 were expecting that end date to have to hold for that
14 B party, then they would be compressed.

15 Q. And would it be safe to say that on a
16 project of the magnitude and complexity of a -- of an
17 Iatan 2, that there are a lot of separate sequencing
18 steps that -- that occur?

19 A. That's fair to say.

20 Q. What is float?

21 A. Float is the amount of time that you've
22 got in a given activity to get it completed.

23 Q. Do you in a -- in scheduling a complex
24 construction project, do you typically build some
25 excess into steps to allow for possible contingencies

1 or -- or unforeseen circumstances?

2 A. If applicable, yes.

3 Q. Is it applicable -- was it applicable to
4 Iatan 2?

5 A. There was float in various activities,
6 yes.

7 Q. So is -- is -- is float related -- is
8 float the difference between what you might expect a
9 task to take and the amount of time that you allow for
10 that task in a schedule?

11 A. Can you rephrase that again for me?

12 Q. You -- you expect it to take two weeks to
13 do something so in the schedule you'll put in two
14 weeks and two days. Is -- is the two days the float
15 or is the -- the entire period the float?

16 A. In your example, the two days would be
17 the float. I might -- I might add, if I could, you
18 know, in a project such as Iatan, there is always
19 something on the critical path. There is never a
20 non-critical path activity.

21 In the early phases of the project, that
22 was the engineering function. Later on, it was the
23 procurement function was on the critical path. And in
24 the later stages, obviously construction activities
25 then start up and commissioning activities were on the

1 critical path. So there is always something that is
2 on the critical path.

3 Q. And they -- and they all tie into
4 sequencing, compression and float? I mean --

5 A. Those are all ingredients in the --
6 managing the schedule.

7 Q. In the mix. I don't think this -- this
8 is not a scheduling. What does constructability mean?

9 A. Constructability means can you physically
10 build what you're proposing to build at the time and
11 place you're wanting to build it in.

12 Q. So that, for instance, if you designed a
13 part and -- and later discovered it was too big to go
14 through the doors, you'd have a constructability
15 problem?

16 A. Constructability issue, challenge, yes.

17 Q. Yes. Yes. Okay. What are the functions
18 of the owner's engineers in a project like Iatan 2?

19 A. Our owner's engineer, Burns and Mac,
20 served several functions. Early in the life of the
21 project, they did some developmental work, developed
22 our -- our -- our PDR. Later on in the project they
23 began some detailed development of some
24 specifications. They did a bulk of our design work
25 for our foundations and our balance of plant

1 equipment. So as the owner's engineer, we had various
2 services and functions that they provided.

3 Q. But were all of those services services
4 provided as owner's engineers?

5 A. Yes. In my opinion, they were.

6 Q. Okay. And one more just kind of general
7 question. What's an aerator?

8 A. An aerator or deaerator?

9 Q. Aerator -- well, deaerator.

10 A. Deaerator is an open feed water heater
11 that's in our feed wa--

12 Q. Can you slow -- just speak a little
13 slower, please.

14 A. That's the first time I've ever been
15 asked to do that, I assure you. A deaerator is an
16 open feed water heater that is in our feed water
17 heater strain that allows for better control of our
18 water systems, allow us to maintain better water
19 quality. And it provides suction to our boiler feed
20 pumps, which is basically the heart of the power
21 plant.

22 Q. And is there a deaerator at Iatan unit 1?

23 A. Yes, there is.

24 Q. And where is it physically located?

25 A. Relatively high above the turbine bay on

1 the front of the boiler.

2 Q. Okay. On the -- so it's above the front
3 of the boiler?

4 A. It's actually right near the top of the
5 boiler on Iatan 1.

6 Q. Okay. And did the original plans for
7 Iatan 2 have a deaerator?

8 A. It's my understanding that the very
9 earliest conceptual designs may have -- not have
10 included a deaerator. From my time on the project, we
11 had incorporated a deaerator. Basically all of the
12 facilities I'm familiar with, with the exception of
13 Hawthorn 5 within Kansas City Power and Light have a
14 deaerator.

15 Q. Okay. And it too increases the
16 efficiency overall of the system. Is that safe to
17 say?

18 A. Improves the water control, both control
19 of the physical water system and the quality of that
20 water.

21 Q. You're familiar with the control budget
22 estimate that was developed and released in late
23 November, early December of 2006?

24 A. Yes, I am.

25 Q. And the -- the dollar amount in that

1 control budget estimate was \$1.685 billion. Is
2 that --

3 A. That's correct.

4 Q. And of that, \$220 million was
5 contingency?

6 A. That's correct.

7 Q. And \$1.465 billion was what I'm going to
8 call just for simplicity sake the base budget.

9 A. 1.685, yes was the base budget.

10 Q. No. The base budget included 220 million
11 for contingency. The -- the other component was
12 1.465, which you add together to get the 1.685
13 billion. Is that --

14 A. Yes. But as -- as part of that control
15 budget process, we identified the risk that we could
16 see at that time.

17 Q. Right.

18 A. And tried to monetize those in that
19 contingency.

20 Q. Right.

21 A. So my contention is the base budget was
22 1.685.

23 Q. well, let me -- let me approach it a
24 little different way. How did the 1.465 billion --
25 how was it estimated?

1 A. The -- the control budget estimate is
2 made up of both direct and indirect costs. Those are
3 on a line item basis. That 1.485 would have had a
4 line item number by contract associated with each one
5 of the individual contracts that was perceived at that
6 time.

7 So on our cost portfolio, which we've had
8 a lot of discussion about this morning, on the far
9 left-hand side you would see an amount in that
10 original control budget estimate for each one of those
11 line items by contract. Okay? And then you will see
12 a progression. As we go through the reforecast
13 efforts, you would see a 2008 column with a line item
14 by contract, a 2010 reforecast column. And then on
15 the far right you could look at what each one of those
16 contracts is estimated to complete currently by that
17 same contract.

18 Q. The control budget estimate in
19 December of 2006 was higher than the budget estimate
20 that was included with the project development report
21 in 2004; is that correct?

22 A. That is correct.

23 Q. And part of the increase was due to the
24 increase in size of the project from 800 to 850
25 megawatts, an increase in temperature of about 30 or

1 50 degrees, something like -- but an increase in
2 temperature, operating temperature, and I don't want
3 to ruffle any feathers but there had been a cost
4 estimating bust, if you will, on the turbine building.
5 And that had also been discovered and addressed by the
6 time the CBE was completed; is that correct?

7 A. Yes. That's correct.

8 Q. And so the CBE takes those -- those
9 specific items into account?

10 A. Yes. If I could expand a little farther
11 on one point you made.

12 Q. Please educate the Commission on that
13 point.

14 A. The -- when we were in development of the
15 control budget estimate, that was based on about 20 to
16 25 percent engineering. The things you mentioned, the
17 deaerator, the change in temperature, et cetera, those
18 were things that had developed since the PDR. Okay?
19 So those are things -- engineering design, maturity
20 things that we had identified.

21 That 20, 25 percent engineering at that
22 point in time we had some underground piping
23 engineered, we had many of the foundations engineered
24 and we had this turbine steel you mentioned engineered
25 to the point we were ready to go out to bid.

1 when we went out to bid, our procurement
2 director, Steve Jones, noticed that the quantities we
3 were getting back on those bids did not match our
4 numbers of quantities in our control budget estimate.
5 That obviously caused us to raise a red flag.
6 We went back to Burns and Mac.

7 And what had happened is the design had
8 continued to progress, but they had not captured the
9 cost of that projected in design in the control budget
10 estimate. That caused us to re-look at quantities
11 throughout that control budget estimate based on the
12 engineering that was done at that time in order to get
13 as good of information -- as good a number as was
14 available based on the information that was available
15 at that time.

16 Q. But so the -- so that had been captured
17 and taken into account by the time of the December
18 2006 CBE edition?

19 A. Yeah. I think I tell that whole story to
20 point out how the impact of engineering design, design
21 maturity can continue to impact the project over the
22 life of the project until that engineering's done.

23 Q. Also, by the time the November/December
24 2006 CBE was developed, both the Alstom and Toshiba
25 contracts were in place; is that correct?

1 A. That's correct.

2 Q. Were there any other contracts in place
3 at that time; Pullman, for instance?

4 A. At the time of the --

5 Q. CBE?

6 A. -- CBE? Pullman would have been in
7 place. You mentioned Alstom, you mentioned Toshiba.
8 We had -- he had a contract with Kissick. It probably
9 wasn't the final form of the Kissick contract. And we
10 may have had a few engineered equipment contracts in
11 place at that point. We had some -- we had many of
12 the engineered con-- equipment contracts in place by
13 later on in '07.

14 Q. I've -- and I can't remember if it's your
15 testimony or other people's testimony, but by December
16 of '06, there had already been a billion dollars or
17 more in contracts let. Would you agree?

18 A. Yeah. Yeah, I would concur with that.

19 Q. So by December of '06 when the CBE was
20 published, the -- the bulk of the contracts for the
21 project at least dollar-wise had -- had been let?

22 A. I wouldn't say a bulk of the contracts
23 had been let. The -- the dollar amount I'd agree we
24 were --

25 Q. Yes. Well, that was my question.

1 A. -- we were over -- we still had many,
2 many contracts to let.

3 Q. Right. No, my question was by dollar
4 amount.

5 A. Yeah.

6 Q. And the -- I'm afraid I'm going to stir
7 up a controversy I really don't want to. What's an
8 EPC contract?

9 A. Engineer, procure and construct.

10 Q. Is that what we lay people would think of
11 as a turnkey project?

12 A. They can take different forms, but in
13 general, yes, an EPC would be considered a turnkey.

14 Q. For a particular item?

15 A. Yes.

16 Q. It could be a particular item, it could
17 be an entire project?

18 A. Yes.

19 Q. Okay. The contracts for the -- with
20 Alstom for the -- for the boiler island and the AQCS,
21 air quality control systems, those were EPC contracts?

22 A. Yes. They -- the air quality control
23 system for both unit 1, unit 2 and the boiler were all
24 contained under one contract with Alstom. And it was
25 an -- engineer, procure, construct -- and construct

1 where Alstom was in charge of all three phases.

2 Q. And is the same true with Toshiba for the
3 generator?

4 A. No. Toshiba on the turbine generator was
5 an equipment only contract with some technical
6 services. We ended up contracting with somebody else,
7 that being Kiewit, to install the turbine generator
8 with technical assistance from Toshiba.

9 Q. Okay. Okay. And as to everything else,
10 in December of '06, KCPL was going to manage and
11 contract for everything else to do with the project;
12 is that correct?

13 A. Can you be more specific? Manage and
14 contract?

15 Q. Well, you had the contracts with Alstom,
16 Toshiba, Pullman, Kissick, but for the -- the balance
17 of plant not covered by those items, KCPL at that
18 stage -- late November, early December of '06, KCP&L
19 was planning to contract and manage the contracts for
20 everything else?

21 A. Yeah. We -- we had -- depending on the
22 piece of equipment, et cetera, our contracting
23 strategy varied somewhat. I'll give you an example.
24 Our materials handling contract for all intents and
25 purposes was an engineer, procure and construct. It

1 was more of a furnish and erect. Whereas, we provided
2 the layout of what we wanted for our material
3 handling, but they -- they being ASI, the successful
4 contractor, did the detailed engineering and provided
5 the equipment and constructed that equipment.

6 So there were various forms depending on
7 the scope of work. But in general, we had a major EPC
8 in Alstom, we had various engineered equipment
9 contracts. And our strategy at that time was to use a
10 multiple prime contracting strategy to get those
11 engineered equipment contracts installed.

12 Q. So going back to our earlier
13 conversation, KCPL would be responsible for the
14 scheduling, sequencing, control of compression and --
15 and deliverables of all the other items required to
16 complete the project?

17 A. Continuing our example there, Alstom was
18 responsible for developing their schedule. Okay? For
19 their engineering procuring and construction. ASI was
20 responsible for developing their schedule to supply
21 that material and get it erected. Kansas City Power
22 and Light's role was to integrate those schedules and
23 make sure we managed any touch points between Alstom
24 and ASI, to use that as an example.

25 Q. So let me I think rephrase. KCPL had the

1 responsibility to see that each of the contractors
2 adhered to the schedule it set so that the schedule
3 and sequencing of the entire project remained on the
4 critical path?

5 A. Yes.

6 Q. The Iatan 1 aspect of the project was for
7 an air quality -- AQCS, air quality control system; is
8 that correct?

9 A. Yes.

10 Q. And that was part of Alstom's contract?

11 A. Alstom had the contract to install the
12 SCR, the baghouse and the absorber and all the
13 associated common equipment on unit 1 to make those
14 operational.

15 Q. Okay. And at the stage -- at the point
16 in time when that project was complete and ready to be
17 put into operation, you had to take Iatan unit 1 out
18 of service; is that correct?

19 A. That's correct.

20 Q. And when -- when was Iatan 1 taken out of
21 service to begin the installation of the AQCS?

22 A. I believe it was the middle of October of
23 2008. The exact date was October 18th, I believe.

24 Q. Mid-October of 2008?

25 A. That's correct.

1 Q. Excuse me a minute. I can't find my
2 note. And I need the right testimony. Excuse me a
3 moment. Never mind. Helps if I get the right page.

4 On page 20 of your direct testimony
5 beginning at line 22 you say that, Alstom's level of
6 transparency regarding issues impacting its work
7 significantly increased over the course of the unit 1
8 outage preparation period and the outage itself. So
9 that would be sometime in August, September of 2008.
10 Is that the time period you're referring to there?

11 A. Could you direct me --

12 Q. It's the last two lines on page 20 of
13 your direct.

14 A. Alstom's level of transparency regarding
15 issues impacting its work significantly increased over
16 the course of unit 1 outage preparation periods and
17 the outage itself. Yes, I'm with you.

18 Q. Okay. So that would be August, September
19 of 2008?

20 A. Into the fall of 2008.

21 Q. Yes. Okay. And what -- what do you mean
22 by the transparency regarding their issues?

23 A. There was -- in the unit 1 -- progression
24 of the Alstom contract, there was a settlement
25 agreement that was mainly associated with unit 1. I

1 believe Mr. Downey will -- will testify to that
2 settlement agreement later. There were several
3 commercial issues that were settled during that
4 settlement agreement. I think that was a key
5 ingredient to allowing Alstom to be more transparent,
6 be more reactive to the issues on the job and help us
7 complete that project in a timely manner.

8 Q. well, I'm a layman and I think probably
9 most of the Commissioners are as well. I don't
10 understand what transparency regarding issues
11 impacting its work. I just -- I don't understand what
12 that term means.

13 A. Uh-huh.

14 Q. what -- what are you -- what are you
15 referring to there?

16 A. If you're referring to -- you know, there
17 are various issues. One of the -- one of the Achilles
18 heel of an EPC contractor is they are fully in control
19 of their own destiny. It is a turnkey project. You
20 don't get the keys till the end. So they are pretty
21 close-mouthed with what they -- what issues and
22 problems they are having.

23 I believe we were very effective in
24 working with Alstom so that we knew what their issues
25 were and could help them feel help us be successful.

1 we helped each other.

2 Q. well, what transparency issues did they
3 have prior to, say, summer of 2008?

4 A. In -- specifically with relation to
5 unit 1?

6 Q. well, unit 1 or unit 2.

7 A. I'll give you -- I'll give you one off
8 the top of my head. They -- they were experiencing
9 some of -- many of the same overheated market issues
10 that we were. They were working with vendors trying
11 to get equipment and supplies that they needed, that
12 they couldn't get as readily as they thought they
13 could for the prices they thought they could.

14 The tendency if it's an EPC contractor,
15 is to not let an owner know you have some of those
16 issues. As time went on, I believe Alstom shared more
17 and more of that with us so we could jointly attack
18 those problems.

19 Q. was -- was there -- were they similarly
20 close to the vest about their labor productivity
21 issues?

22 A. That's one area where we were very
23 specific in our contract where they had to be open and
24 transparent with their scheduling activities. We had
25 some verbiage in the contract that was very specific

1 where they had to give us performance metrics, actual
2 manhours planned, et cetera, where we could do an
3 independent tracking of their schedule progress.

4 Q. And so had -- had Alstom regularly
5 provided all the information you needed to calculate
6 their labor productivity say from August 2006 forward?

7 A. Alstom mobilized onsite in the spring of
8 2006 -- or '7, I'm sorry, spring of 2007. Their
9 construction hours are what we actually got. So they
10 wouldn't have started reporting until after we
11 baselined the schedule, which I believe was in April
12 of 2007. Pretty well coincided with when they started
13 actual work. So basically from the start of their
14 work, they were reporting their -- their schedule
15 progress.

16 Q. So beginning in 2007, KCPL was aware that
17 Alstom was having problems with its labor
18 productivity?

19 A. Yes. On various issues. We started
20 tracking that very early on.

21 Q. In your rebuttal testimony at page 67 --

22 A. I'm there.

23 Q. -- line 10 you note, At the end of May in
24 2008 Alstom was approximately 30 days behi-- is that
25 HC? I'm sorry.

1 MR. STEINER: What page are you on, Tim?

2 MR. SCHWARZ: 67 on the rebuttal, line

3 10. Judge, I --

4 JUDGE PRIDGIN: Let me give KCPL a

5 chance.

6 MR. STEINER: Line 10, Tim?

7 MR. SCHWARZ: Yeah. That -- I'm sorry.

8 MR. STEINER: That number is.

9 MR. SCHWARZ: I'd ask that we'd go
10 in-camera. I'm sorry.

11 JUDGE PRIDGIN: That's quite all right.

12 We'll go in-camera. Let me ask counsel to verify
13 anybody in the room that needs to leave. Kelly, are
14 you okay on HC?

15 UNIDENTIFIED SPEAKER: Am I okay?

16 MR. STEINER: Have you signed a
17 nondisclosure?

18 UNIDENTIFIED SPEAKER: With the CP --
19 with the regulatory plan.

20 MR. SWEARENGEN: Do you want her to
21 leave?

22 MR. FISCHER: No. I think we're okay.
23 She's with the joint owners and this is going to be
24 fairly brief.

25 MR. SCHWARZ: Actually I think the -- you

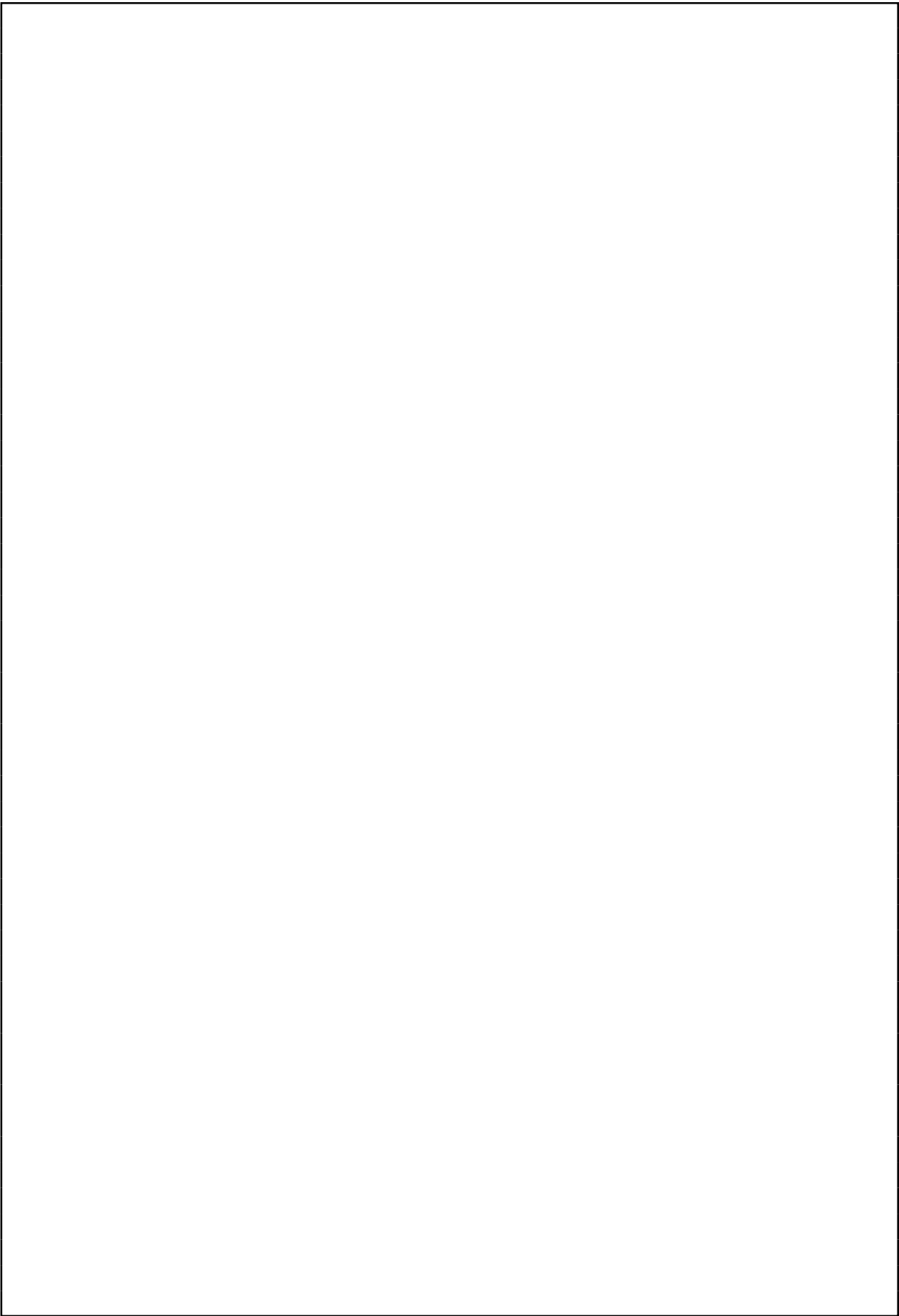
1 know, we may be locking the barn door after the horse
2 is out. I don't -- no, we're not. No, we're not. We
3 need to go HC.

4 JUDGE PRIDGIN: Give me just a moment.
5 We'll go in-camera.

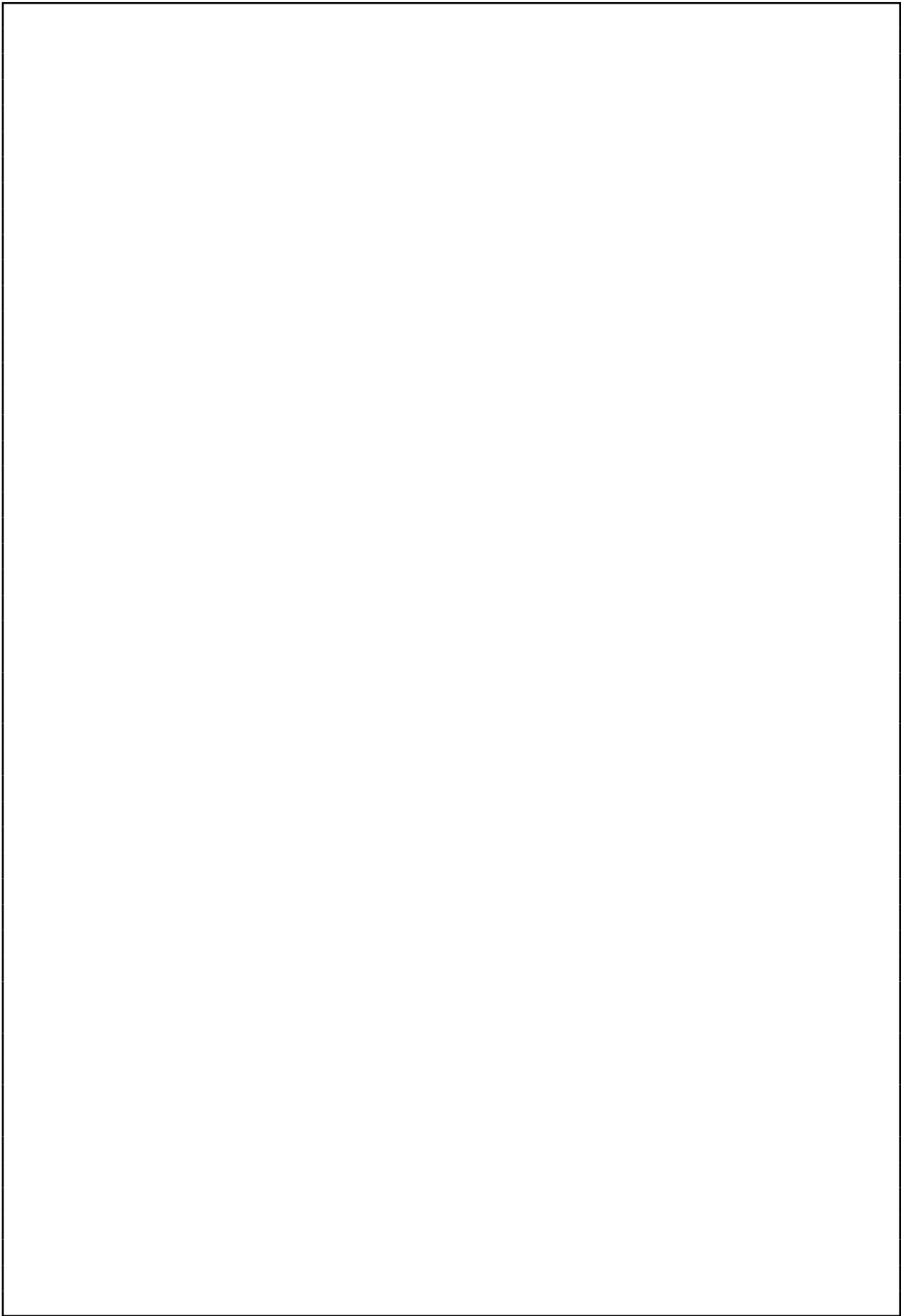
6 (REPORTER'S NOTE: At this point, an
7 in-camera session was held, which is contained in
8 volume 16, pages 638 to 643 of the transcript.)

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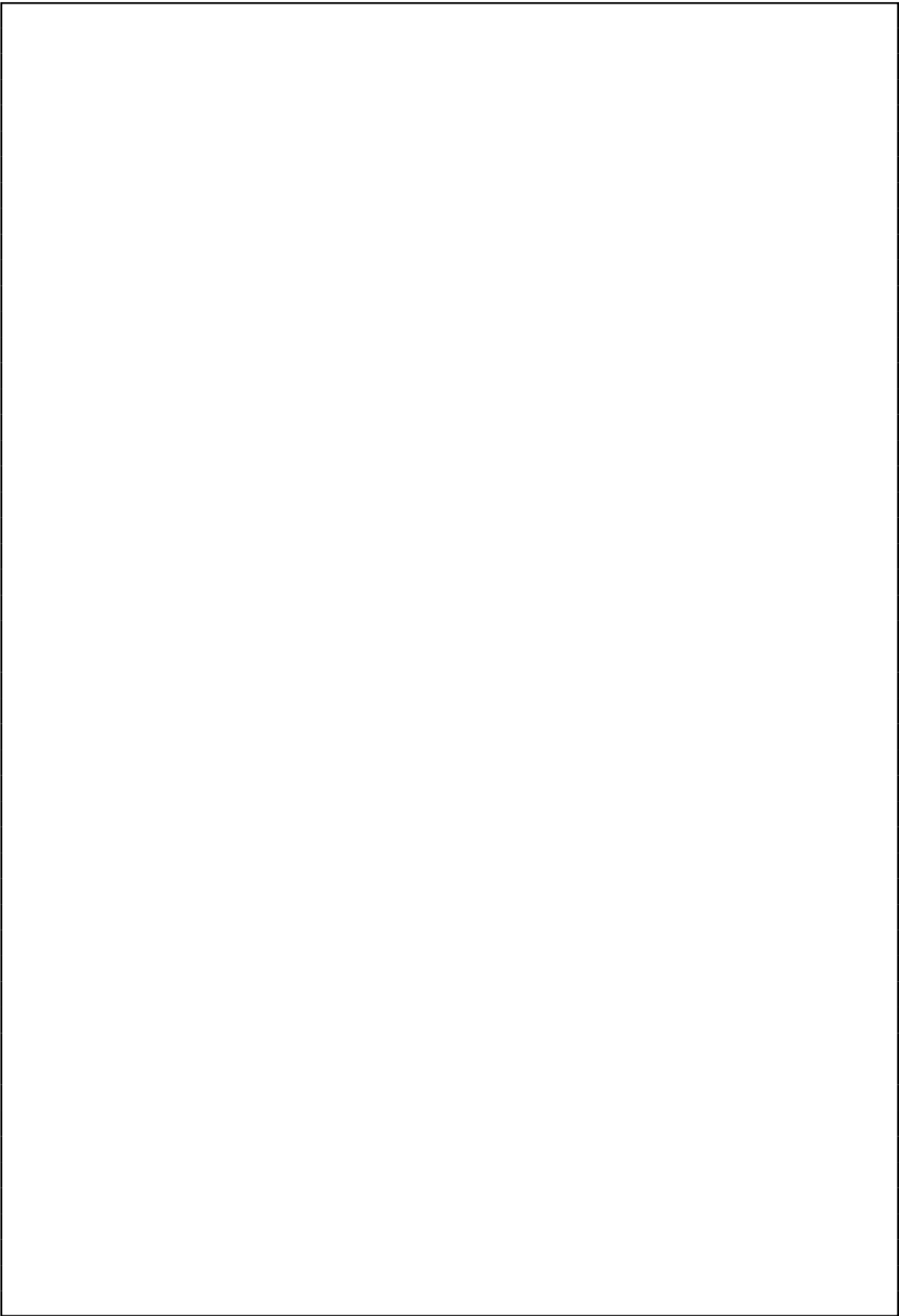
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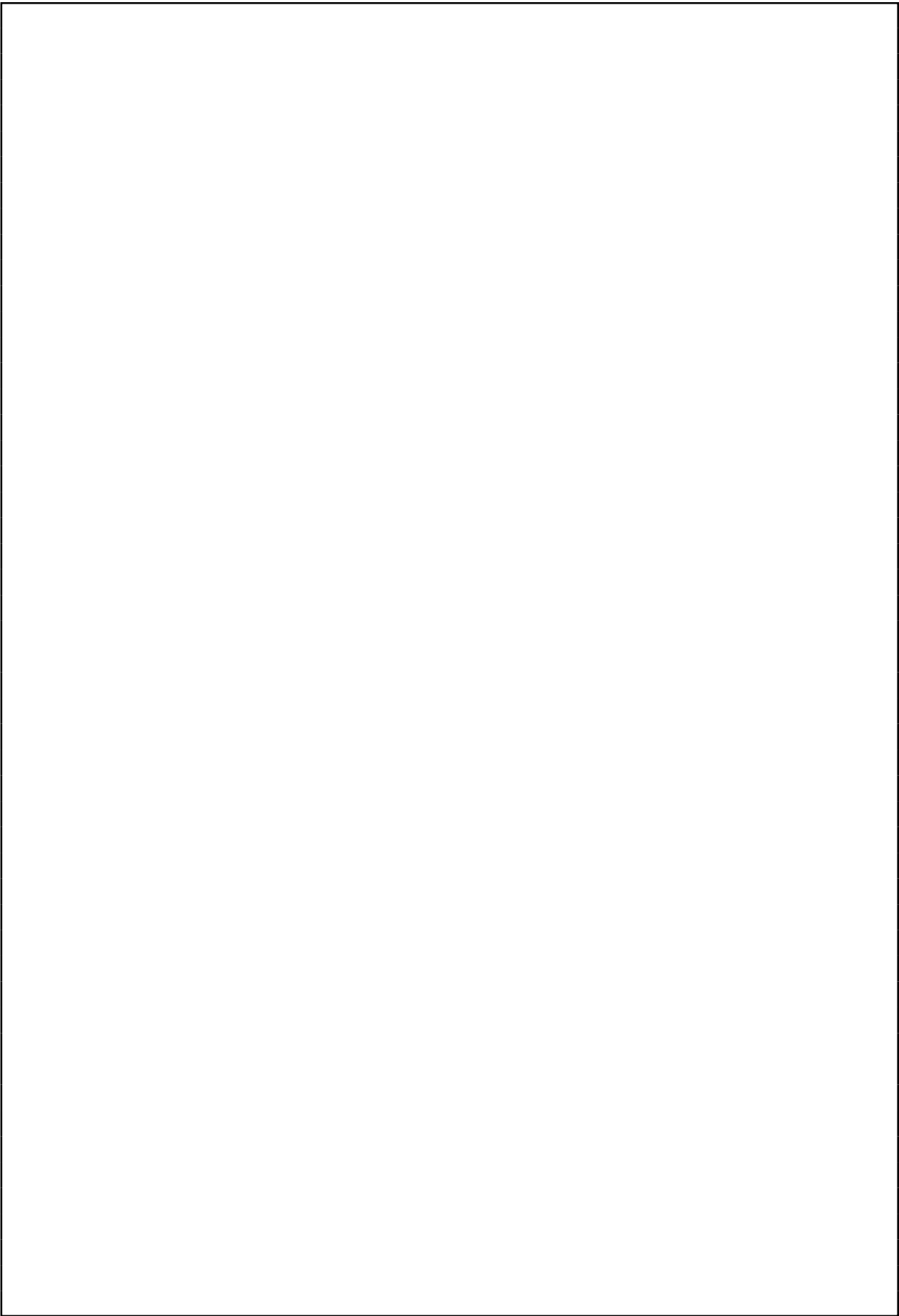
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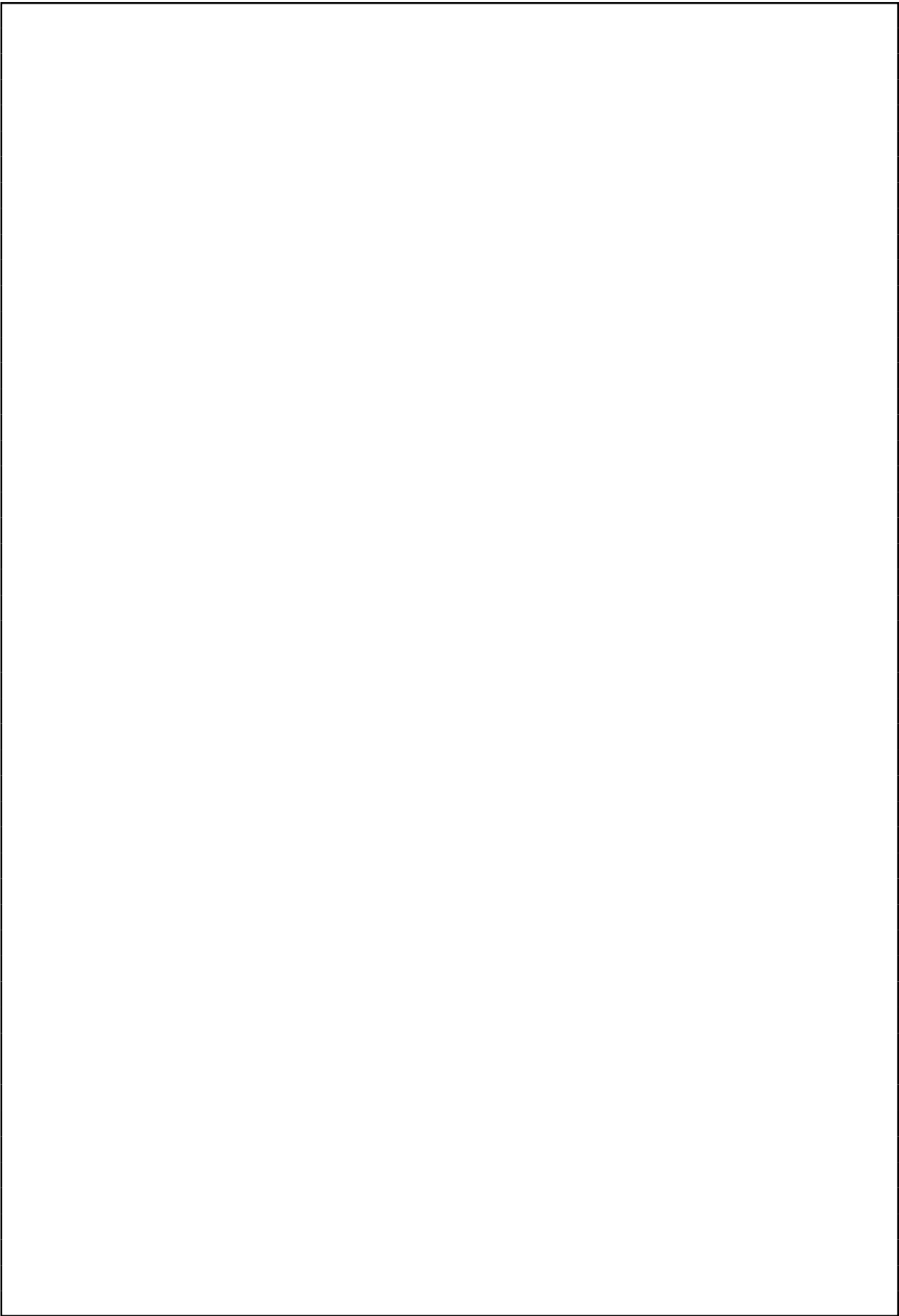
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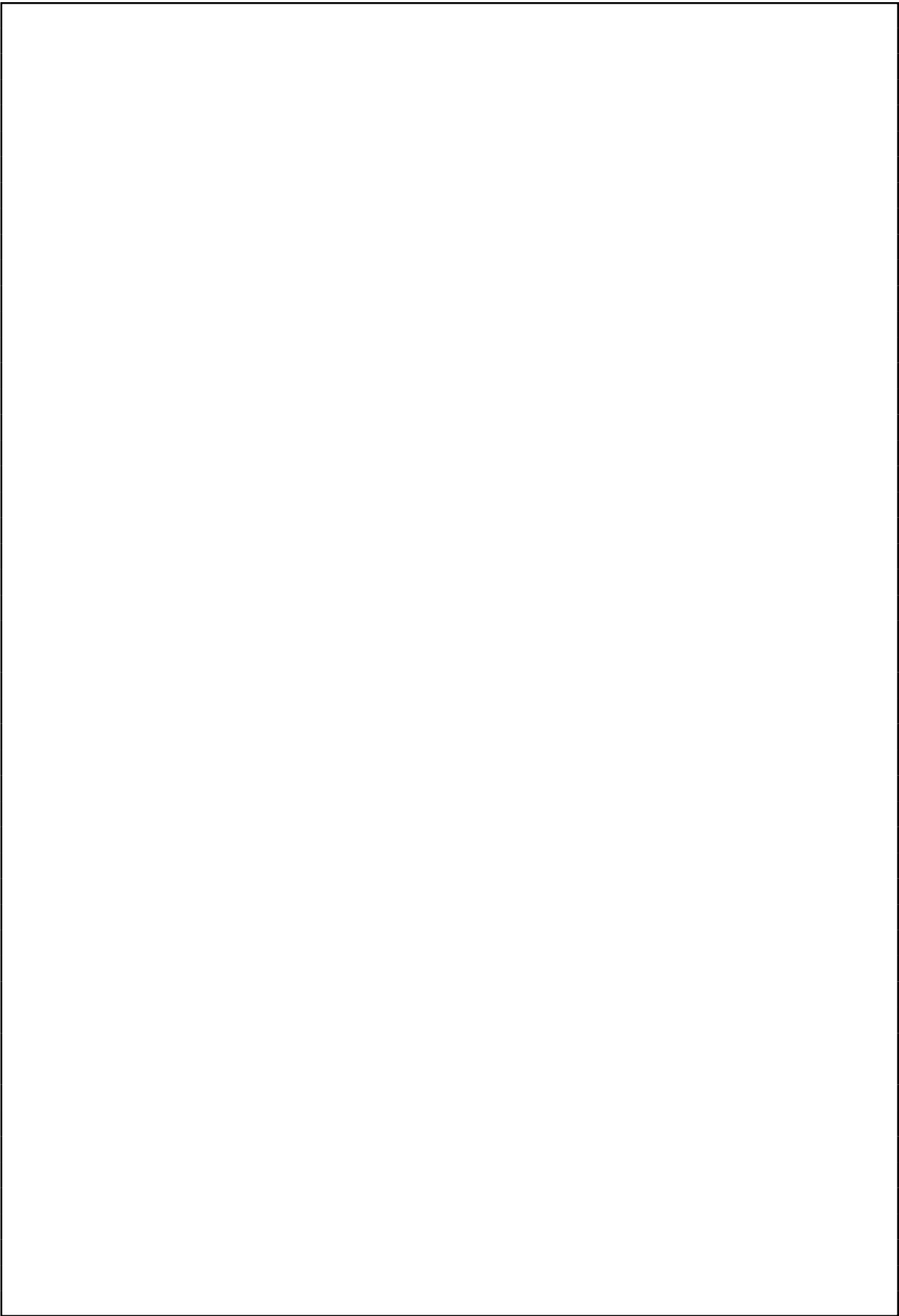
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1 JUDGE PRIDGIN: All right. Thank you.

2 We're back in public session.

3 BRENT DAVIS testified as follows:

4 BY MR. SCHWARZ:

5 Q. What -- what was your role -- or your
6 title in the Iatan projects?

7 A. Iatan project director.

8 Q. Okay. And prior to your appointment as
9 Iatan project director, had you ever worked in
10 construction management on a new supercritical
11 coal-fired plant?

12 A. No. I had been involved as plant manager
13 of the Hawthorn generation -- generating station; in
14 the rebuild of Hawthorn 5; the construction and
15 commissioning of Hawthorn 6 and 9, a combined cycle
16 plant; and Hawthorn 7 and 8, 270-megawatt simple cycle
17 combustion turbines. So I was heavily involved in
18 those projects from an operations perspective as plant
19 manager.

20 Q. But I just want to make clear, you had
21 not had any construction management experience in
22 building a new coal-fired supercritical electric
23 generating plant?

24 A. That particular facility I was talking
25 about, Hawthorn, it's a 550-megawatt subcritical unit.

1 You know, the -- they're both very big boilers and the
2 fact -- subcritical or supercritical, the construction
3 issues are very similar. Steve Easley was our VP of
4 construction on that job. Steve and I worked closely
5 together through that entire project. And Steve
6 Easley is who asked me to come onto the Iatan project.

7 Q. I understand. But the answer to my
8 question would be no; is that correct?

9 A. That's correct. No on the supercritical
10 part.

11 Q. Yeah. Well, you hadn't -- you hadn't
12 built one from the ground up before, had you?

13 A. Absolutely. Hawthorn 5 boiler was built
14 from the ground up and it had basically the same
15 environmental equipment as Hawthorn 1 -- or Iatan 1
16 and Iatan 2.

17 Q. But it wasn't -- you didn't build every
18 component from the ground up; is that correct?

19 A. No. It was built from the ground up.

20 The found--

21 Q. The rebuild?

22 A. Yes.

23 Q. The entire plant was rebuilt?

24 A. The entire boiler and AQC equipment that
25 I just shared with you was built from the ground up.

1 Q. Thank you.

2 MR. SCHWARZ: I think that's all that I
3 have.

4 JUDGE PRIDGIN: All right. Mr. Schwarz,
5 thank you. This looks to be a good time to break
6 before we continue with cross-examination. Anything
7 further from counsel before we take a break?

8 MS. OTT: I have copies of Staff
9 exhibits, so if the parties want to look at them
10 before we admit them.

11 JUDGE PRIDGIN: All right.

12 MS. OTT: I'll pass them out.

13 JUDGE PRIDGIN: Let's adjourn for about
14 15 minutes. We will resume at about 3:35. Thank you.
15 We're off the records.

16 (A recess was taken.)

17 JUDGE PRIDGIN: All right. We are back
18 on the record. If I'm not mistaken, we would now be
19 to Staff's cross-examination of Mr. Davis. Is there
20 anything else from counsel before we resume?

21 MS. OTT: Can I go ahead and admit Staff
22 Exhibit 248 and 249?

23 JUDGE PRIDGIN: 248 and 249 are being
24 offered. Are -- and these are both HC, I believe.

25 MS. OTT: That's correct.

1 JUDGE PRIDGIN: Are there any objections?

2 MR. MILLS: No objection.

3 MR. SWEARENGEN: No objection.

4 JUDGE PRIDGIN: All right. 248 and
5 249-HC are both admitted.

6 (KCP&L Exhibit Nos. 248-HC and 249-HC
7 were received into evidence.)

8 JUDGE PRIDGIN: Anything else? All
9 right. Hearing nothing, Ms. Ott, I believe it's your
10 witness.

11 CROSS-EXAMINATION BY MS. OTT:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. What does the term "Iatan project" mean
15 to you?

16 A. Iatan construction project means to me
17 the environmental retrofits on unit 1 and the
18 construction of unit 2 in its entirety.

19 Q. Now, are you familiar with the position
20 project manager?

21 A. I've heard that term before.

22 Q. Are you the project manager?

23 A. I would be one of the project managers,
24 yes.

25 Q. So what's the difference between a

1 project manager and a project director?

2 A. They're synonomous in my mind.

3 Q. So was the project manager the person
4 assigned by an organization to achieve the objectives
5 for the project?

6 A. I would agree with that.

7 Q. And have you been the project manager for
8 the entirety of the Iatan projects?

9 A. My role has changed over the life of the
10 projects.

11 Q. Let's start at the beginning. What was
12 your first role?

13 A. I was project director for the Iatan
14 construction projects. I was in charge of both
15 projects. And one of our earliest audit findings was
16 a recommendation to bring on a vice president of
17 construction for a job of this scope and magnitude.

18 Q. Okay.

19 A. We di--

20 Q. Can we do dates? So when were you the
21 project director?

22 A. Yeah. I came onto the project in
23 May/June time frame of '06.

24 Q. And then were you saying you became the
25 VP of construction?

1 A. No.

2 Q. Okay.

3 A. The recommendation was made to hire a VP
4 of construction. That was when one of the earliest --
5 and I believe you referred to it earlier in the risk
6 assessment, that recommendation was made. Our EOC
7 acted on that recommendation. We hired Dave Price as
8 VP of construction. Dave started I believe in May of
9 2007.

10 Q. Now, would the VP of construction be a
11 position higher than the project director?

12 A. Yes. I would --

13 Q. You would report to VP of construction?

14 A. I reported to Dave. Dave and I worked
15 together during that period of the summer of '07.
16 We'd had discussions in the fall of '07. He asked me
17 to concentrate on unit 1 as the unit 1 project
18 director.

19 Q. So --

20 A. And his focus was on unit 2.

21 Q. Okay. So in the summer of '07 you
22 were -- became exclusively the project director of
23 Iatan 1?

24 A. I believe the date when it was made
25 official was November of '07.

1 Q. And then after that, what -- did your
2 role change again or --

3 A. Upon the completion of unit 1 in the
4 spring of '09, Carl Churchman asked me to stay on the
5 operations interface role on Iatan 2. And I've been
6 in that role basically through to the end of -- to the
7 current day.

8 Q. So is your title operations --

9 A. My --

10 Q. -- manager?

11 A. -- my title's still project director.

12 Q. Okay. What are your duties as the
13 project director?

14 A. Currently?

15 Q. Yes.

16 A. Currently? I'm continuing to spend all
17 my time on the Iatan construction projects. I'm
18 onsite on a daily basis. On most days I'm the top
19 Kansas City Power and Light representative onsite.
20 During the start-up commissioning time frame, I was
21 very involved in the start-up commissioning effort
22 along with Mr. Bob Bell, Stan Prenger, Tom Mackin.

23 Q. So you're going to back to your original
24 role?

25 A. I'm going back a few months ago. I'm

1 kind of working you backwards. That was --

2 Q. Let's start maybe chronologically and
3 maybe not go backwards. And then that way I won't
4 know when you're jumping. Let's start in May of '06.
5 what was your project -- what was your responsibility
6 as the project director of both projects?

7 A. I was project director. At that time we
8 would have been in the engineering/contracting phase,
9 so it would have been focused on those
10 engineering/contracting activities.

11 Q. And then when you were just exclusively
12 Iatan 1 in November of '07?

13 A. Focused on the environmental retrofit on
14 1 and getting all of the engineering, procurement,
15 construction activities accomplished in order to get
16 that in service -- the environmental retrofit in
17 service.

18 Q. Now, did you do the EPC activities
19 yourself or did you have a staff underneath you that
20 was performing those duties?

21 A. There was a staff that was -- we -- we
22 managed both projects with basically the same staff.
23 we had some that worked with me that were more focused
24 on unit 1.

25 Q. Are you a professional engineer?

1 A. No, I'm not.

2 Q. Are you familiar with the project
3 execution plan document?

4 A. Yes, I am.

5 Q. I'm going to hand you a copy of the
6 document and we're going to talk about it for a little
7 bit. Can you just identify that document for me?

8 A. This is the Iatan construction project --
9 project execution plan dated June of 2007.

10 Q. Okay. And if I get into -- this is a
11 highly confidential document -- I'll tell you to go
12 in-camera, but there's some background that I don't
13 believe is highly confidential.

14 Can you describe this document?

15 A. It's an overall guidance document for the
16 project. It's got -- if you look at the table of
17 contents, it's got an executive summary, it has
18 various sections that describe safety, scope of work,
19 design engineering. All the key elements of the
20 project to execute the final project.

21 Q. Who drafted this document?

22 A. It's a result of an effort of the entire
23 project leadership team with the services of Mike
24 Cushman to help us work through drafting this
25 document.

1 Q. So did Mr. Cushman draft this document
2 and then individuals adopt sections of them?

3 A. No. That's not the way it went. It was
4 more to say that individuals drafted pieces of this.
5 It was vetted with the project team. Mr. Cushman
6 facilitated those vetting sessions and ultimately the
7 entire project team adopted this document.

8 Q. Okay. Can we just go to page 36 for a
9 moment?

10 A. I'm sorry. My copy does --

11 Q. The page numbers are within that little
12 emblem on the bottom right-hand corner.

13 A. I was too far back. I was into some
14 attachments. I still don't see the -- there you go.
15 Page what? Excuse me.

16 Q. Thirty-six.

17 A. Yes, ma'am.

18 Q. Okay. Now, there is a box towards the
19 end of the page that has who the section is authored
20 by and it says, TBD. My understanding is that means
21 To Be Determined?

22 A. Yeah.

23 Q. And then there's no signature there?

24 A. Uh-huh.

25 Q. So who drafted this section?

1 A. I can't answer that based on what I see
2 here.

3 Q. Do you know who assumed the role that
4 would have drafted that section?

5 A. No, I don't.

6 Q. So do you know who would have drafted
7 that section and in hopes that somebody would -- who
8 assumed this role would adopt it?

9 A. I don't recall.

10 Q. And what were your responsibilities
11 relative to this document?

12 A. I was responsible for -- I believe if you
13 look back at some pages, you'll see my signature.
14 where you see my signature I was responsible for that
15 particular section. The executive summary would have
16 been penned by me, et cetera.

17 Q. When was this -- and this is referred to
18 as the PEP. Correct?

19 A. Uh-huh.

20 Q. Okay. When was this supposed to be
21 completed?

22 A. I don't recall our completion date. I
23 think it was pretty -- the June '07 was pretty
24 consistent with what our goal was. We had several
25 processes and procedures in place prior to this

1 document that was governing how we were conducting
2 business on the project prior to this document. And
3 this document being a guidance document, those just
4 kind of fell underneath it.

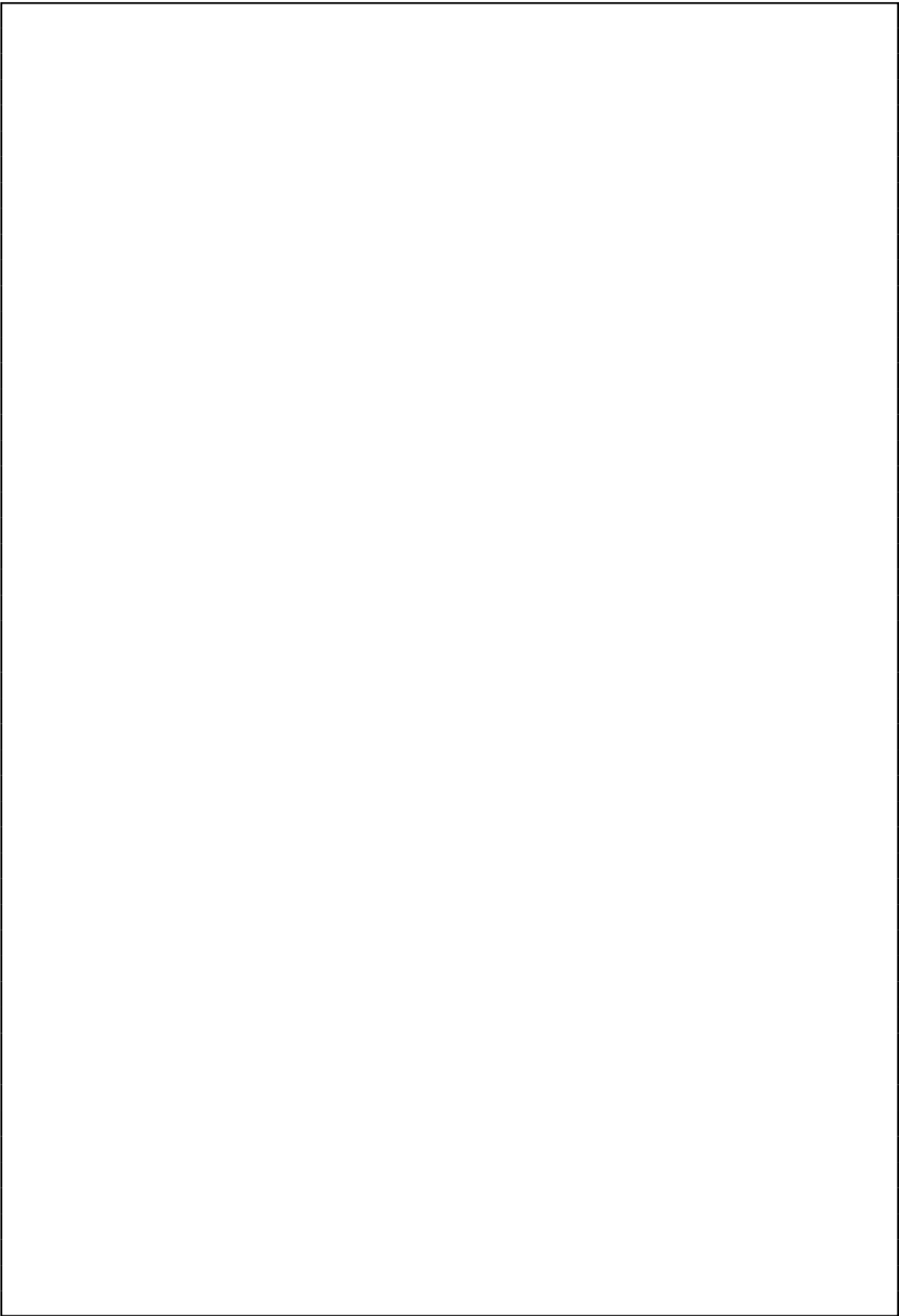
5 MS. OTT: Okay. I think we're going to
6 have to go in-camera for a second.

7 JUDGE PRIDGIN: All right. Bear with me
8 just a moment. I'll ask counsel to verify, does the
9 room need to be cleared of anyone? Everyone have an
10 agreement? All right. we'll go in-camera. Just a
11 moment, please.

12 (REPORTER'S NOTE: At this point, an
13 in-camera session was held, which is contained in
14 volume 16, page 656 of the transcript.)

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1 JUDGE PRIDGIN: When you're ready,

2 Ms. Ott.

3 BRENT DAVIS testified as follows:

4 BY MS. OTT:

5 Q. Now, this is part of the executive
6 summary -- executive summary you drafted?

7 A. Uh-huh.

8 Q. Do you know if this document was ever
9 updated or modified?

10 A. Not to my knowledge.

11 Q. Okay. Is this an important document?

12 A. Yes. I would consider it an important
13 guidance document for the project.

14 Q. Who was responsible for maintaining this
15 document?

16 A. The project team.

17 Q. And did the project team never see a need
18 to update or modify the document?

19 A. I think if you review these various
20 sections, take section -- like if you look at the
21 procurement section, the things that are in here are
22 relatively high-level guidance type things. The
23 policies and procedures that were within our
24 procurement practice, they fell underneath this
25 guidance document, even though they may have changed

1 over time. So I don't think we ever had enough
2 substantial change to need to modify this project
3 execution plan.

4 Q. I believe -- are you -- you were in the
5 room for Mr. Blanc's testimony today, were you?

6 A. Most of it.

7 Q. Okay. I'm going to hand you a document I
8 handed him too. And it is the Ernst & Young phase 1
9 risk assessment point -- report. And have you seen
10 this presentation before?

11 A. Yes. I believe I have.

12 Q. Were you present when it was initially
13 given?

14 A. I don't know about initially given. I
15 can't comment on that.

16 Q. But you've reviewed it before?

17 A. Yeah. I reviewed it very close to
18 contemporaneously to when it was published.

19 Q. Let's go to -- hold on one second. Let's
20 go to page 35. Actually let's go to 31 first and
21 we'll go in order.

22 MS. OTT: And I believe we need to go
23 in-camera again.

24 JUDGE PRIDGIN: All right. Just a
25 moment, please.

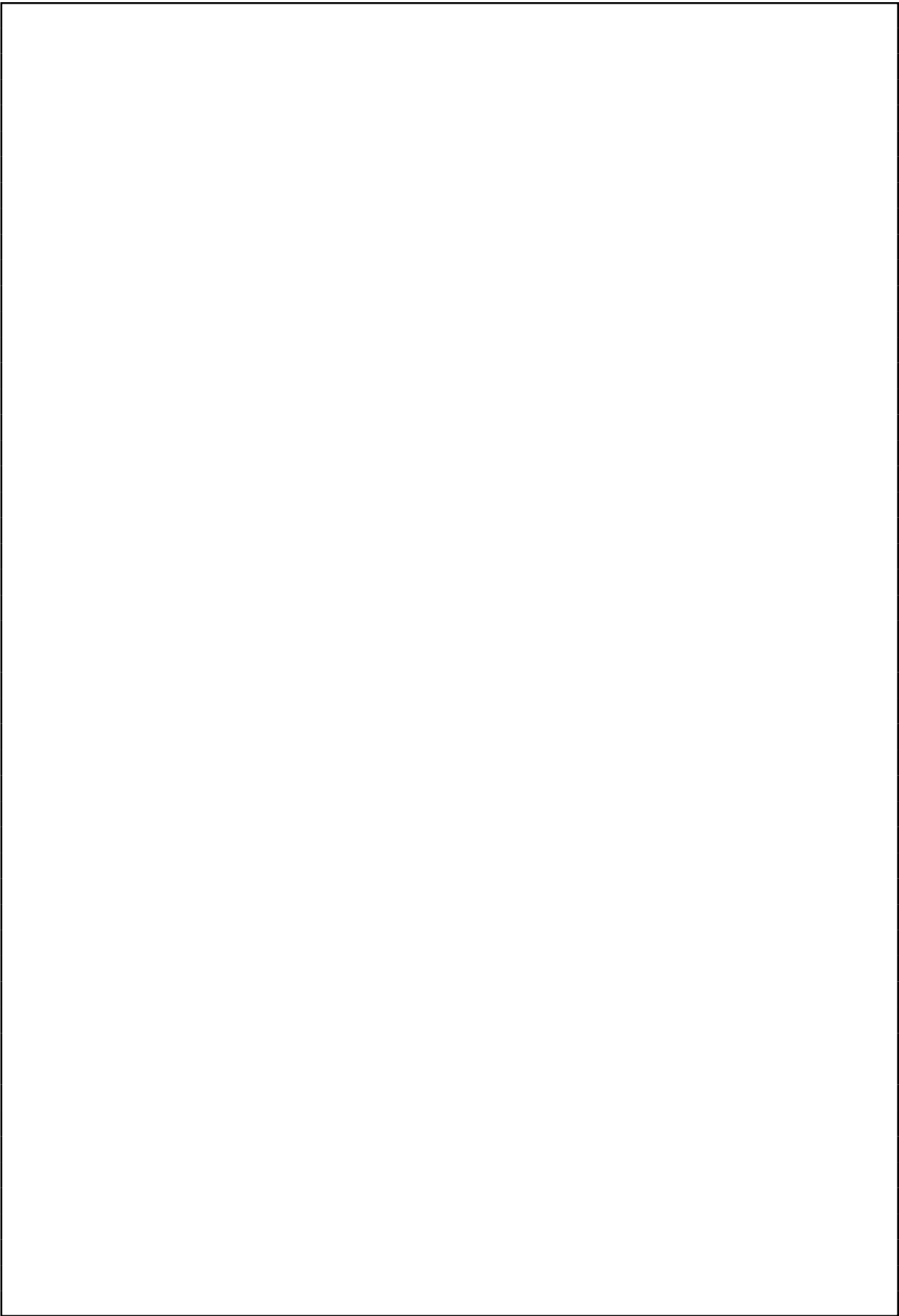
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(REPORTER'S NOTE: At this point, an in-camera session was held, which is contained in volume 16, pages 660 to 663 of the transcript.)

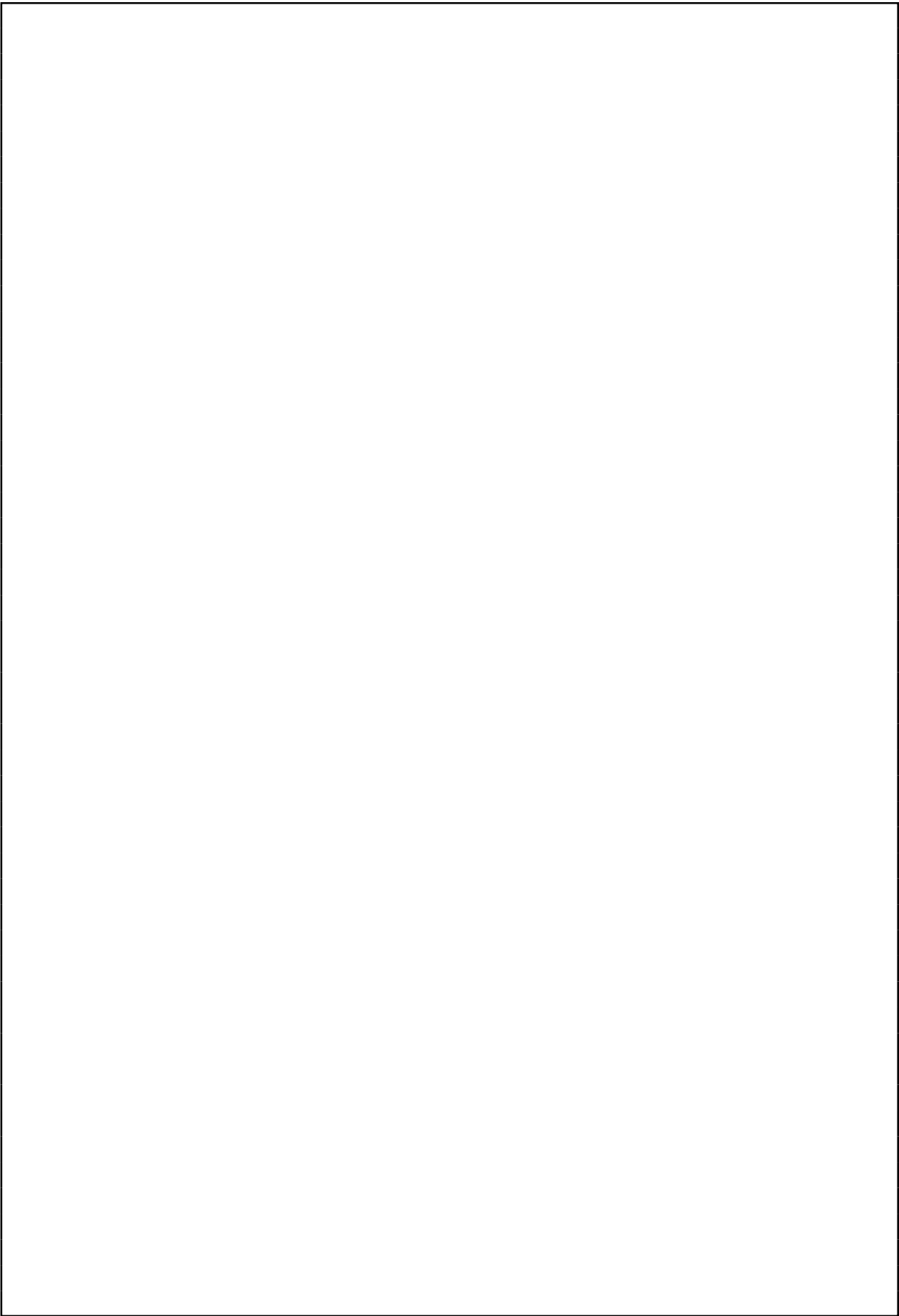
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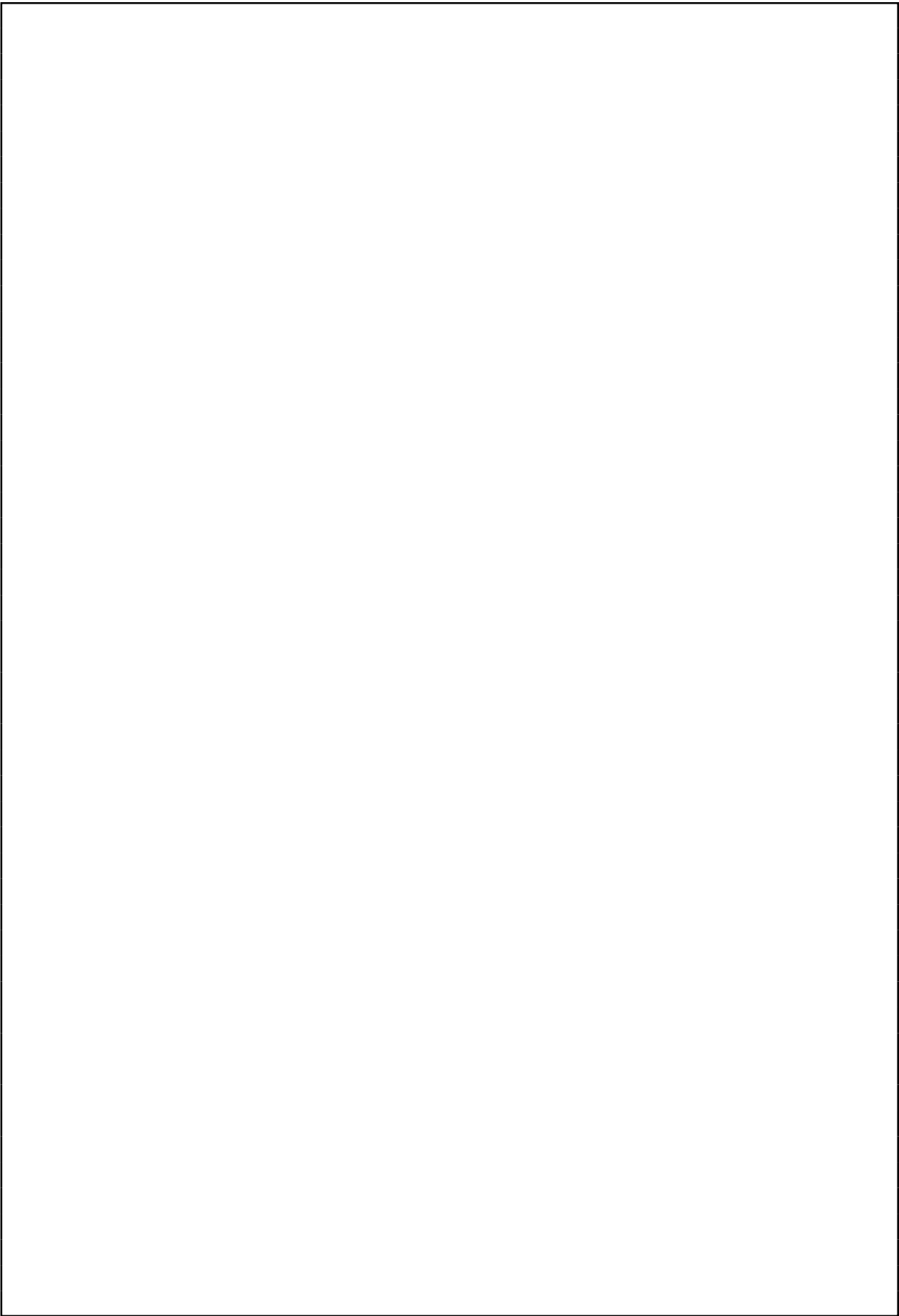
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1 BRENT DAVIS testified as follows:

2 BY MS. OTT:

3 Q. So if this construction project started
4 and -- you said the building of it in late of '06, why
5 did it take until -- Ernst & Young to inform you to
6 create a project execution plan?

7 A. The first point I'd make is there is a
8 lag on these reports. This is dated March 2007.
9 Our -- our audit process was a very interactive
10 process. In other words, as Ernst & Young was
11 developing a lot of these recommendations, we were
12 made aware of them and our project team immediately
13 started activities to address many of their issues.

14 You asked when I first saw this. I don't
15 remember the exact date, but it was sometime in the
16 latter part of 2006. The project execution plan, work
17 began on it in the late part of 2006, early part of
18 2007. Once again, the document and the principles of
19 the document were very much in place well before its
20 publication, final signatures, all that of June of
21 2007.

22 So even though the formal documents may
23 not have come out by then, there was activity taking
24 place that was in concert with that project execution
25 plan and many of those issues addressed in that risk

1 assessment were already in flight and possibly already
2 addressed. That was part of our strategy of using the
3 auditing process to help us manage this project
4 effectively, point those issues out, develop
5 management action plans to get those issues addressed.

6 I'm very proud to say that at the end of
7 this project, there are no open audit findings. Every
8 audit has been answered with an effective mitigation
9 strategy to answer those issues.

10 Q. Okay. So you stated that this June 2007
11 project execution plan was implemented prior to this
12 March 2007 risk assessment report. When -- when was
13 the project execution plan implemented?

14 A. The formal -- the formal date would have
15 been June 2007, but I'll give you an example. I used
16 the procurement section as an example in there
17 earlier. Steve Jones as procurement director was in
18 concert with what was said -- what was outlined in
19 this project execution plan much earlier than that.
20 In other words, the processes and procedures he was
21 following were consistent with this project execution
22 plan.

23 Q. So was it --

24 A. So -- so the key elements of the project
25 that were going on at that time, engineering and

1 procurement, were consistent with this document.

2 Q. So was it your testimony that KCP&L would
3 do something and then formalize it in writing at a
4 later date?

5 A. In this particular instance, that is true
6 because we -- we had the appropriate processes in
7 place to manage those early functions of the project
8 and we memorialized them in this document.

9 Q. Is the only reason you memorialized them
10 because Ernst & Young said it was the most critical
11 document for a project to be run under, so then you
12 created the document?

13 A. It's not the only reason. Ernst & Young,
14 actually their finding was based on a discussion that
15 we had about what a project execution plan should
16 entail. So it was an interactive process with Ernst &
17 Young where they were aware of what we were doing and
18 making recommendations that could assist us in
19 managing the project.

20 Q. So do you agree with Ernst & Young that
21 the PEP is one of the most critical documents in
22 running a construction project?

23 A. Absolutely. And it did assist us in
24 managing the project for the rest of the, what,
25 four-plus year life of the project.

1 Q. But you never went back and modified or
2 changed as the scope of the project changed?

3 A. Because we felt like, in general, we were
4 still in -- in concert with what this guidance
5 document said.

6 Q. Did you ever feel it was necessary to go
7 back and have somebody adopt the sections that it --
8 on page 36?

9 A. Which section is that?

10 Q. On assurance, I believe. The title on
11 the top of the page is assurance. That wasn't
12 important for somebody to go back and adopt and sign?

13 A. You know, at -- without going back and
14 knowing the exact time frame of this, within this
15 document we did have a quality assurance and quality
16 control program. It was a very important part of
17 our -- our monitoring of the contractor's quality. So
18 even though this does not have a signature on it, it
19 does not mean that we weren't fulfilling the function.
20 We were.

21 Q. Let's go to page 4.

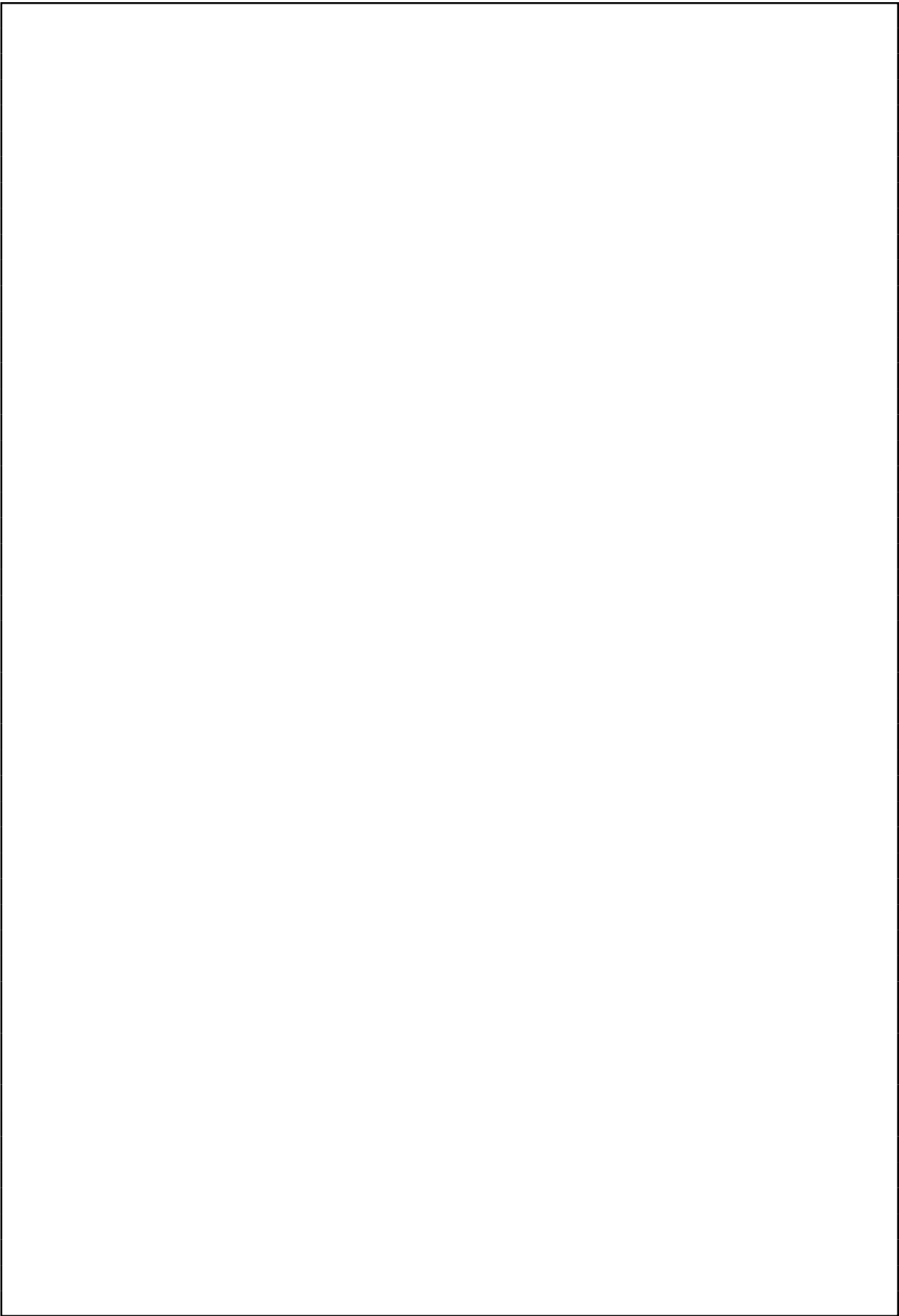
22 MS. OTT: I think we'll have to go
23 in-camera again. Of the PEP report.

24 JUDGE PRIDGIN: All right. Just a
25 moment, please.

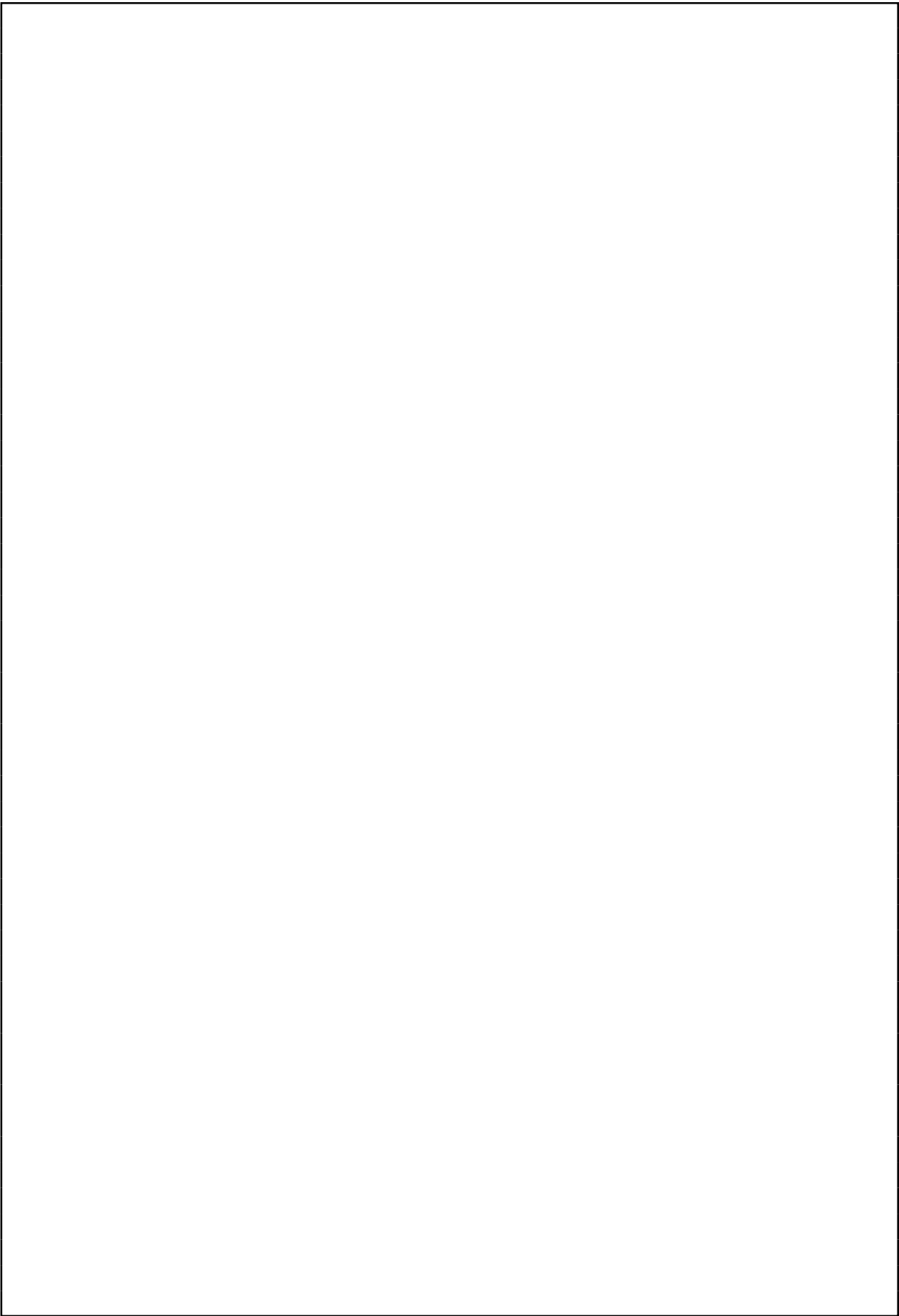
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(REPORTER'S NOTE: At this point, an in-camera session was held, which is contained in volume 16, pages 669 to 671 of the transcript.)

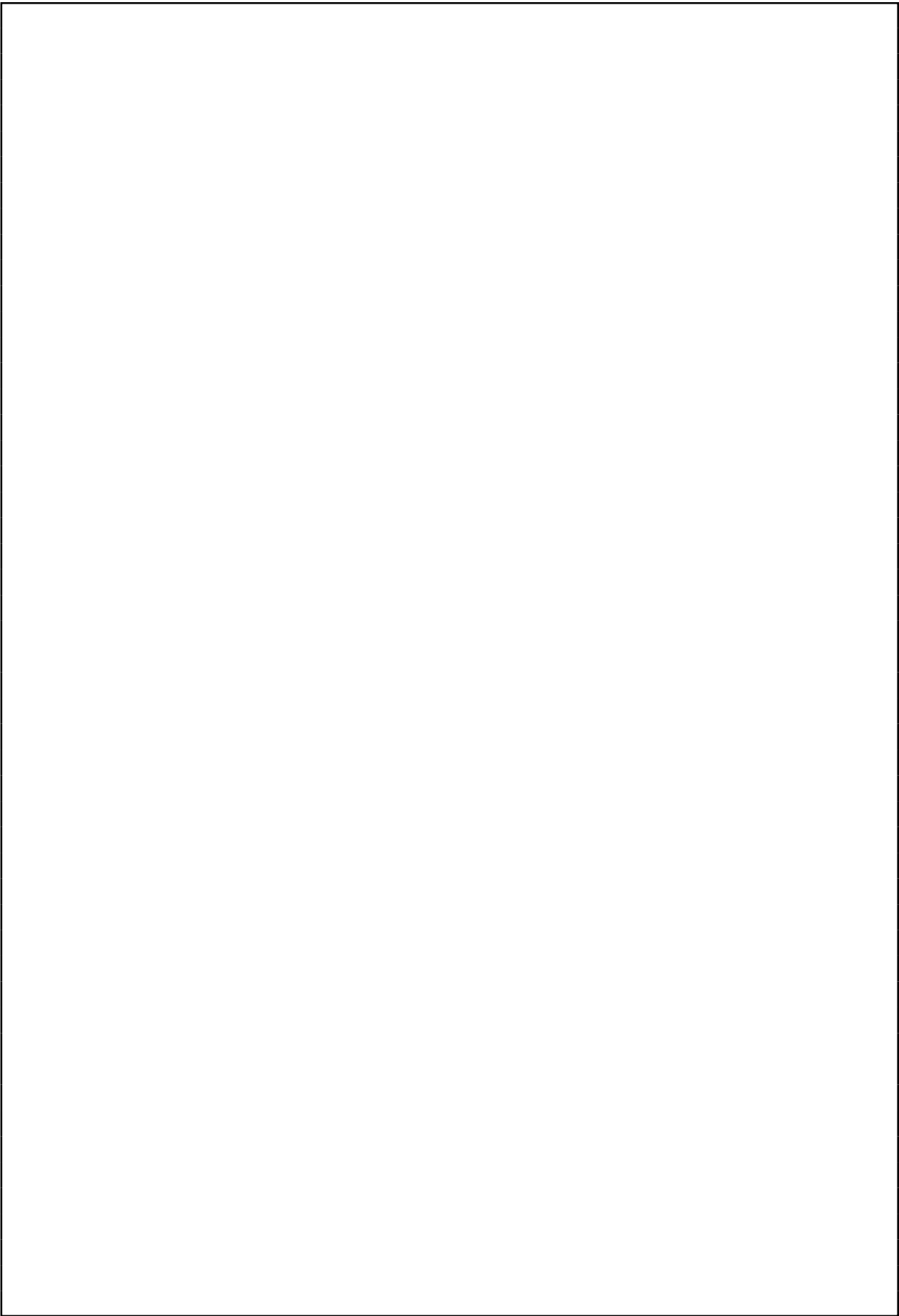
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1 JUDGE PRIDGIN: we're back in public
2 forum.

3 BRENT DAVIS testified as follows:

4 BY MS. OTT:

5 Q. You just stated you had worked with
6 Schiff on a day-to-day basis. Did you approve work
7 that Schiff did?

8 A. Yes, I approved various -- requested
9 various services from shift.

10 Q. So you requested their services. You
11 didn't approve the work that they did?

12 A. Can you define what you mean by
13 "approve"?

14 Q. So you had the authority to request
15 Schiff to provide services to KCP&L?

16 A. Yes. I could ask Schiff for help and
17 they would find a way to help me.

18 Q. And you didn't have to seek authorization
19 from your direct report who you report to in order to
20 engage in their services?

21 A. It depended on the issue, but I'll give
22 you a couple of examples. Schiff assisted us with the
23 investigation of a boiler problem utilizing one of
24 their technical consultants. And I don't -- I know
25 that was an interaction between Schiff and I and they

1 had them onsite within a very short period of time.

2 Q. Were you involved with the hiring of
3 Schiff?

4 A. No, I was not. Schiff was on board with
5 the project whenever I came on the project.

6 Q. Are you familiar with the building of the
7 unit Comanche 3? I'm probably saying that wrong,
8 but --

9 A. I am familiar with that unit.

10 Q. Do you know if Schiff was involved in the
11 building of that unit?

12 A. No, I don't.

13 Q. You don't know if they were involved or
14 they weren't?

15 A. I don't know.

16 Q. Okay. Do you know who Tom Maiman is?

17 A. Yes, I do.

18 Q. You do you know -- are you familiar with
19 his credentials?

20 A. Yes, I'm familiar with his credentials.

21 Q. Do you know what his expertise regarding
22 the development of coal plants is?

23 A. I know that Tom fulfilled various roles
24 at Commonwealth Edison. My personal experience with
25 Tom is he was a very valuable asset to this project

1 team during the time he was on it.

2 Q. But I'm asking specifically related to
3 coal plants. Do you know what his --

4 A. He was -- he was involved in major
5 retrofits of coal plants, construction of nuclear
6 plants, et cetera --

7 Q. Okay. So --

8 A. -- is my understanding during his time.

9 Q. So he was just involved in retrofits of
10 coal plants. Let's try to stick to my questions.

11 MR. HATFIELD: Let him answer them.

12 THE WITNESS: It just involved a retrofit
13 can be more difficult than new instruction so --

14 MS. OTT: And just so -- Mr. Hatfield, if
15 his answers are non-responsive, then I will probably
16 redirect his question back to the question I asked.
17 Just so you know.

18 BY MS. OTT:

19 Q. Do you know who Ron Grant is?

20 A. Yes, I do.

21 Q. And who is he?

22 A. Ron is a scheduler, a senior scheduler
23 who works with Jim Wilson and Associates and provided
24 services to the project earlier -- early in our
25 schedule development phase.

1 Q. On how many occasions did you meet with
2 him?

3 A. Oh, numerous in the 2006, 2007 time
4 frame.

5 Q. What construction experience did you have
6 prior to the Iatan project? You may have gone over
7 some of it with Mr. Schwarz, but --

8 A. Yeah.

9 Q. -- that was a while ago.

10 A. While I was plant manager at Hawthorn, we
11 rebuilt the boiler with new environmental equipment,
12 we -- we constructed and started up a 260-megawatt
13 combined cycle unit, we rebuilt the fuel yard, we
14 constructed two 70-megawatts simple cycle turbines.
15 All that on a very small site where logistics,
16 constructability was a big issue. And all that was
17 completed in about a two, two and a half year time
18 frame.

19 Q. Now, of those projects, which of them
20 were multi-prime?

21 A. I would have considered Hawthorn 5 was
22 very similar to the Iatan project in that the boiler
23 and the AQCS equipment was an EPC with Babcock and
24 Wilcox. We had various multiple prime -- multiple
25 contracts to refurbish the turbine equipment and

1 basically the balance of plant retrofitted, if you
2 will, to increase the output of that by nominally
3 100 megawatts.

4 The two combustion simple cycle
5 combustion turbines would have been EPC contracts with
6 GE. The construction of the combined cycle would have
7 been a multiple prime. Seaman's was the -- basically
8 an EPC contract for the simple cycle combustion
9 turbine. And we contracted with Neuter (ph.) for
10 the -- the -- heat recovery steam generator. B&W was
11 the erector of that. We self-performed the
12 refurbishment of a 100-megawatt Westinghouse turbine
13 that already existed to make the combined cycle
14 portion. So I'd consider that whole project a
15 multi-prime.

16 Q. Now, were you assigned to the
17 construction side of those projects or the operations
18 side?

19 A. Interplay between both. I interacted
20 with Steve Easley on a daily basis. Our staff, the
21 operations staff was responsible for the start-up and
22 commissioning of the combined cycle unit and the --
23 the Hawthorn 5 unit.

24 Q. So were you a part of the construction
25 staff or would you have been classified underneath the

1 operations staff?

2 A. When we first started the project, Steve
3 Easley and I -- he would have been the construction
4 arm, I would have been the operations arm reporting to
5 the same vice president. Later on in the project the
6 ball was passed to the -- so to speak, the ball was
7 passed to the plant for the start-up and commissioning
8 activities. And those are all part of the
9 construction of one of these facilities.

10 Q. So was Iatan the first construction
11 project that you were assigned to the construction
12 staff and not initially to the operations?

13 A. Yes. Purely to the construction staff,
14 that would be correct.

15 Q. Okay. Thank you. What is your
16 experience with a fast track project?

17 A. It would have been those projects I just
18 mentioned. Hawthorn 5 was definitely a fast track
19 project.

20 Q. The entirety of the project was fast
21 tracked or just portions of it?

22 A. No. The entirety of that rebuild.
23 During that period of time it was very important for
24 us to replace that lost capacity and that was as fast
25 as you can do one of those.

1 Q. Was cost a factor on Hawthorn 5?

2 A. Cost was a factor, although less of a
3 factor given that there was some insurance
4 considerations involved. But we still managed costs
5 and made prudent cost decisions.

6 Q. Is there ever a time during a project
7 where you would decide to fast track a portion of it?

8 A. Yeah. There can be that.

9 Q. At what stage in engineering would you
10 make a decision to place a project on fast track?

11 A. I'm not sure I understand your question.
12 what stage of engineering? Can you define that a
13 little bit?

14 Q. At what point of the construction project
15 would you decide to place a portion of it or the --
16 the remaining of it on a fast track pace?

17 A. You know, fast track, accelerated sounds
18 like you're using those terms interchangeably. You
19 know, there are various stages through the execution
20 of a project where you may make a decision to speed up
21 an activity in order to make a later activity more
22 efficient, et cetera.

23 Q. Does the engineering of a project need to
24 be at a certain stage before you initiate procurement
25 activities?

1 A. Yes, it is. Yes, they do.

2 Q. And how -- in your opinion, how far do
3 you think a project needs to be complete before it
4 engages in procurement?

5 A. I believe the -- the question you're
6 asking is a process question. If -- if you want me to
7 talk about the process for a little while --

8 Q. Can you just give a general answer --

9 A. I can give --

10 Q. -- and if there's a percentage of a
11 project --

12 A. I can give you --

13 Q. -- or --

14 A. I can give you a real quick example of
15 using Iatan as the real life, if you'd like.

16 Q. I just want to know at what -- at what --
17 how far engineering needs to be along before you
18 should start engaging in procurement activities?

19 A. Engineering -- as I said earlier, in the
20 early stages of engineering, engineering was on the
21 critical path on this project. So you did everything
22 you needed to do to remove the barriers to get that
23 engineering done as quickly as possible so you could
24 start that construction.

25 I'll give you the example of the

1 foundations. The foundations on Iatan 2 had to be
2 designed to meet a key turnover date to Alstom.
3 Those -- all that engineering information had to get
4 gathered from the various equipment manufacturers.
5 Alstom had to supply those loads that were going to
6 land on those foundations. Burns and Mac had to get
7 those foundations designed in time for our contractor,
8 Kissick, to get those foundations built to meet a key
9 turnover of August 15th of 2007.

10 All that activity was on the critical
11 path early in the light -- life of the project. It
12 was all accomplished on time. Did we accelerate some
13 of those activities in order to make that happen?
14 Yes, we did. That was a decision we made on a
15 day-by-day basis.

16 Q. Okay. But you don't have a percentage
17 then of how far the engineering needs to be in place
18 before you start procurement activities?

19 A. When we -- if --

20 Q. Do you have a percentage? Can you give
21 me a --

22 A. There's not an exact percentage.

23 Q. Okay. Thank you. Okay. Let's go to
24 page 15 of your rebuttal. Here you mention cost
25 overruns. Can you identify for the Commission the

1 cost overruns that have occurred at the Iatan project
2 through August 31st, 2010?

3 A. August 31st, 2010. Are you looking for
4 an exact number?

5 Q. I just want to know if you can identify
6 the cost overruns.

7 A. I could if I had the cost portfolio in
8 front of me based on that date.

9 Q. So you would use the cost portfolio to
10 identify cost overruns?

11 A. Yes.

12 Q. Have you -- have you tried to identify
13 the cost overruns?

14 A. Absolutely. We -- we were engaged in
15 them every day as they occurred.

16 Q. Did you do a report on the cost overruns?

17 A. No. My -- mine would have been a daily
18 review of the change orders, the purchase orders, et
19 cetera that were -- that came in on a daily basis
20 during the life of this project.

21 Q. And are the change order, purchase
22 orders, et cetera is there like a -- in -- is that
23 contained within the cost portfolio?

24 A. The change orders are summarized in the
25 cost portfolio. A change order list feeds into the

1 cost portfolio, which you turned me to my testimony.
2 I believe that's what this section of my testimony on
3 page 15 refers to is our change orders and
4 Mr. Elliott's review of those change orders.

5 Q. Could KCP&L create a report on the cost
6 overruns?

7 A. We can create a change order report that
8 represents many of those cost overruns.

9 Q. Now, would that change order report track
10 costs to the control budget estimate?

11 A. Absolutely.

12 Q. So why didn't you create that report?

13 A. I believe we did. And we gave it to
14 Mr. Elliott and I believe that same report was
15 provided to others within the Staff.

16 Q. So the information provided to
17 Mr. Elliott was just the change orders. Is that what
18 you're saying, that that's the report?

19 A. He got -- he had requested a report for
20 all change orders bot-- above a \$50,000 amount.

21 Q. Did you attend the recent deposition of
22 Mr. Forrest Archibald?

23 A. I attended an early portion of it.
24 Didn't stay very long.

25 Q. Were you in there when Mr. Archibald

1 testified that the Iatan project costs cannot be
2 traced to the R&Os and CPs?

3 A. I don't believe I was in there then.

4 Q. Do you know at what stage of the
5 deposition you left?

6 A. No, I do not. Relatively early. I
7 didn't stay very long. I believe you asked two
8 separate questions though there, if you would like for
9 me to clarify.

10 Q. Okay. Did you hear him that say that
11 costs could not be tracked to R&Os?

12 A. No. I didn't hear him say that, but we
13 were talking about change orders, not R&Os.

14 Q. Were you -- we, as in you and me or --

15 A. You and I.

16 Q. Okay.

17 A. Previously we were talking about change
18 orders. And change orders can very definitely be
19 tracked in the cost reports.

20 Q. Now, are change orders written for
21 estimated amounts?

22 A. Very few of them are. There may be a few
23 that were, but most of them are for -- are executed as
24 a change order whenever the amount is known and
25 defined and agreed to by the contractor.

1 Q. Are change orders drafted to state not to
2 exceed a certain dollar value?

3 A. There can be some in that range depending
4 on the nature of the work.

5 Q. So how would you track a change order
6 that is only to an estimated amount?

7 A. That change order ultimately comes in as
8 a bill and most change orders are for the amount of
9 the final change order. And that is tracked to a
10 contract number and that contract number is on the
11 cost portfolio.

12 Q. But you said "most." So the documents
13 that are not to an exact number and they are to an
14 estimate, how do you track costs to that -- to the
15 change order?

16 A. The final invoices would be charged to
17 that contract number.

18 Q. Would a change -- would all change orders
19 state whether or not the costs are being charged to
20 the contingency budget?

21 A. That's a question you need to address
22 with Mr. Archibald.

23 Q. So how would you track an overrun if you
24 don't know what's in the contingency or what is being
25 charged to the contingency?

1 A. The -- the cost engineers manage the
2 contingency draws. They watch the scope, et cetera.
3 So if you want any detail around the contingency draws
4 and how that compares to scope and how that's managed
5 at a contract level basis, I'd refer you to
6 Mr. Archibald.

7 Q. So if you don't know whether it's being
8 charged to a contingency or if it's a cost overrun,
9 how can you look at a change order and determine
10 whether or not it's being billed to the -- it's being
11 charged to the contingency or if it's a cost overrun?
12 How -- you don't go back on the contin-- the change
13 order and identify that, do you?

14 A. Each change order from Brent Davis's
15 project management perspective stands on its own
16 merit. I look at that change order and whether it's
17 needed or not, whether it's prudent or not based on
18 that individual change order.

19 when I go back and I look at our cost
20 portfolio, as I was explaining earlier, and look at
21 that original CBE amount and compare it to that final
22 amount that we paid that contractor, that gap is a
23 compilation of many, many change orders in most cases.
24 So I've made each one of those individual assessments
25 on the prudence of that change order every time I've

1 signed one of those hundreds of change orders I've
2 signed over the life of this project.

3 Q. But can you track it to a cost overrun?

4 A. Absolutely. You can track it back -- you
5 can track that change order back to that contract
6 number.

7 Q. And does -- and you said that wouldn't
8 establish whether or not it was in the contingency
9 budget or not?

10 A. Normally the contingency draws when we
11 are executing the change order depending on the
12 amount, et cetera. I might call Forrest and say, Hey,
13 is this a contingency draw? How much of it is a
14 contingency draw? He would let me know that at that
15 time.

16 Q. Now, would you agree that cost overruns
17 are above the control budget and the contingency
18 budget?

19 A. Yes. I'd agree with that.

20 Q. Now, going back to the cost overruns,
21 Mister -- do you know who Mr. Meyer is?

22 A. Yes. Dan -- Dan Meyer, I assume you
23 mean. Yes.

24 Q. Yes. And were you in the room for
25 Mr. Blanc when they -- he was discussing some pie

1 chart?

2 A. I was in the room for most of Mr. Blanc's
3 testimony.

4 Q. Now, did Mr. Meyer's attempt to
5 identify -- identify the Iatan project's cost
6 overruns, was that before the November 3rd, 2010 audit
7 report?

8 MR. FISCHER: If you know.

9 THE WITNESS: I -- I can't answer that
10 question. I don't know that.

11 BY MS. OTT:

12 Q. Let's go to page 16 of your rebuttal.
13 And you're discussing senior management. I don't
14 think -- I know you have some highly confidential
15 information on this page, but is there any
16 documentation that shows KCPL's senior management, an
17 internal audit -- internal audit considered all the
18 findings were satisfactory -- satisfactorily closed
19 and the risks were mitigated?

20 A. Are you referring to a particular line on
21 this page of testimony?

22 Q. well, you're just testing the internal
23 audits. And I was just -- were they satisfied with
24 the findings in the audits and were they -- and then
25 the risks that were associated with were mitigated?

1 A. In particular to Burns and Mac's
2 performance or in general?

3 Q. We can start with Burns and Mac's
4 performance.

5 A. There were -- there was more than one
6 audit done in various aspects. I believe there were
7 two or three audits done by Burns and Mac on various
8 issues. Each one of those issues had a -- a
9 management plan, a mitigation plan associated with it.
10 Those plans were executed. And as I stated earlier,
11 to my knowledge, there are no open item audit findings
12 where our executives and our board have not accepted
13 our mitigation plan.

14 Q. Is there any documentation that states
15 that you satisfactorily complied with the audit
16 recommendations?

17 A. I believe our auditing group has that
18 documentation, yes.

19 Q. And what document -- do you know what
20 document that would be contained within?

21 A. Many of them are contained right within
22 the audit reports themselves, an outline of the
23 mitigation plan.

24 Q. But I was asking if they were sas-- the
25 recommendations if they were complied with, if there

1 was documentation that they had been complied with?

2 A. I can't -- I can't answer a specific
3 document.

4 Q. Now, discussing Burns and Mac, did KCP&L
5 receive a discount from them when it negotiated its
6 contract for the Iatan project?

7 A. We did receive a discount.

8 Q. And that was just for the Iatan project?

9 A. That's correct.

10 Q. And if you would use their services under
11 a general service agreement, do you receive a
12 discount?

13 A. I'm not familiar with our current general
14 services agreement with Burns and Mac.

15 Q. Let's go to page 19. I think it's the
16 bottom. I think it goes onto page 20. You state
17 that, Burns and Mac engineering work supported the
18 procurement of the projects.

19 Did Burns and Mac ever provide drawings
20 for the procurement of the project?

21 A. Thousands of drawings were provided.

22 Q. Did Burns and Mac ever miss any key
23 milestones in the project?

24 A. They were late on some design of some
25 foundations. They recovered by that with that

1 virtually all of the foundations were released on time
2 to the various contractors. They were very
3 instrumental in specking our procurement of our
4 engineered equipment and we had virtually no
5 engineering equipment that arrived onsite late, which
6 caused any schedule difficulties.

7 So I would say Burns and Mac's scheduled
8 performance, although there were some early
9 challenges, given them being on the critical path
10 early in the life of the project, their overall
11 schedule impact was minimal.

12 Q. Let's go to page 21. Your -- we'll go
13 back to the Hawthorn project for a minute. Did KCP&L
14 document any information that it learned from its
15 involvement in the Hawthorn 5 project?

16 A. Specific documents I can't recall.

17 Q. Have you ever reviewed a presentation
18 given by Schiff Hardin on November 23rd, 2005?

19 A. Probably not. That would have been prior
20 to my involvement in the project.

21 Q. I'm going to hand you a copy of the
22 presentation and have you look over it for a second.
23 Particularly if you want to look at slide 7.

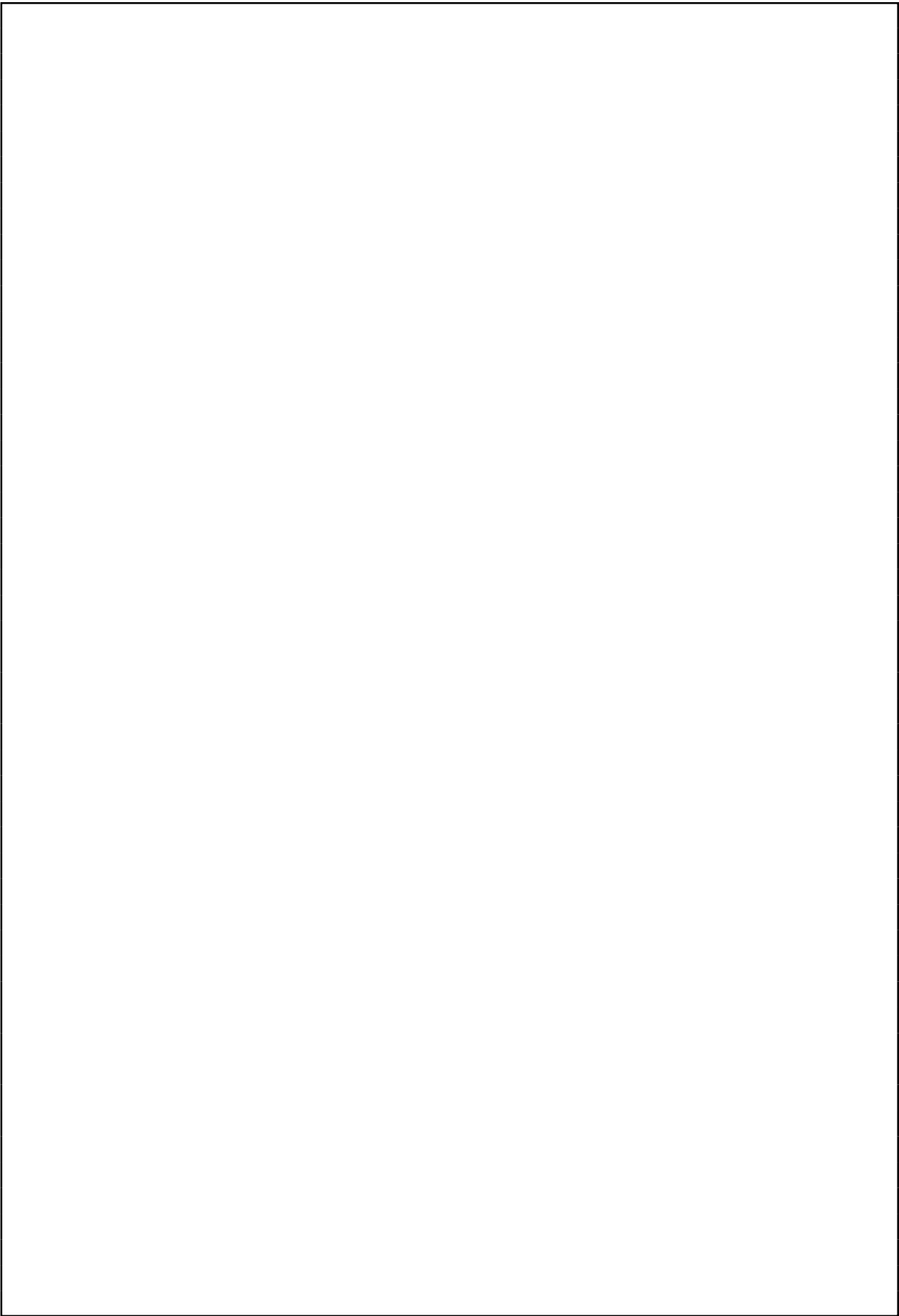
24 MS. OTT: And we're going to have to go
25 in-camera for a moment.

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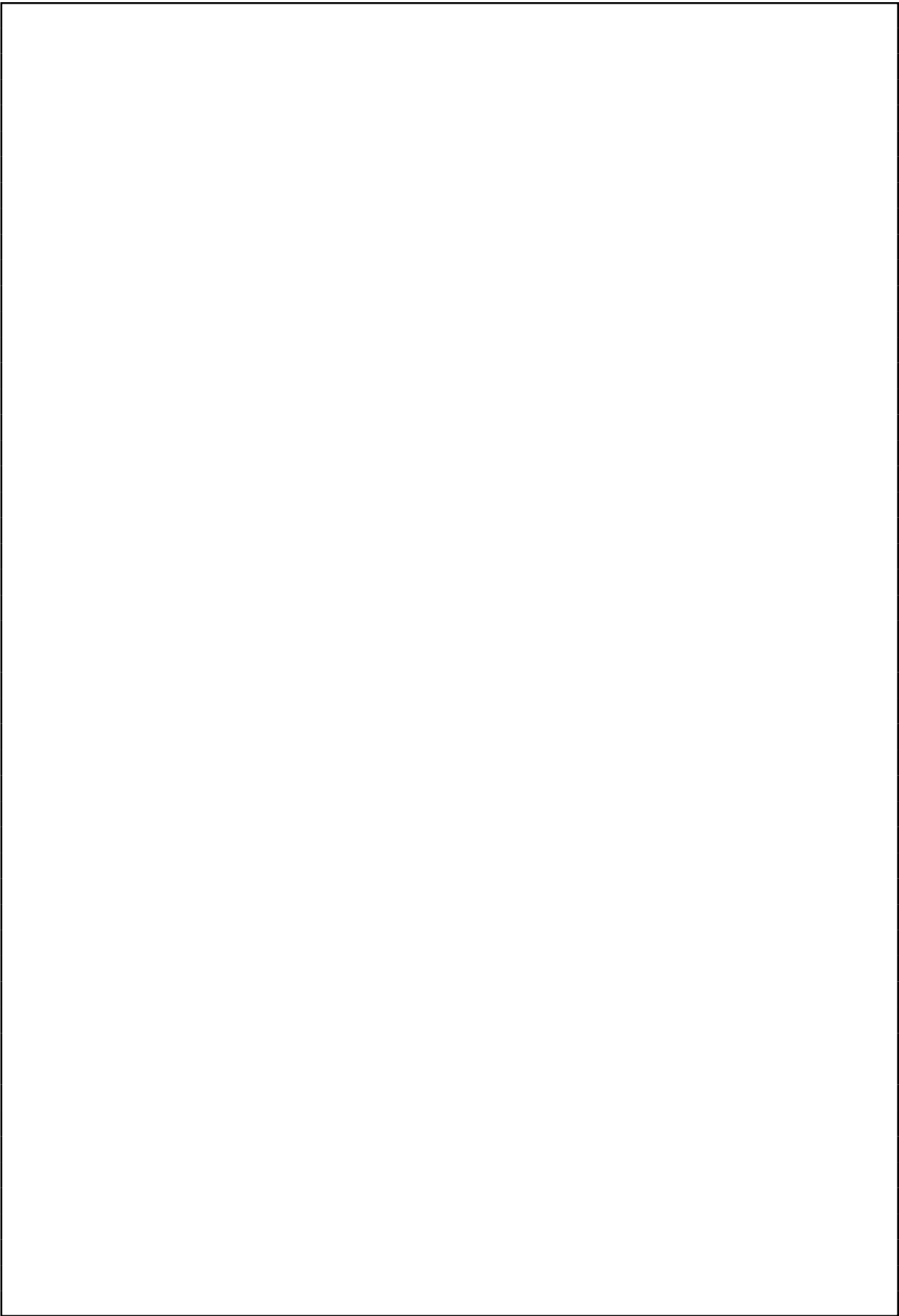
JUDGE PRIDGIN: Just a moment, please.

(REPORTER'S NOTE: At this point, an
in-camera session was held, which is contained in
volume 16, pages 692 to 693 of the transcript.)

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1 BRENT DAVIS testified as follows:

2 A. On Steve's team, he had Jeff Fleenor.
3 Jeff Fleenor was on the Iatan project for a period of
4 time. He had Mack Hargis as the construction manager.
5 Mack Hargis was on this project for a period of time.

6 BY MS. OTT:

7 Q. How long was Mr. Hargis on the team?

8 A. Approximately a little over a year, year
9 and a half.

10 Q. And who was the one you identified before
11 him?

12 A. Jeff Fleenor.

13 Q. And how long was he on the team?

14 A. Oh, Jeff was on the team for over two
15 years.

16 Q. And what plants did Mr. Fleenor build?

17 A. Mr. Fleenor was involved in the Hawthorn
18 5 construction.

19 Q. And Mr. Hargis?

20 A. He was involved in the Hawthorn 5
21 construction. We had various other individuals. Stan
22 Prenger is in -- was involved in the start-up of
23 Hawthorn 5. He was involved in the -- he was start-up
24 manager for basically both projects, Hawthorn 5 and
25 the Iatan projects. Tom Mackin, the plant manager at

1 Iatan was involved in the Hawthorn 5 reconstruction.

2 On a contracted basis or a secunda basis,
3 we had numerous individuals from throughout the
4 industry who had -- have construction experience. I
5 could give you a lot of names. They probably wouldn't
6 mean anything to you. Our start-up team had many
7 years of start-up experience. Our construction team,
8 various secunda people that we hired had many years of
9 construction experience.

10 Q. Would that be ground-up construction of a
11 coal plant?

12 A. Yes. Cul-- a couple other names came to
13 mind real quick.

14 Q. And are --

15 A. Russ Finkel and Paul waddell (ph sps.)
16 were both construction managers on the Iatan project.
17 Paul had installed the fuel equipment at two other
18 locations very similar to the equipment we put in at
19 Iatan. Russ Finkel was the lead electrical contract
20 manager on Hawthorn 5. He did much of the electrical
21 work at Iatan.

22 Q. Now, did you -- did Iatan have -- for the
23 project team have sufficient staffing at the
24 beginning?

25 A. Yes, we did.

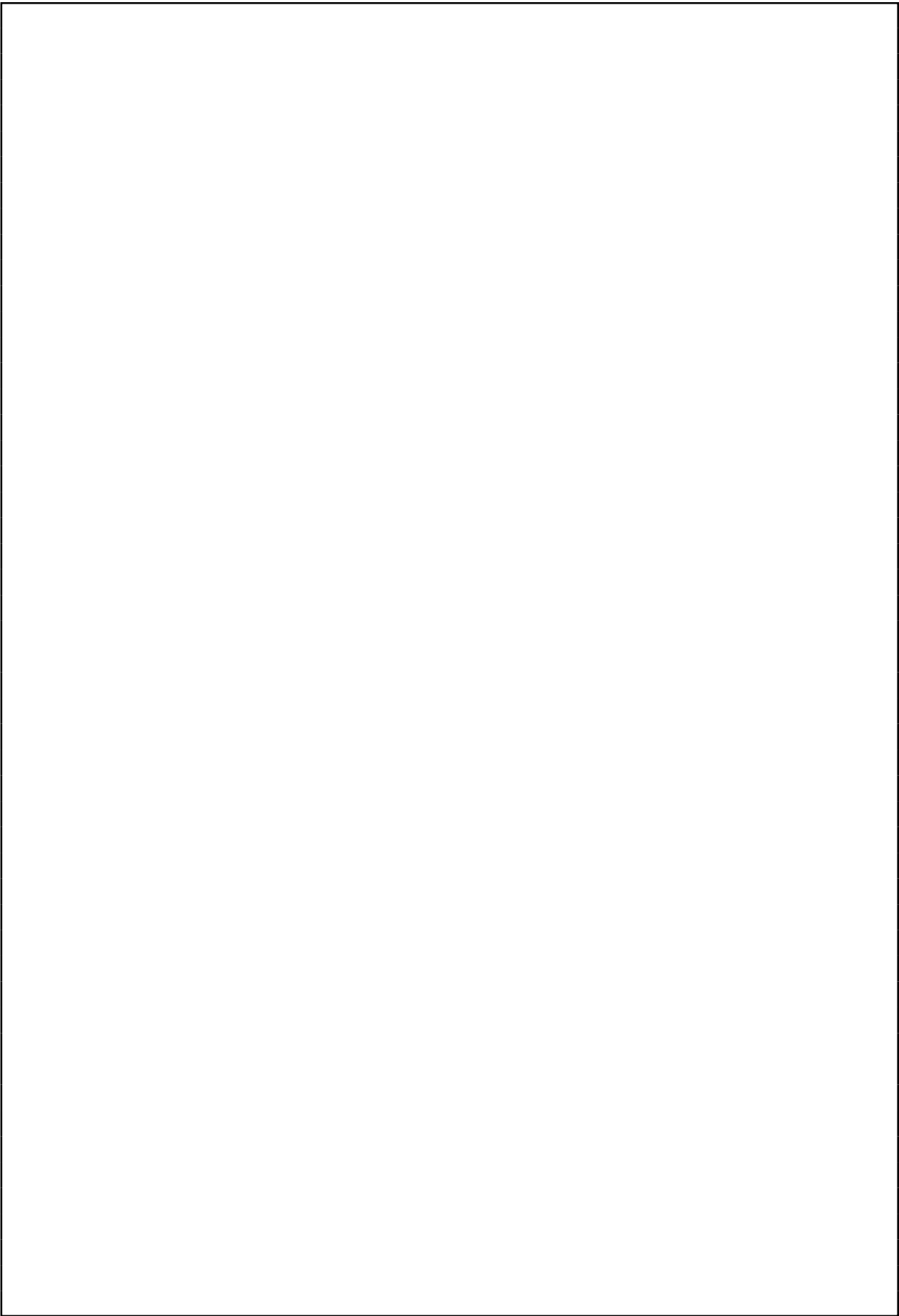
1 Q. I'm going to hand you a recommendation to
2 award letter for general contract for construction
3 services.

4 MS. OTT: We're going to have to go
5 in-camera again.

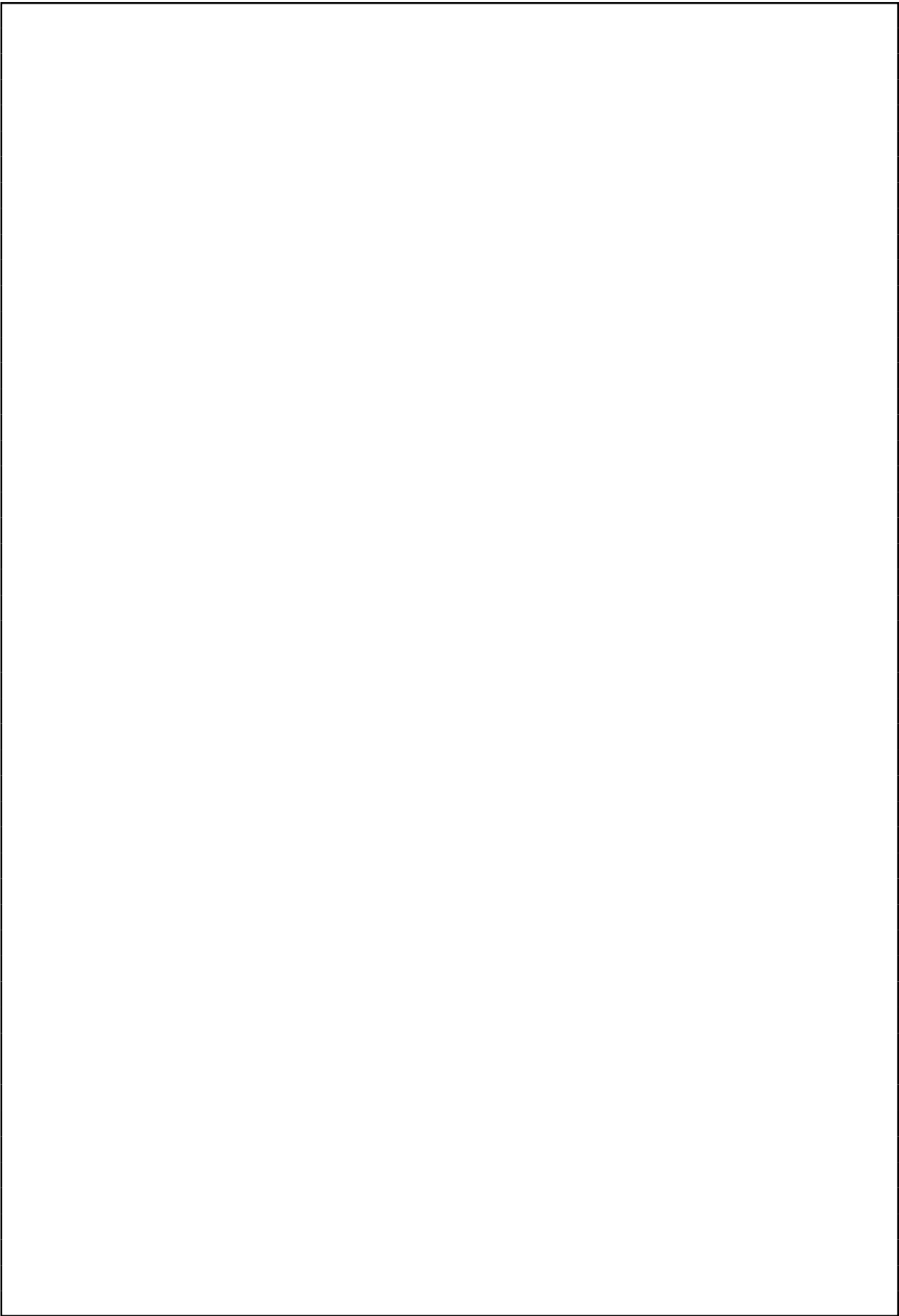
6 (REPORTER'S NOTE: At this point, an
7 in-camera session was held, which is contained in
8 volume 16, pages 697 to 701 of the transcript.)

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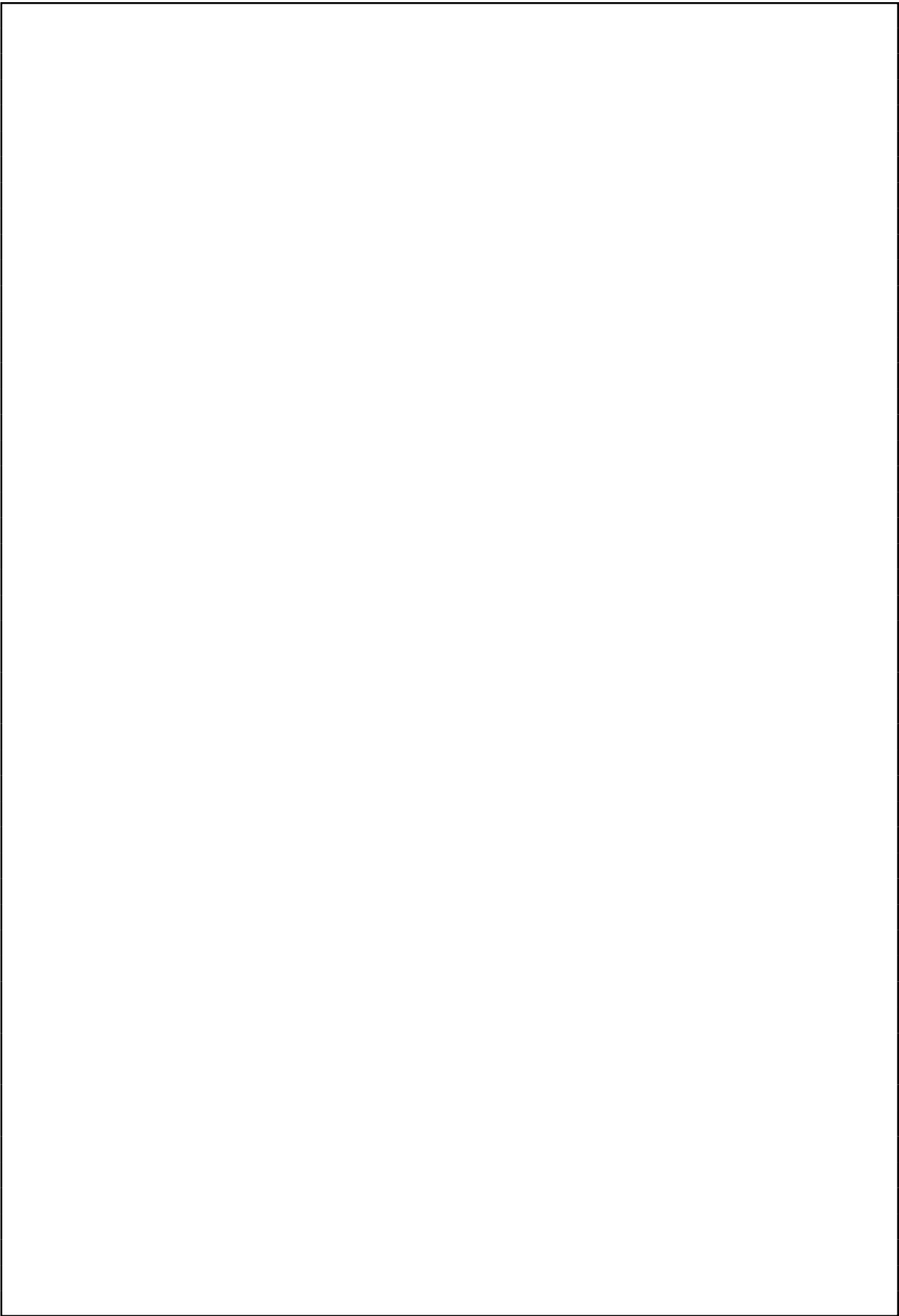
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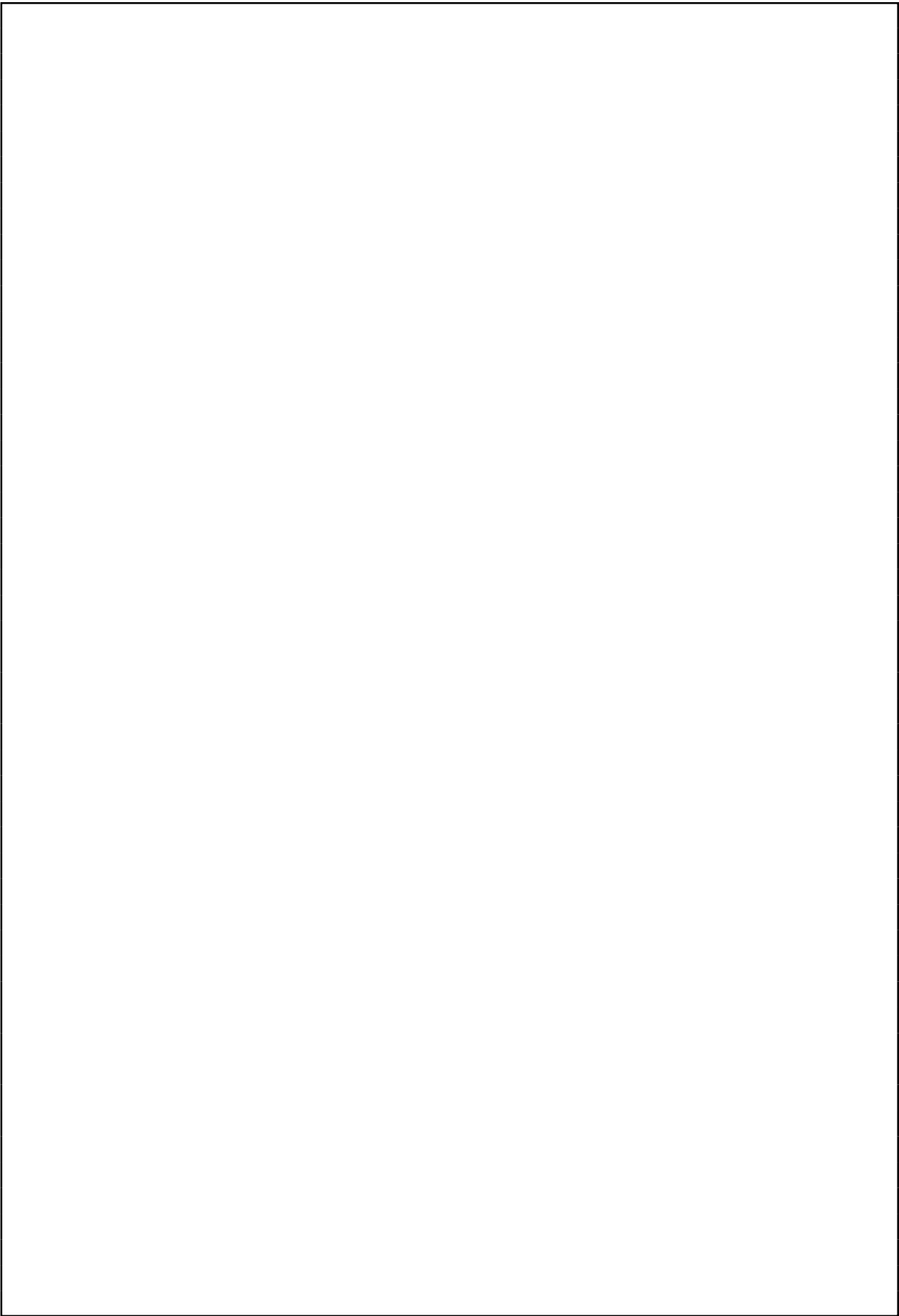
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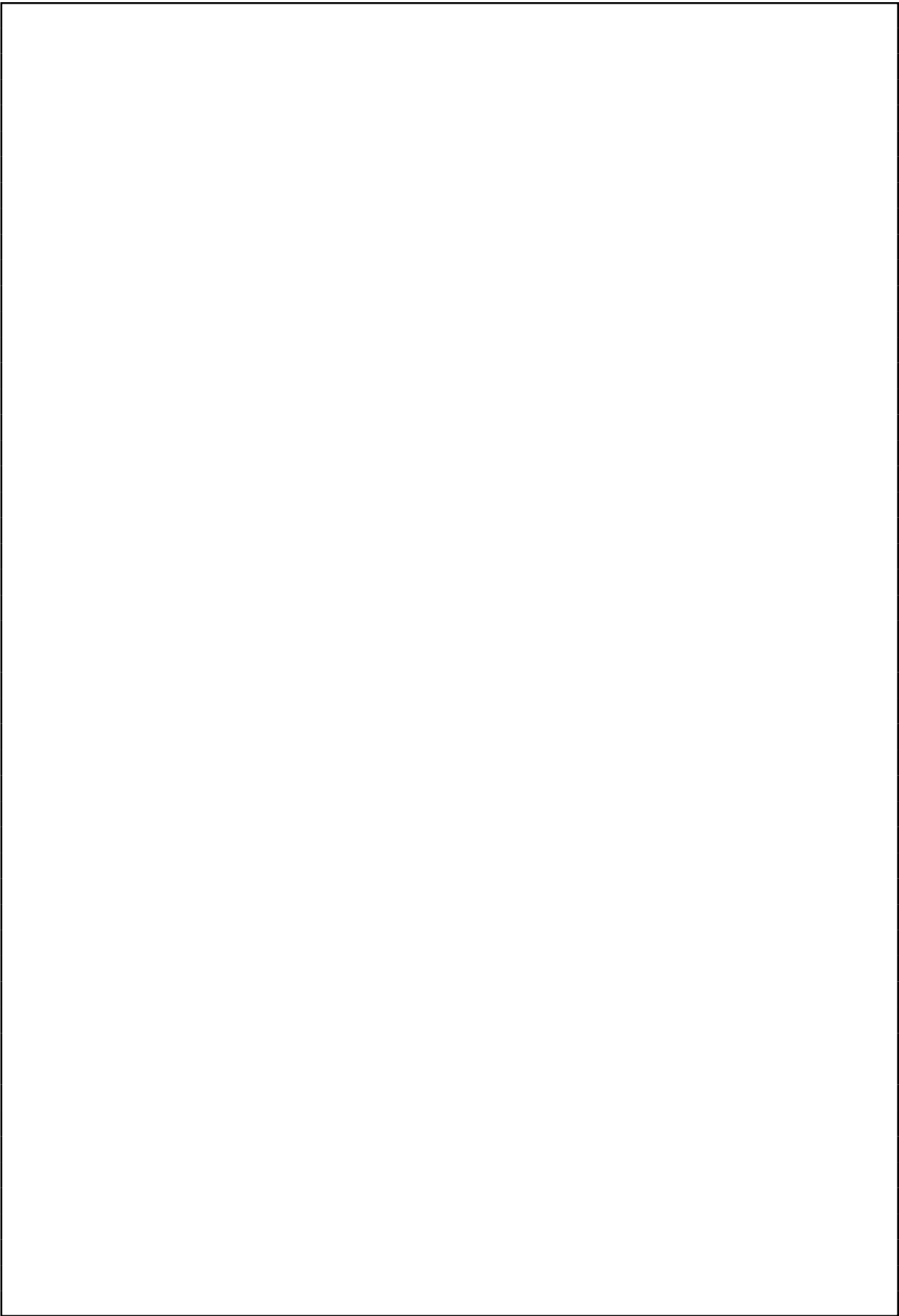
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1 JUDGE PRIDGIN: I'm sorry. We're back in
2 public now.

3 I'm sorry. You can answer the question.
4 I'm sorry.

5 BRENT DAVIS testified as follows:

6 A. Some of them were, some of them were not
7 depending on individual's circumstances. The point is
8 here the leadership was in place and as we grew that
9 project team, those people reported to these
10 individuals that could -- could supply the leadership
11 necessary in each one of those functional areas I
12 mentioned.

13 BY MS. OTT:

14 Q. Actually, let's go back to this
15 recommendation award letter.

16 MR. FISCHER: Ms. Ott, would it be
17 possible to mark that as an exhibit so we can talk
18 about it in -- in the record here a little easier?

19 MS. OTT: Yes. We can mark it as an
20 exhibit. I guess we'd be at Staff Exhibit 250. That
21 would be HC?

22 JUDGE PRIDGIN: That's correct.

23 MS. OTT: And I'll have to have somebody
24 go make copies of them. Okay. Let's go to page 10.
25 And I guess we're going to have to go back in-camera.

1 JUDGE PRIDGIN: That's fine. Could you
2 briefly explain what that is for my notes?

3 MS. OTT: It is a recommendation to award
4 letter for general contract for construction services.

5 JUDGE PRIDGIN: Okay. Give me just a
6 moment, please. And this is HC; is that correct?

7 MS. OTT: That's correct.

8 JUDGE PRIDGIN: all right. Thank you.
9 Let me go in-camera. Just a second, please.

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 volume 16, page 704 of the transcript.)

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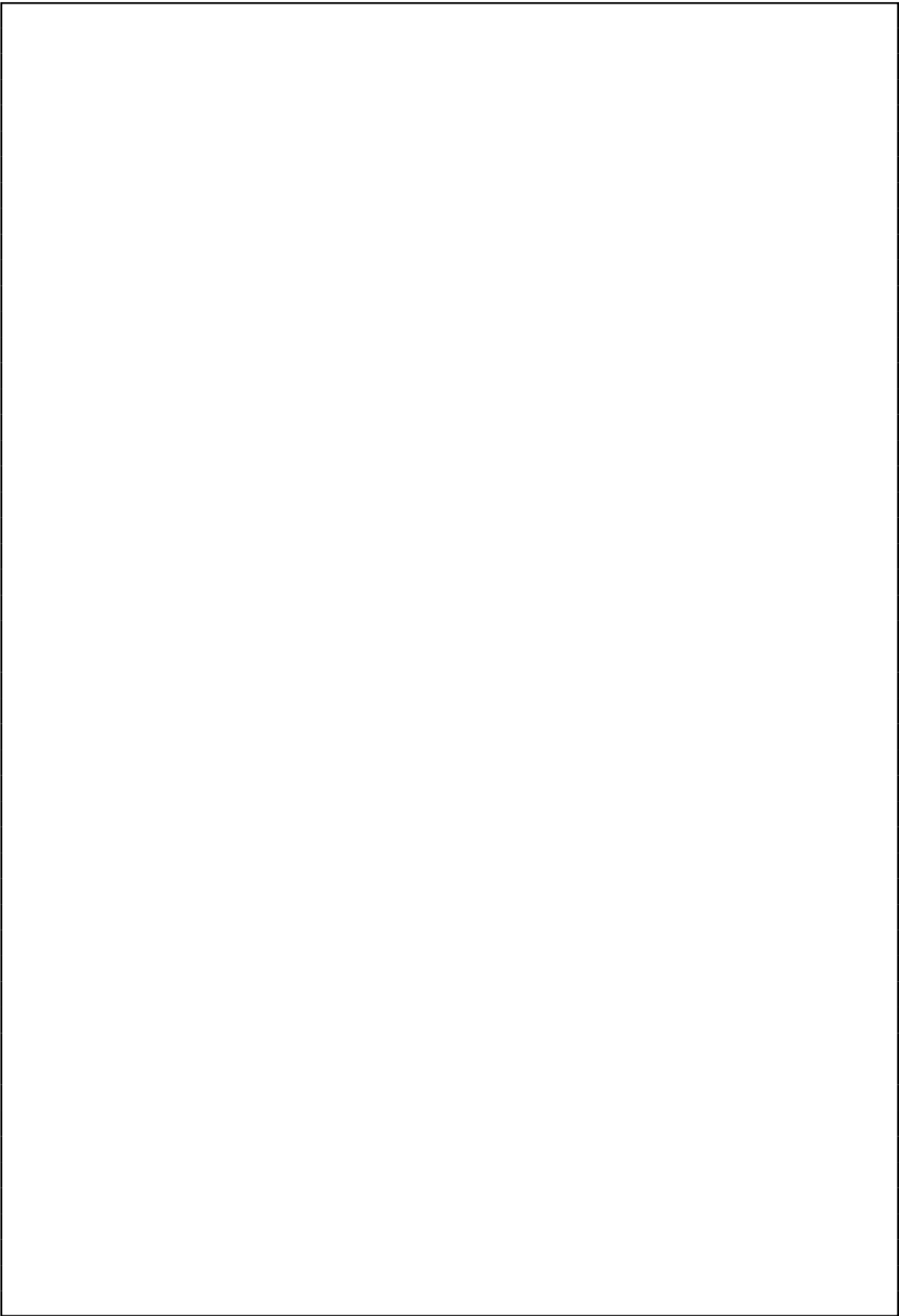
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1 JUDGE PRIDGIN: We are back in public
2 session.

3 MS. OTT: Well, if we're going to make
4 this an exhibit, I don't need to read other things
5 from the document.

6 BRENT DAVIS testified as follows:

7 BY MS. OTT:

8 Q. Do you know who Mr. Grimwade is?

9 A. Yes, I do.

10 Q. And who is he?

11 A. He was the project director. I actually
12 think it's project -- his title was senior project
13 director earlier in the life of the project.

14 Q. Okay. And do you know who Terry Murphy
15 is?

16 A. Yes, I do.

17 Q. Okay. Did they work together on the
18 project?

19 A. For a period of time, yes.

20 Q. How would you describe their
21 relationship, their working relationship?

22 A. I -- I wasn't on the project during that
23 tenure. I don't know that I'd have a good basis to
24 describe that.

25 Q. Have you ever seen any of the senior

1 management -- manager's assessments of the Iatan
2 project?

3 A. Not that I recall.

4 Q. That might be for another witness, but I
5 just wanted to see.

6 Okay. Let's go to page 33 of your
7 rebuttal. Okay. You talk about different schedules
8 here. Was the Iatan project being managed under three
9 different schedules?

10 A. Excuse me. I didn't hear the under.

11 Q. Oh, on -- you talk about different
12 schedules on page 33. Was the Iatan project being
13 managed under three different schedules?

14 A. No. There was one schedule for the
15 entire project.

16 Q. Okay. Just wanted to clarify that.
17 Let's go to page 36 and you talk about this baseline
18 schedule. Was that baseline schedule integrated into
19 the definitive estimate?

20 A. I'm sorry. I didn't hear you again.

21 Q. Was the baseline schedule that you
22 discuss on page 36 integrated into the definitive
23 estimate?

24 A. The -- the control budget estimate was
25 developed and published in January -- December/January

1 time frame of 2006, 2007 and the project schedule was
2 baselined shortly after that. I believe it was April
3 of 2007.

4 Q. Okay. So are you -- so --

5 A. So the --

6 Q. I asked about the definitive estimate,
7 not the control budget estimate.

8 A. They're basically the same --

9 Q. They're the same?

10 A. -- to me.

11 Q. How would you define a definitive
12 estimate?

13 A. For the purposes of this project, I
14 believe early in the life of the project we used those
15 terms interchangeably. My own personal definition, we
16 would have had more engineering complete before I
17 would have called it a definitive estimate.

18 Q. So what's the industry standard?

19 A. That would be a question for Mr. Meyer.

20 Q. Okay. Okay. I just want to make sure I
21 have that clear. So you wouldn't call the control
22 budget estimate a definitive estimate, but you used
23 them interchangeably here?

24 A. For purposes of the interaction of the
25 project, the control budget estimate I believe was

1 also called the definitive estimate as far as
2 nomenclature. At 20, 25 percent engineered, I
3 personally would not have called that a definitive
4 estimate. I would have more likely called our 2008
5 cost reforecast the definitive estimate when 70 to
6 75 percent engineering was complete. There was a
7 whole lot more definition to the project at that time.

8 Q. Do you know who made the decision to use
9 the 20 to 25 percent as the definitive estimate, use
10 that term?

11 A. No, I don't.

12 Q. What is AFUDC to you?

13 A. Allowance for funds used during
14 construction.

15 Q. I'm going into the JLG crane incident,
16 just so -- maybe not. Hold on. Was the turbine work
17 performed during the unit 1 outage in the Iatan 1 in
18 the control budget estimate?

19 A. No. That was a plant project.

20 Q. Who was ultimately held responsible for
21 the turbine -- the cost of the turbine trip?

22 A. It's my understanding that was a joint
23 responsibility between us and General Electric.

24 Q. Do you know if KCP&L sought reimbursement
25 of its share of the cost for the turbine trip?

1 A. I believe there was a sharing of the cost
2 of the turbine trip.

3 Q. Was that from a -- as a result of a
4 stipulation and agreement or was that in the contract?

5 A. I wasn't involved in the exact
6 commercial. I can't answer a lot of those questions.

7 Q. So how come cost related to the turbine
8 trip -- the turbine overhaul, why was that included in
9 the Iatan project?

10 A. It was not included in the Iatan project.
11 It was a plant project.

12 Q. When did KCP&L plan to move the turbine
13 to the turbine pedestal?

14 A. Unit 2 you're talking about?

15 Q. Yes.

16 A. Our original schedule was to have the
17 generator in place when -- basically when it arrived,
18 which would have been in May of 2008, I believe.

19 Q. So why was the Iatan project trailer
20 campus built as an obstruction to move the turbine to
21 its pedestal?

22 A. The I-- the campus relocation I think
23 you're referring to was a result of -- we had planned
24 to have the campus in one location. We were in the
25 early stages of developing that when Kiewit approached

1 us about contracting for the balance of plant job.

2 Kiewit's construction sequence, as we
3 talked about earlier, was different than our original
4 plan. They felt like that area was needed for laydown
5 and to gain access for the major components of the
6 turbine. That was part of their construction plan.
7 We ultimately agreed with that and agreed to fund
8 moving the construction campus or what was there at
9 that time.

10 Q. Did it ever occur to you prior to Kiewit
11 that maybe when you were designing where the campus
12 was going to be located, that that would be a bad
13 location?

14 A. There is no good or bad in this. There's
15 different ways to build one of these things out.
16 Kiewit ultimately convinced us that their method of
17 building it out was more efficient. There's more than
18 one way to skin this cat, so to speak, so Kiewit's way
19 was different and it required moving that construction
20 campus and we ultimately agreed with Kiewit's
21 analysis.

22 Q. How much did it cost for KCP&L to move --
23 to relocate the campus?

24 A. I don't remember the exact amount. Was
25 it in my testimony? I don't recall it.

1 Q. Do you have the estimate?

2 A. It was in the million dollar range. Over
3 a million dollars, I believe. But that's a rough
4 estimate. I don't remember the exact amount.

5 Q. Now, were you ever interviewed by Pegasus
6 Consulting?

7 A. Yes, I was.

8 Q. Did Dr. Nielsen interview you?

9 A. I -- Dr. Nielsen and I sat in on various
10 meetings. I don't remember if it was a direct
11 one-on-one interview.

12 Q. So do you remember if you had a
13 one-on-one interview with somebody from Pegasus?

14 A. Yeah, I did.

15 Q. But you don't who it was with?

16 A. I believe I had a one-on-one with Jack.
17 I don't remember Jack's last name.

18 Q. And were you the only two present during
19 that interview?

20 A. No. I believe there was another
21 representative from Pegasus. I don't remember who
22 that was.

23 Q. Were you represented by counsel?

24 A. No, I was not.

25 Q. Do you know relatively what time you were

1 interviewed by them?

2 A. No. I can't recall. It was -- I can't
3 recall the time frame. It was sometime within the
4 last year, I believe.

5 Q. So you were the project director for
6 Iatan when you were --

7 A. Yeah.

8 Q. -- interviewed?

9 Did you do anything to prepare for that
10 interview?

11 A. Not that I recall.

12 Q. And were you given any prior instructions
13 on -- regarding the level of cooperation during that
14 interview?

15 A. No. I knew that I was -- I was to be
16 open and transparent with Pegasus just like I would be
17 anybody concerning project issues.

18 Q. Did you bring any documents to the
19 interview?

20 A. Not that I recall.

21 Q. Were you shown any documents by Pegasus?

22 A. I can't recall off the top of my head.
23 They may have had some various project documents and
24 asked me questions on them, but I don't recall that
25 specifically.

1 Q. Did you only ever meet with them one time
2 or did you ever have any other meetings or interviews
3 with --

4 A. No. I met more than once with them.

5 Q. Individually or with a group?

6 A. I only recall the one individual meeting
7 and there were other meetings that I attended.

8 Q. And do you have an approximation of how
9 many of those meetings there were?

10 A. Two to four maybe.

11 Q. And how many people were at those
12 meetings?

13 A. Six to ten.

14 Q. Do you recall any of them, who were --
15 who was present?

16 A. I recall Mr. Nielsen.

17 Q. Anyone else?

18 A. Not off the top of my head.

19 Q. And what did you discuss during your
20 interview?

21 A. A whole array of project questions. They
22 were gathering information to do their work.

23 Q. So they were just asking questions
24 related to the project?

25 A. Yes.

1 Q. were they asking substantive questions
2 or --

3 A. schedule, engineering. It ran the whole
4 gamut, as I recall.

5 Q. Did they ask personnel questions?

6 A. I don't recall that specifically, but
7 they may have.

8 Q. Okay. Let's go to page 6 of your
9 surrebuttal.

10 MR. FISCHER: Surrebuttal?

11 MS. OTT: Yes.

12 BY MS. OTT:

13 Q. On line 12 there's a question that says,
14 Mr. Hyneman identifies a number of criticisms
15 regarding the Iatan's project team from assessments by
16 LogOn Consulting. When did you first read these
17 assessments by LogOn?

18 Can you read your answer?

19 A. I had not read these assessments until I
20 received a copy of the schedules attached to
21 Mr. Hyneman's rebuttal testimony.

22 Do you want me to continue?

23 Q. Uh-huh. You can read the entire answer.

24 A. Okay. I knew that certain members of the
25 LogOn team had prepared assessments, though these were

1 never finalized or distributed. I note that each of
2 the LogOn assessments were stamped Do -- Draft, Do Not
3 Distribute on the bottom line -- on the bottom. I
4 recall attending multiple meetings with LogOn team
5 members who discussed many of the observations I read
6 in these assessments.

7 Q. Who is LogOn Consulting?

8 A. LogOn is a -- I would characterize them
9 as a consultant who largely supplied staff
10 augmentation services to us.

11 Q. Do you know when they were hired to work
12 on the Iatan project?

13 A. They came on the project -- Carl had
14 hired them -- Carl Churchman. They would have come on
15 the project sometime summer to fall of 2008.

16 Q. Do you know why they were hired to work
17 on the Iatan project?

18 A. There were some areas we needed some
19 additional staff augmentation. That was my main
20 interface with them. We had -- we had a few of those
21 folks probably peaked at -- I don't know, probably
22 around ten individuals who augmented our staff in
23 various functions. We had -- we had a guy in
24 engineering, a guy in quality, a couple of guys in
25 construction, a guy over in start-up. So they were

1 basically secunda staff.

2 Q. How long did they work on the Iatan
3 project?

4 A. Various -- various individuals on the
5 project worked till relatively recently. I think
6 Forrest had a cost individual that worked -- Forrest
7 Archibald had a cost individual that worked for him
8 until the last month or so, within the last month.

9 Q. Do you know how much KCP&L paid for
10 LogOn?

11 A. No, I do not.

12 Q. Now, did LogOn provide any -- any
13 assessments?

14 A. It's my understanding that they did
15 provide assessments. I think my testimony reflects
16 that. It would have been a -- those assessments would
17 have been a very small portion of the overall. A big
18 portion of their work was that staff augmentation I
19 previously mentioned.

20 Q. Do you know who wrote those assessments?

21 A. Some of those assessments were written by
22 a professor out of Rolla. I don't recall his name.
23 Duke. I remember Duke.

24 Q. And do you know who at KCP&L read the
25 assessments?

1 A. Contemporaneously with the -- when they
2 were written you mean?

3 Q. When they were provided.

4 A. Yeah. I don't know that. I -- I -- I
5 know I did not.

6 Q. Do you know if Mr. Churchman would have
7 read them?

8 A. You know, he and I discussed a few issues
9 that once I read them, I recognized the issue. So
10 whether he read them or not, I can't answer, but I
11 would assume he probably read portions of them.

12 Q. So did you read all of the assessments
13 provided by LogOn?

14 A. You mean consistent with my testimony
15 once I knew they were out there? I didn't read them
16 all.

17 Q. Do you know if anyone read them all?

18 A. I can't answer that.

19 Q. Now, did you approve change orders for
20 LogOn?

21 A. I'm sure my signature's on some change
22 orders for the secunda staff, for the staff
23 augmentation people.

24 Q. I'm going to hand you some copies.

25 A. I wish I could turn and talk toward you,

1 but you're in my back.

2 COMMISSIONER KENNEY: I'm okay.

3 THE WITNESS: You're okay?

4 COMMISSIONER KENNEY: I'm good.

5 BY MS. OTT:

6 Q. Let's see. I just handed you some change
7 orders.

8 JUDGE PRIDGIN: Ms. Ott, I've got
9 somebody asking for a break. Do you know about how
10 much longer your questioning will last?

11 MS. OTT: No. I mean --

12 JUDGE PRIDGIN: Five minutes, two hours?

13 MS. OTT: Half hour, 45 minutes.

14 JUDGE PRIDGIN: All right.

15 MS. OTT: I can't --

16 JUDGE PRIDGIN: I guess let me take a
17 quick break and then we'll maybe discuss with counsel
18 how late they're interested in going this evening
19 especially given that it's snowing outside. And if we
20 could go off the record and take a break and come back
21 on in about ten minutes.

22 (A recess was taken.)

23 JUDGE PRIDGIN: All right. We're back on
24 the record. Before we continue with -- with evidence,
25 just let me inquire of the parties if you have any --

1 how do I put this? what your preference would be, if
2 you want to keep going until we reach a more natural
3 break this evening or due to the weather if you're
4 more comfortable just calling it a night and -- and I
5 am going -- we're going to have to get going again at
6 8:30 in the morning. We're going at a very slow pace.
7 And, you know, weather notwithstanding, I mean we're
8 already behind and it's really just the second day of
9 the hearing. So I'm -- I'm fine with whatever.

10 MR. FISCHER: We're here at your
11 pleasure, Judge.

12 JUDGE PRIDGIN: Well, anyone else?

13 MR. SCHWARZ: Well, I have told my
14 witness to come from Key West on Monday. And if he's
15 not -- I mean at the rate we're going, I'm not sure
16 that we'll be ready to take him Monday or Wednesday
17 or --

18 JUDGE PRIDGIN: No, I understand.

19 MR. FISCHER: Judge, regarding
20 Mr. Drabinski, we're certainly willing to take him out
21 of order, if necessary.

22 JUDGE PRIDGIN: That's fine. And because
23 I think -- you know, because it sounds like we would
24 be going for a while before we reached a natural break
25 and because of the snow, it might be safer to go ahead

1 and call it a night. But there's certainly the
2 possibility of staying considerably later than this
3 throughout the hearing until we get caught up or if we
4 need to move witnesses around, issues around,
5 whatever. I mean I'm just -- I'm trying to be mindful
6 of people's safety and trying to get through the
7 hearing as well.

8 MR. FISCHER: I did hear they're calling
9 for substantial snow tonight.

10 JUDGE PRIDGIN: Yeah, I would think so.
11 I mean, it's my preference to let people start getting
12 wherever they need to go to get in for the evening and
13 starting again at 8:30 in the morning and, you know,
14 hopefully -- if we don't start catching up soon, we'll
15 have to start to continue staying in late in the
16 evenings to start to catch up.

17 MS. OTT: I was just going to say, I
18 can't guarantee this is short.

19 JUDGE PRIDGIN: No, I understand. I
20 appreciate your honesty.

21 MS. OTT: I don't want everyone else --

22 JUDGE PRIDGIN: No. And I told Ms. Ott I
23 would rather her tell me -- you know, not do the
24 typical, Oh, it's just a few questions, Judge, and
25 then -- you know, I've done that. We've all done

1 that. So I appreciate her honesty.

2 I think it's better that we call it an
3 evening and resume at 8:30 with Ms. Ott continuing to
4 cross-examine Mr. Davis. Is there anything further
5 from counsel before we adjourn for the evening?

6 MR. FISCHER: Judge, if this is a natural
7 breaking point, I have been made aware of a date that
8 is wrong on the Exhibit 66 that I used at the opening
9 statement. It's the meetings of the Public Service
10 Commission Staff.

11 The very first date on that indicates
12 that the stipulation and agreement was signed
13 August 25th of 2005. That is incorrect. The Missouri
14 stipulation and agreement was actually signed
15 March 28th, 2005 and I believe it was approved by the
16 Commission on August 23rd of 2005. So I'd just like
17 to correct that for the record.

18 JUDGE PRIDGIN: Mr. Fischer, thank you.
19 welcome back. I think I'm going to end
20 it.

21 COMMISSIONER KENNEY: Oh. You looked at
22 me. I thought you were waiting on me to do something.

23 JUDGE PRIDGIN: No, no. Not at all. Is
24 there anything else from the parties before we adjourn
25 for the evening? All right. Thank you. We will

1 stand in recess until 8:30 a.m. Thank you. We are
2 off the record.

3 (WHEREUPON, the hearing was adjourned
4 until 8:30 a.m. January 20, 2011.)

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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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KCP&L Exhibit No. 249-HC
Construction Project Effectiveness,
May 2007,
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