

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 21, 2011

Jefferson City, Missouri

Volume 19

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In the Matter Of the Application )  
of Kansas City Power and Light )  
Company for Approval to Make )  
Certain Changes in Its Charges ) 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

REPORTED BY:  
Jennifer Leibach, CCR No. 1780  
TIGER COURT REPORTING, LLC

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1 JUDGE PRIDGIN: Good morning. We are on the  
2 record. It is about 8:45 a.m. I believe we are on Friday,  
3 January 21st, and I think, as we left it last night,  
4 Mr. Giles would be the next witness. He is on the stand, and  
5 I will administer an oath here in just a moment.

6 Is there anything from counsel before we move  
7 on to Mr. Giles?

8 MS. OTT: Staff would just like to offer  
9 Exhibit 250.

10 MR. FISCHER: No objection.

11 JUDGE PRIDGIN: 250, and that's HC. That's  
12 been offered. I hear no objection. It is admitted.

13 (Exhibit No. 250 was received into evidence.)

14 JUDGE PRIDGIN: Anything further from counsel  
15 before Mr. Giles is sworn? All right.

16 (The witness was sworn.)

17 JUDGE PRIDGIN: Thank you very much, sir. If  
18 you would, please have a seat. And, Mr. Fischer, anything  
19 before he stands cross?

20 MR. FISCHER: Yes, Judge.

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. FISCHER:

23 Q. Mr. Giles, would you state your name and  
24 address for the record?

25 A. Chris Giles, G-i-l-e-s, 1200 Main Street,

1 Kansas City, Missouri.

2 Q. Are you the same Chris Giles that caused to be  
3 filed in this case direct and rebuttal testimony?

4 A. Yes.

5 Q. For just your information, your direct has  
6 been marked as 24-HC and -NP and your rebuttal 25-HC and -NP.

7 Do you have any corrections or changes you  
8 need to make to your testimony or exhibits?

9 A. No.

10 Q. If I were to ask you the questions that are  
11 contained in your pretrial testimony today, would your  
12 answers be the same?

13 A. Yes.

14 Q. And are they true and correct to the best of  
15 your knowledge and belief?

16 A. Yes.

17 Q. And do your attached exhibits accurately  
18 depict what they're intended to show?

19 A. They do.

20 MR. FISCHER: Judge, I'd move for the  
21 admission of KCP&L Exhibit 24-HC and -NP and Exhibit 25-HC  
22 and -NP and tender the witness for cross.

23 JUDGE PRIDGIN: Any objections? Hearing none,  
24 KCP&L 24 and 25, both NP and HC, are admitted. Before we  
25 proceed to cross, just while I'm thinking of it,



1 Commissioners Kenney and Gunn are participating from the  
2 St. Louis office, and so you may occasionally see them on  
3 your screen, and there may be a bit of a delay if they ask  
4 questions or say something, so I apologize.

5           we will work through that, and I apologize for  
6 the technological problems we had this morning. I believe  
7 we're all squared away. I think we'll be fine. We may just  
8 have a little bit of a delay if they speak, so try to be  
9 patient, and we'll work with that.

10           All right. Let me see who has  
11 cross-examination. Ms. Ott, I assume you will?

12           MS. OTT: Yes.

13           JUDGE PRIDGIN: Mr. Mills?

14           MR. MILLS: A little bit.

15           JUDGE PRIDGIN: Mr. Schwarz?

16           MR. SCHWARZ: No.

17           JUDGE PRIDGIN: Mr. Mills, to you, sir.

18                           CROSS-EXAMINATION

19           QUESTIONS BY MR. MILLS:

20           Q.       Mr. Giles, let me give you a hypothetical  
21 about a construction situation in a change order.  
22 Hypothetically speaking, say the design drawings prepared by  
23 Burns & Mc put a particular component in upside down. When  
24 you get to the field, the component is installed according to  
25 the drawings; later on someone realizes that's upside down.

1 would a change order be issued to correct that  
2 if the component needed to be put in the right way?

3 A. My response would be I think so, but those are  
4 questions best for Mr. Archibald.

5 Q. Okay. And really -- okay. So let's assume  
6 that it would be issued for a situation like that.

7 Under those circumstances, would it be prudent  
8 for KCP&L to put the component in the right way?

9 A. I'm not linking your two questions.

10 Q. Okay. Assuming that the component is  
11 important and it needs to be put in the right way to work,  
12 would it be prudent for KCP&L to issue a change order to make  
13 sure that component is put in the right way?

14 A. Yes.

15 Q. Would it be reasonable for ratepayers to pay  
16 the cost of that correction?

17 A. Yes.

18 Q. Why is that?

19 A. Well, no construction project is perfect. I  
20 mean, there will be errors, there will be omissions, and as  
21 long as those errors and omissions aren't prudent -- or  
22 imprudent, it's part of the project.

23 Q. Okay. Let me take that hypothetical a bit  
24 further. Let's assume that it was an unreasonable mistake  
25 for that component to be drawn in wrong, it was just a

1 bone-headed move, nobody -- somebody was way too tired,  
2 working way too hard would have ever made that mistake (sic).

3 Does that change your answer any?

4 A. No.

5 Q. Okay.

6 MR. MILLS: No further questions.

7 JUDGE PRIDGIN: Mr. Mills, thank you.

8 Ms. Ott?

9 CROSS-EXAMINATION

10 QUESTIONS BY MS. OTT:

11 Q. Good morning, Mr. Giles.

12 A. Good morning.

13 Q. Have you had any formal training in project  
14 management?

15 A. No.

16 Q. How about formal training in project cost  
17 management?

18 A. I have an MBA degree, and my concentration was  
19 accounting and cost control, so I have an education  
20 background. I've not worked as a cost engineer, cost auditor  
21 or anything of that nature.

22 Q. Do you have any formal training with project  
23 integration?

24 A. No.

25 Q. Project scope management?

1 A. Are you referring to project as in a  
2 construction project or any type of project?

3 Q. Any type of project.

4 A. I have years of experience as a manager,  
5 director, and officer of KCP&L where I've been involved in  
6 many projects that I would have managed the project.

7 Q. So it would be your work experience that's  
8 your formal training?

9 A. Yes.

10 Q. Do you have any formal training in project  
11 scope management related to construction?

12 A. No.

13 Q. Do you have formal training in project time  
14 management?

15 A. Are you referring to construction or projects  
16 in general?

17 Q. How about construction?

18 A. No.

19 Q. Do you have formal training related to  
20 construction in project quality management?

21 A. No.

22 Q. How about formal training in construction  
23 related to project procurement management?

24 A. No.

25 Q. And formal training with -- related to

1 construction in project risk management?

2 A. No.

3 Q. Are you a project management professional?

4 A. No.

5 Q. Are you an expert on matters related to  
6 auditing?

7 A. I have 35 years experience with Kansas City  
8 Power & Light Company related to rate case audits and  
9 prudence audits. I don't know that that would qualify me as  
10 an expert, but I have significant experience with them.

11 Q. Have you ever done a -- completed an audit?

12 A. No. As I mentioned before, I've never worked  
13 as an auditor.

14 Q. Okay. So are you an expert in cost  
15 accounting?

16 A. I have a background in cost accounting. I  
17 don't know how to quantify myself as an expert or not.

18 Q. Are you an expert in cost engineering?

19 A. No.

20 Q. Are you a professional engineer?

21 A. I am not.

22 Q. And are you a certified public accountant?

23 A. No.

24 Q. And from reading your background, your  
25 undergraduate degree is in economics?

1 A. Yes.

2 Q. And you said you hadn't performed an audit,  
3 but I think we were talking about rate cases. Have you ever  
4 performed a construction audit?

5 A. No. As I stated earlier, I have extensive  
6 experience with prudence audits and rate case audits, but I  
7 have never worked as an auditor.

8 Q. Now, you stated you have been on different  
9 rate cases throughout your tenure at KCP&L.

10 Are you familiar with the term cost of service  
11 versus rate design used in a rate case?

12 A. Yes.

13 Q. What does cost of service mean to you?

14 A. Exactly what it states. It's the cost to  
15 serve customers.

16 Q. And what does rate design mean to you?

17 A. Rate design is the tariffs or pricing that  
18 would reflect the cost of service.

19 Q. And in your experience with rate cases here at  
20 the Missouri Public Service Commission, have you ever filed  
21 pre-filed testimony in rate cases?

22 A. Yes.

23 Q. And what area did you primarily serve as a  
24 witness in?

25 A. I have served in many different areas over my

1 career.

2 Q. which was your primary? were you more of a --  
3 did you do rate design or cost of service?

4 A. Both.

5 Q. which one did you primarily do?

6 A. There was not a primary role for me in those.  
7 I was manager, director, senior director and vice-president  
8 of regulatory affairs during my career, and I've testified on  
9 a variety of issues, including cost of service, allocations,  
10 specific issues related to adjustments by Staff, rate design,  
11 a number of topics.

12 Q. Okay. What type of revenue requirement issues  
13 did you file testimony on in the ER-2009-0089 case?

14 A. I don't recall.

15 Q. In this current rate case, what revenue  
16 requirement issues did you file testimony on?

17 A. I am totally -- my testimony, both my direct  
18 and my rebuttal testimony, are related to the prudent  
19 decisions of the Iatan 1 and 2 projects.

20 Q. Do you remember any of your testimony from the  
21 ER-2009-0089 case, what subject matters you would have  
22 provided testimony on?

23 A. I would be the policy witness for the company,  
24 including regulatory. So my overall testimony would have  
25 covered just about every topic in the case.

1 Q. Did you file specifically related to rate  
2 design?

3 A. I don't believe so. I believe Mr. Rush did.

4 Q. Throughout the past few days, there's been  
5 some testimony that KCP&L had requested Mr. Henderson and  
6 Mr. Schallenberg to participate in some of the activities  
7 regarding to the Iatan project.

8 Do you recall such testimony?

9 A. I sure do.

10 Q. Okay. Did you hear that Mr. Blanc testified  
11 that you and Mr. Downey requested Mr. Henderson and  
12 Mr. Schallenberg to participate in the cost -- the cost of  
13 reforecast of Iatan?

14 A. I don't believe -- I wouldn't characterize it  
15 as we requested. We offered.

16 Q. Offered?

17 A. To have the Staff participate, observe, learn  
18 everything they could about what we were doing and how we  
19 were doing it on the reforecast.

20 MS. OTT: Okay. I'd like to have an exhibit  
21 marked, so I guess we'd be at 251, and it is a chain of  
22 e-mails from -- the initial one was started on February 26th,  
23 2008.

24 JUDGE PRIDGIN: Ms. Ott, I have as 251 a PEP,  
25 so I believe this would be 252.



1 MS. OTT: Oh, which one was 251?

2 MR. SCHWARZ: The PEP.

3 JUDGE PRIDGIN: The project execution plan, I  
4 believe, was offered yesterday as 251. This would be 252.  
5 Does counsel agree? Maybe my notes are wrong. Does that  
6 sound right? We'll go with 252.

7 (Exhibit No. 252 was marked for identification  
8 by the Court Reporter.)

9 BY MS. OTT:

10 Q. Okay. When you read the first e-mail that was  
11 sent from Wess Henderson to both you and Mr. Downey, it seems  
12 to be a verification of a phone call that you had with  
13 Mr. Dottheim and Mr. Wess Henderson. Do you see that?

14 A. I do.

15 Q. Okay. Do you see Mr. Schallenberg's name  
16 anywhere in this e-mail?

17 A. Not in -- if you're referring to the one on  
18 the bottom of the page from Wess Henderson -- is that  
19 correct?

20 Q. That's correct.

21 A. No, I don't see Mr. Schallenberg's name on  
22 this particular e-mail.

23 Q. Do you know why Mr. Schallenberg wouldn't have  
24 participated in that phone call?

25 A. I do not.

1 Q. Do you see Mr. Elliott's name?

2 A. No.

3 Q. Do you know why Mr. Elliott wasn't requested  
4 to be in on that phone call?

5 A. No.

6 Q. Is this about the time when Mr. Elliott was  
7 making site visits?

8 A. Mr. Elliott had started site visits long  
9 before this date.

10 Q. Okay. Wouldn't you think Mr. Elliott would be  
11 involved in the reforecast if he was on site?

12 A. We already had discussed this with  
13 Mr. Elliott. He knew about it.

14 Q. And when did you discuss that with  
15 Mr. Elliott?

16 A. As soon as the reforecast process began.

17 Q. And what's that date?

18 A. It would have been in the last quarter,  
19 perhaps even the spring of 2007. So Mr. Elliott had started  
20 his work at site early in '07. Continuing discussions with  
21 Mr. Elliott on his routine visits, we would have told him we  
22 were about to conduct a reforecast. So Mr. Elliott was well  
23 aware of what the company was doing.

24 Q. So if Mr. Elliott was aware, wouldn't it be  
25 important for him to be on the phone call with Mr. Dottheim

1 and Mr. Henderson regarding the reforecast?

2 A. No.

3 Q. Now, your response to Mr. Henderson, you  
4 mention that this is nothing more than KCP&L's continued  
5 attempt to be transparent regarding the design, construction  
6 and schedule of the projects. Do you see that?

7 A. I do.

8 Q. Okay. Do you believe KCP&L has been as  
9 transparent as possible regarding this Iatan project?

10 A. Absolutely. No question.

11 Q. Are you familiar with documents being withheld  
12 based on attorney-client privilege?

13 A. I am aware there are documents withheld based  
14 on attorney-client privilege, but none of those documents  
15 have anything to do with any item that Staff would need to  
16 conduct its audit. None of those documents relate to any of  
17 the cost control system or any documents related to KCP&L's  
18 identification and explanation of cost overruns.

19 Q. If you've never done a construction audit, how  
20 do you know what documents Staff needs to conduct its  
21 construction audit in prudence review?

22 A. It's common sense.

23 Q. Now, are you familiar that restrictions were  
24 placed on R and Os at a point in the audit?

25 A. No, I'm not aware of that.

1 Q. You were not aware that they were only  
2 viewable on site?

3 A. I'm not aware of that, no.

4 Q. Okay. Let's go back to this e-mail. Now, you  
5 responded to Mr. Henderson's e-mail on April 7th, 2008.  
6 That's a good month after -- oh, he sent it on the 26th of  
7 February, and then you responded on the 4th of March of 2008,  
8 and then Mr. Henderson responded to you on April 7th, 2008.

9 Did you ever respond to Mr. Henderson's  
10 request that you set up a meeting involving KCP&L, the KCP  
11 staff and the Missouri Public Service Commission?

12 A. Are you referring to --

13 Q. The top e-mail here.

14 A. The top e-mail?

15 Q. He's asked for dates for you and other  
16 appropriate KCP&L to be available to have this meeting on  
17 reforecast.

18 A. I don't believe we had a meeting. I believe  
19 we covered it in a phone call.

20 Q. Do you have any documentation that you  
21 responded to Mr. Henderson's April 7th, 2008, e-mail?

22 A. No. Like I said, I believe it was in a phone  
23 call.

24 Q. When was that phone call?

25 A. I don't recall.

1 Q. Do you know who was on the phone call?

2 A. I don't.

3 Q. So you don't remember anything about this  
4 phone call?

5 A. Well, it was clear to me, after the response  
6 from Mr. Henderson, that the Staff really had no interest in  
7 attending these meetings. I would have followed that up  
8 either with a call to Mr. Henderson or to Mr. Schallenberg  
9 and, in fact, I didn't discover until the hearing in April of  
10 2009 when we had a -- what we called a mini hearing on cost  
11 control system and discovery request, Mr. Dottheim in that  
12 hearing mentioned that --

13 Q. Is this related to that phone call you're  
14 talking about?

15 A. Yes.

16 Q. This conversation happened on your phone call  
17 that you don't recall happening?

18 A. No.

19 Q. You don't recall who was on the call?

20 A. I'm just pointing out that Mr. Dottheim said  
21 the staff felt co-opted, whatever that meant.

22 MR. FISCHER: Judge, I would ask for the  
23 witness to be allowed to answer the question that was on the  
24 table.

25 MS. OTT: I don't believe his question was

1 responsive. He was going on to finding out something later,  
2 and I was directly asking about a phone call.

3 JUDGE PRIDGIN: You can re-ask your question,  
4 Ms. Ott.

5 BY MS. OTT:

6 Q. So you said you don't recall who's on the  
7 phone call, you don't remember the phone call, but now you  
8 remember Mr. Dottheim was on the phone call?

9 A. No, I didn't say that.

10 Q. Okay. Well --

11 A. I never got a good explanation in my mind of  
12 why staff declined our offer. And what I was about to  
13 explain to you was that I found that answer in the April 2009  
14 hearing when Mr. Dottheim, along this same line of  
15 questioning, indicated the staff felt co-opted from doing  
16 that with KCP&L.

17 Q. But doesn't Mr. Henderson here request to set  
18 up a meeting?

19 A. He does.

20 Q. Regarding the reforecast?

21 A. Yes. He wanted to know what we had in mind.

22 Q. Thank you. Now, in your response you say,  
23 "Our expert consultants have indicated it's normal to have a  
24 reforecast at 70 percent."

25 who are those expert consultants you're

1 referring to in this e-mail?

2 A. Mr. Dan Meyer.

3 Q. Only Mr. Meyer?

4 A. Mr. Meyer, his Staff, other members of the  
5 Schiff Hardin team.

6 Q. Now, did Mr. Price initiate the reforecast?

7 A. No.

8 Q. Was the reforecast completed before  
9 Mr. Price's departure from KCP&L?

10 A. No, I don't believe it was.

11 Q. And who was Mr. Price?

12 A. Mr. Price was vice-president of construction.

13 Q. And do you know when he left?

14 A. I believe he left in roughly the first quarter  
15 of 2008.

16 Q. Okay. I'm going to go back to the  
17 transparency of material.

18 Now, you stated that they've withheld  
19 information that they believe -- they being KCP&L and GMO --  
20 that Staff doesn't need to conduct their construction and  
21 prudence review. Is it your understanding that KCP&L must or  
22 is required to withhold these documents?

23 A. I'm not an attorney. I don't know.

24 Q. Have you reviewed all of the documents in  
25 which KCP&L's withheld from the Staff?

1 A. No.

2 Q. So how do you know Staff doesn't need the  
3 documents to conduct its audit?

4 A. I am very familiar with the cost control  
5 system, the documents contained within that system, and I  
6 have reviewed most all of those documents. I'm well aware of  
7 what is there, what would be needed to do an audit in a  
8 prudence review. And in my 35 years's experience with KCP&L,  
9 KCP&L not only provided explanations of cost overruns, KCP&L  
10 provided every decision, every document, every justification  
11 for every dollar spent on that project. Staff got more than  
12 they bargained for.

13 Q. who makes the decision to withhold the  
14 information from Staff?

15 A. KCP&L attorneys.

16 Q. which attorneys?

17 A. It could be any one of KCP&L's attorneys on  
18 staff. It could be Roger Steiner, it could be Heather  
19 Humphrey, Bill Riggins, any of our outside counsel.  
20 Primarily, it's KCP&L attorneys.

21 Q. would any Schiff Hardin attorneys make the  
22 decision to withhold information?

23 A. Schiff Hardin attorneys may recommend  
24 decisions. Schiff Hardin does not make decisions for Kansas  
25 City Power & Light.



1 Q. Do you know if they made any recommendations  
2 to withhold information?

3 A. Yes, I'm sure they did.

4 Q. I'm going to show you a document. I'm sorry,  
5 I only have one copy of this one. I'm going to hand you a  
6 letter that was actually from Ms. Schatz to me, accompanied  
7 with some invoices from Staff data requests 411 and 413. I  
8 want you to take a look at that.

9 And in response to a Staff data request that  
10 is attached behind, is the majority of that document  
11 redacted?

12 A. Appears so, yes.

13 Q. And everything but basically the memo and the  
14 intro is blacked out?

15 A. Yes.

16 Q. Do you believe that's being transparent?

17 A. Well, as I -- this particular document, as I  
18 indicated earlier, has nothing to do with Staff's audit.

19 Q. Isn't this --

20 A. would not impact them whatsoever.

21 Q. This particular document is related to  
22 Schiff's scope of services?

23 A. That's correct.

24 Q. And if Staff's reviewing the prudence of a  
25 \$20 million expenditure towards the project, don't you think

1 that being transparent on the scope of their service would be  
2 necessary for Staff to review?

3 A. There were other documents that Staff reviewed  
4 that indicated their scope of service. I don't know  
5 particularly why that one was deemed attorney-client.

6 Q. Now, do you recall that Staff was inquiring  
7 into some gifts being given by vendors at the Iatan site?

8 A. I am aware of, at a minimum, 25 data requests  
9 related in some way, some form to gifts and gratuities.

10 Q. Okay. And did you indicate that those --  
11 there weren't -- gifts weren't being offered?

12 A. Could you rephrase your question?

13 Q. Did you indicate that gifts were not being  
14 offered from vendors at the Iatan site?

15 A. No.

16 Q. Were you ever offered gifts?

17 A. No. I believe the response to all of those  
18 questions -- because we repeatedly got the questions and we  
19 repeatedly answered in the same manner -- it's against  
20 KCP&L's policy to accept gifts other than gifts and  
21 gratuities of nominal value. And we responded to all of  
22 those data requests consistently and continuously.

23 Q. How do you define "nominal value?"

24 A. It's a nominal value. There's no set dollar  
25 limit on it in the policy.

1 Q. Okay. So is it nominal value in relation to a  
2 particular individual? Because something nominal to me may  
3 not be nominal to you.

4 A. No, it's not a particular individual.

5 Q. So if there's no set dollar value on what is  
6 nominal, how does somebody know if they're receiving a gift  
7 that is nominal or not?

8 A. Well, if there's any question, one would go to  
9 their supervisor and say, I've been offered this, is this  
10 nominal value? Would you consider this to be more than a  
11 nominal value? Do I need your approval for this particular  
12 item?

13 I can provide you examples. I've worked for  
14 the company for 35 years. It's never been an issue to me  
15 and -- of what is nominal value. Have I attended baseball  
16 games with tickets provided by vendors? Yes. Have I gone to  
17 Salt Lake City to attend the winter Olympics? No.

18 Q. So you've accepted baseball tickets or tickets  
19 of some sort?

20 A. Yes.

21 Q. From vendors?

22 A. It was not, I might add, directly from a  
23 vendor. It was an employee of the company who got the  
24 tickets from a vendor, and the vendor didn't attend the ball  
25 game. But that's what I would consider of nominal value.

1 Q. Do you remember what type of seats you had at  
2 that game?

3 A. Regular baseball ticket seats.

4 Q. Was it a Royals game?

5 A. I have attended Royals games, yes.

6 Q. Was that particular gift a Royals game?

7 A. Yes. My example was --

8 Q. It might make a difference of nominal value or  
9 not.

10 A. And I might add, it's infrequent. I've  
11 probably attended events sponsored by someone other than the  
12 company, in 35 years, three times.

13 Q. So why do you accept the nominal gifts or what  
14 you deem as nominal?

15 A. Why?

16 Q. Yes.

17 A. There's no reason not to.

18 Q. Now, you were an employee of KCP&L in its last  
19 rate case, ER-2009-0089?

20 A. Yes.

21 Q. When did you leave KCP&L?

22 A. The end of June 2009.

23 Q. Now, in that rate case, were you aware that  
24 KCP&L had refused to provide Staff information related to  
25 Iatan 2?

1 A. That's not correct.

2 Q. Did they object to DRS that requested  
3 information from Iatan 2?

4 A. In January of 2009, the Staff submitted the --  
5 I should say the accounting staff submitted its first set of  
6 data requests on the Iatan 1 and 2 projects. We received  
7 about 150 data requests about 30 days before Staff was to  
8 file its testimony in that case. As I indicated, there were  
9 150 of them. We had to respond to those fairly quickly.

10 So at the time, KCP&L objected to providing  
11 Unit 2 data because we wanted to focus on the Unit 1 data.  
12 And we wanted Staff to focus on -- as it turns out, Staff  
13 pointed out that, hey, you know, we need Unit 2 information  
14 because it also impacts common facilities, and we said, yes,  
15 you do, and we provided it.

16 Q. Did you ever ask for an extension to provide  
17 the information on Iatan 2?

18 A. I don't recall.

19 Q. Whose recommendation was it to not allow Staff  
20 to have the information related to Iatan 2?

21 A. We -- the initial objection was based on a  
22 group discussion. There were several individuals in the  
23 meeting.

24 Q. Were you one of those individuals?

25 A. I was.

1 Q. And who else was in that meeting with you?

2 A. I don't recall. It was a large group.

3 Q. Can you recall any of the members in that  
4 meeting?

5 A. No.

6 Q. Do you know when that meeting took place?

7 A. It was shortly after we received the data  
8 request, sometime in January of 2009.

9 Q. Was it your personal recommendation not to  
10 give the Staff this information?

11 A. I would have felt comfortable giving them the  
12 information, yes. But I was also concerned that the time it  
13 would take for us to provide Unit 2 data and still meet the  
14 deadline concerned me, so I was more focused on let's get  
15 them the Unit 1 information, we can follow-up with Unit 2.

16 Q. Do you know what grounds the objection to  
17 provide that information was on?

18 A. I don't.

19 Q. If I handed you a copy of one of the DRs,  
20 would it refresh your memory?

21 A. I would imagine.

22 Q. And isn't the objection relevance? Is the  
23 objection relevance?

24 A. I don't follow your question.

25 Q. The objection is: "KCP&L objects to this data

1 request to the extent it calls for information pertaining to  
2 Iatan 2 and, therefore, seeks discovery of the information  
3 which is irrelevant, immaterial, and inadmissible." Do you  
4 see that?

5 A. I do.

6 Q. So KCP&L didn't believe it was relevant at  
7 that point for Staff to audit Iatan 2?

8 A. It was not relevant in -- as I stated earlier,  
9 when KCP&L first objected to this particular request, the  
10 rate case we were involved in was the Unit 1 rate case. So  
11 Unit 2 data was not relevant to the Unit 1 rate case. That  
12 was the basis for the objection.

13 Subsequently, we realized that was incorrect  
14 because common facilities also were part of the Unit 1 rate  
15 case, and we provided the data. It did not impact the Unit 1  
16 rate case whatsoever, nor has it impacted this case  
17 whatsoever.

18 Q. When did you realize that the information was  
19 relevant?

20 A. It was very shortly after we submitted it. I  
21 would say probably -- it may have even been sooner than we  
22 filed -- than Staff filed their testimony.

23 Q. Was that after Staff contacted KCP&L to obtain  
24 the information?

25 A. No, I don't believe so. We -- we had

1 initially thought that all the common facilities were  
2 budgeted separately in the Unit 1 budget and the Unit 2  
3 budget so that each unit would have separate common  
4 facilities in those budgets. It was right about this time we  
5 discovered that it was incorrect that there was not a budget  
6 for common associated with each unit.

7 In fact, the contracts, the way they were let  
8 and the way the work progressed, there was no distinction of  
9 common at all. So we had to at that point, say, well, we've  
10 got to figure out how to allocate actual cost to common. So  
11 that was right around the February 2009 time frame, and we  
12 worked -- and we notified Staff of that. We gave them the  
13 information, and we worked through that process with Staff  
14 over the next three to four months.

15 Q. So it was in February of 2009 when you  
16 realized it was relevant for Staff to have information to  
17 have Iatan 2; did I get that correct?

18 A. Yes.

19 MR. FISCHER: Judge, I think I'm going to  
20 object to this line of questioning at this point. We're  
21 talking about a previous rate case, and the Commission has  
22 already ruled on this specific issue finding that the KCP&L  
23 did not unreasonably conduct its discovery or the discovery  
24 processes that KCP&L used were not unreasonable, and it seems  
25 like we're plowing old ground that we've now plowed in a



1 previous rate case and in the 259 case.

2 JUDGE PRIDGIN: Okay. Ms. Ott?

3 MS. OTT: This information is going to the  
4 transparency. There is testimony throughout Mr. Giles's  
5 direct and rebuttal testimony that they had been transparent.  
6 This clearly shows at one point they were withholding  
7 information. I'm actually done with this line of  
8 questioning. We can move on.

9 MR. FISCHER: I would say the Commission has  
10 already ruled on that specific issue and found the company  
11 was not unreasonable, Judge.

12 MS. OTT: This isn't going to reasonableness.  
13 It's going to transparency.

14 JUDGE PRIDGIN: I'll overrule. Ms. Ott?

15 BY MS. OTT:

16 Q. Did you ever review the Schiff Hardin invoices  
17 in 2008 that were provided to Staff?

18 A. I did not review the Schiff Hardin invoices on  
19 a routine basis. There was a period of time where Staff had  
20 requested actual receipts for Schiff Hardin expenses for two  
21 months. I believe those two months were February, March of  
22 2009.

23 I reviewed each of those, and based upon my  
24 review, I found nothing unreasonable or inappropriate, so I  
25 passed them along to Staff.

1 Q. So wait, I just want to make sure I -- you  
2 said you reviewed only February and March of 2009 invoices?

3 A. No, actual receipts that ties to the invoices.  
4 I did not review the invoices for services. I reviewed  
5 expense receipts for those two months. That's the extent of  
6 my review.

7 Q. So do you believe providing staff with  
8 redacted invoices is being fully transparent?

9 A. I have not seen the invoices you're referring  
10 to, so I can't answer that question.

11 Q. If I showed you an invoice that's redacted,  
12 could you give an opinion on it?

13 A. We'll see.

14 Q. I'm handing you Schiff Hardin Invoice 1267523  
15 dated June 30th, 2008, to Ms. Lora Cheatum.

16 Now, is there any information, descriptive  
17 information available on these invoices other than the date,  
18 the name, the position and the hours worked?

19 A. I can't tell just from glancing at this  
20 what -- what some of these numbers are, but it appears that  
21 you're correct.

22 Q. So there's actually no -- no information  
23 contained within it that describes what duties these Schiff  
24 Hardin employees performed?

25 A. Well, based on the first page, it appears that

1 they have only redacted their legal work, but I can't tell  
2 for sure.

3 Q. Now, were you in the room yesterday when  
4 Mr. Davis said Schiff provided more than legal work?

5 A. Yes, I was.

6 Q. Do they provide separate invoices for their  
7 legal and non-legal work?

8 A. I don't know. I'm not familiar with Schiff  
9 invoices.

10 Q. would you agree the entire document, majority  
11 of it is blacked out?

12 A. There is a substantial amount of redaction,  
13 yes.

14 Q. Now, if you go to actually the -- after the  
15 first page, after the cover sheet, the second entry, it's on  
16 April 1st, 2008, and there's project control analyst, Eric  
17 Gould; do you see that?

18 A. I do.

19 Q. And Mr. Gould, he does not provide legal  
20 services?

21 A. That's correct.

22 Q. And the information pertaining to what job he  
23 did is redacted?

24 A. That's correct.

25 Q. Thank you. Do you know who Carl Morano is?

1 A. I believe Mr. Morano was at one time an  
2 auditor for Ernst & Young. That's the extent of my knowledge  
3 of Mr. Morano.

4 Q. Are you aware of any work that Mr. Morano  
5 would have done for the Iatan project?

6 A. No.

7 Q. Did you review the Alstom contract audit?

8 A. I'm sorry, I didn't hear you.

9 Q. I said did you review the Alstom contract  
10 audit?

11 A. I did.

12 Q. Did Mr. Morano perform that audit?

13 A. I don't know.

14 Q. Do you know if KCP&L was required to approve  
15 Schiff's annual labor rate increases?

16 A. I don't know.

17 Q. Did you ever read the Schiff KCP&L contract?

18 A. I believe I did at some point.

19 Q. So you don't remember from that contract  
20 whether or not KCP&L was required to approve any labor  
21 increases?

22 A. No.

23 Q. Do you know if Schiff ever requested an  
24 increase for labor?

25 A. I don't know any details regarding the Schiff

1 Hardin billing or invoices other than what I testified to  
2 earlier, my review of two months of expense receipts in 2009.

3 Q. Do you recall a meeting with Staff regarding  
4 mileage of Burns & Mc employees?

5 A. I have met with Staff several times. I know  
6 there were some questions Staff had regarding mileage.

7 Q. So you remember discussing that with Staff?

8 A. I do.

9 Q. Do you remember stating that if it was up to  
10 you, you would give Staff the information KCP&L was  
11 withholding?

12 A. I don't know what you're referring to.

13 Q. Related to the mileage of Burns &  
14 Mc employees.

15 A. Again, I don't know what you're referring to.  
16 You'll need to be more specific.

17 Q. Do you ever remember making a statement to  
18 Staff that you would provide Staff the information KCP&L was  
19 withholding, any of the information?

20 A. withholding regarding what? I can't follow  
21 you. You'll have to give me a little more.

22 Q. withholding documents, not providing Staff  
23 with documents, do you ever recall making that statement to  
24 Staff?

25 A. without a little more specificity, I cannot

1 answer your question.

2 Q. So you never remember telling staff you would  
3 provide information, if it was up to you, that KCP&L was  
4 withholding or redacting?

5 A. Absent a better definition of what we were  
6 talking about, no, I cannot answer that. I don't know.

7 Q. Did you review the data KCP&L provided to  
8 Mr. Dave Elliott?

9 A. No.

10 Q. Do you know if KCP&L ever objected to  
11 providing information to Mr. Elliott?

12 A. Not that I'm aware of.

13 Q. Did they ever provide Mr. Elliott with  
14 redacted information?

15 A. I don't believe any information Mr. Elliott  
16 ever requested was attorney-client privilege. I can't say  
17 for sure, but I'm not aware of any attorney-client  
18 information Mr. Elliott requested.

19 Q. So any invoice Mr. Elliott would have reviewed  
20 wouldn't have been attorney-client privilege, there would  
21 have been no information redacted based on that ground?

22 A. Could you restate that?

23 Q. So would Mr. -- was Mr. Elliott provided  
24 invoices?

25 A. I'm sure he was.

1 Q. Okay. And any of that information in those  
2 invoices, they wouldn't have been redacted; is that what  
3 you're stating?

4 A. That's correct.

5 Q. Why would that information not be redacted?

6 A. As I indicated earlier, the only information  
7 that has ever been redacted is what was termed  
8 attorney-client privilege. I'm not aware of any information  
9 Mr. Elliott requested to review that would have been deemed  
10 attorney-client privilege.

11 Q. Do you remember having a meeting with the  
12 staff to discuss the May 2008 crane accident?

13 A. I do.

14 Q. Do you remember who was present at that  
15 meeting?

16 A. No, I don't.

17 Q. Were there attorneys present at that meeting?

18 A. Yes.

19 Q. Who would have been the attorney for KCP&L?

20 A. I don't recall. It could have been any one of  
21 a number of individuals.

22 Q. Would there have been any Schiff Hardin  
23 attorneys at that meeting?

24 A. Possibly.

25 Q. You don't recall, though?

1 A. No.

2 Q. Do you recall indicating to Staff that KCP&L  
3 would not be seeking recovery of the rates of the crane  
4 accident?

5 A. There was a -- yes, I do recall. There was a  
6 question of -- at that point in time, I believe there was a  
7 couple -- I can't remember the amount, but there was an  
8 amount being accrued or held in case KCP&L had some  
9 responsibility or incurred some costs for the crane accident.  
10 And my point to Staff was, unless KCP&L actually has to pay  
11 something, we would not continue to have that accrual, and it  
12 would not be charged to customers.

13 Q. And is that what you stated to Staff during  
14 that meeting?

15 A. Yeah. My -- yes, my -- my thought process was  
16 and what I was trying to convey to Staff was that if we don't  
17 incur any costs, which I didn't think we would because it was  
18 definitely not KCP&L's fault, obviously, customers wouldn't  
19 be billed for that.

20 Q. And were you in the room yesterday when  
21 Mr. Davis read some of his testimony from the acquisition  
22 case that stated that KCP&L was not liable for the crane?

23 A. Yes, I was here.

24 Q. And do you agree with that statement that he  
25 made -- that he read?



1 A. That's my understanding, yes.

2 Q. You stated -- are you a consultant for KCP&L  
3 or a contractor?

4 A. I'm a consultant.

5 Q. How much are you being paid per hour?

6 A. \$200 an hour.

7 Q. Do you have any other payment in addition to  
8 that, such as a retainer?

9 A. \$2,500 a month.

10 Q. Plus -- so that's in addition to your \$200 an  
11 hour?

12 A. Yes.

13 Q. Are you required to work a certain amount a  
14 month to reach that \$2,500 a month retainer?

15 A. No.

16 Q. Are you receiving a pension from KCP&L?

17 A. No.

18 Q. Will you be receiving a pension one day?

19 A. I have received my pension.

20 Q. And how much was that?

21 MR. FISCHER: Judge, I think I'm going to  
22 object to this line of questioning. I think it may be  
23 relevant to some Staff adjustment, but it seems like it ought  
24 to be in-camera, if nothing else, and this seems to be  
25 irrelevant, really, to the real issues in this case.

1 JUDGE PRIDGIN: Ms. Ott?

2 MS. OTT: I believe there is testimony that is  
3 taking Mr. Giles's payment out of the rate case and  
4 there's -- and I'm more than happy to go in-camera to have  
5 this discussion if we're getting into highly confidential  
6 information.

7 JUDGE PRIDGIN: All right. If it pertains to  
8 something that's being litigated in rates, I mean, I'll  
9 overrule, we'll go in-camera. Hold on just a moment.

10 MR. FISCHER: Judge, I would also object to  
11 references to his pension. There is nothing in the rate case  
12 about taking Mr. Giles's pension out of the case. While the  
13 staff seems to think that they should exclude his current  
14 salary, there's nothing about his past performance or any  
15 kind of pension payments or any other arrangements in the  
16 past that's relevant to this case.

17 JUDGE PRIDGIN: All right. Ms. Ott, any  
18 response?

19 MS. OTT: I think this all goes to his  
20 compensation and being compensated, possibly, in a way that  
21 is viewed as double compensation.

22 JUDGE PRIDGIN: All right. I'll overrule.  
23 I'll give you some leeway.

24 (REPORTER'S NOTE: At this point, an in-camera  
25 session was held, which is contained in volume 20, pages 1047

1 to 1047 of the transcript.)

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1 JUDGE PRIDGIN: We are back in public session.

2 CHRIS GILES testified as follows:

3 BY MS. OTT:

4 Q. Do you have a contract with KCP&L for your  
5 services?

6 A. My contract is actually with an employment  
7 group called Next Source.

8 Q. And do they have a contract with KCP&L?

9 A. They do.

10 Q. On average, how many hours a week do you work  
11 for KCP&L?

12 A. I have worked about an average of 40 hours a  
13 week since I retired.

14 Q. And is that because there's a pending rate  
15 case, or is that going to be typical going forward after the  
16 completion of this rate case?

17 A. It's primarily been because of this rate case.  
18 I have, obviously, a great deal of knowledge of the  
19 regulatory plan, the history of the Iatan project, all the  
20 way up to when I retired. And I've continued to work on the  
21 Iatan project since I retired. So my role has primarily been  
22 rate case related, both Kansas and Missouri.

23 Q. Has KCP&L told you what your role is as it  
24 relates to interactions with the Staff?

25 A. I have never had a specific instruction one

1 way or another.

2 Q. Has anyone ever suggested what your role  
3 should be with its relationship with staff?

4 A. No.

5 Q. How about in meetings, has anybody told you  
6 what your role is in relation to meeting with staff  
7 personnel?

8 A. No. My role -- I have never been expressly  
9 told what my role -- or if you're getting to the question of  
10 what my authority is, I have had the authority to deal with  
11 staff in the same manner I always dealt with staff.

12 Q. So are you allowed to make key decisions for  
13 KCP&L?

14 A. You'll have to define better what you mean by  
15 "key" decisions.

16 Q. Do you have the authority to make decisions on  
17 behalf of KCP&L?

18 A. You'll have to be more specific.

19 Q. Do you have authority to make -- to enter into  
20 a settlement agreement?

21 A. I didn't hear you.

22 Q. Do you have authority to enter into a  
23 settlement agreement?

24 A. Not without KCP&L's approval, no.

25 Q. Do you have authority to tell other KCP&L

1 witnesses what questions they can or cannot answer to Staff?

2 A. Are you saying -- you'll have to put that into  
3 context. I can't answer.

4 Q. So in a meeting, if a Staff member asked  
5 another KCP&L employee a question, do you have authority to  
6 tell that other KCP&L employee not to answer Staff's  
7 question?

8 A. Yes.

9 Q. And who gave you that authority?

10 A. As I indicated earlier, I have the same level  
11 of authority with my relationships with Staff as I had always  
12 had at KCP&L.

13 Q. Who informed you that when you retired, your  
14 role was going to be exactly the same when you were -- as a  
15 contractor?

16 A. I didn't say it would be exactly the same. I  
17 said my relationship in dealing with the Commission Staff was  
18 the same.

19 Q. But who informed you that your relationship in  
20 your role with Staff was going to be the same?

21 A. It was not a specific inform. It was implied,  
22 for lack of a better term. That's why I would be in the  
23 meetings. I was there representing regulatory in these  
24 meetings you're referring to, so that if Staff -- for  
25 instance, if Staff were -- we were in a meeting to discuss a

1 particular topic, we gathered individuals to address that  
2 topic, and I saw that Staff was going beyond the topic, I  
3 definitely had authority to say that's beyond the scope of  
4 this meeting. That's why I was in the meeting.

5 Q. Was Mr. Blanc in those meetings?

6 A. No.

7 Q. Were any KCP&L attorneys in the meeting?

8 A. I'm sure there were.

9 Q. So would you state, then, you have management  
10 authority at KCP&L?

11 A. No.

12 Q. Do you know if Black & Veatch made a proposal  
13 for an EPC contract for Iatan 2?

14 A. They did not.

15 Q. I want to show you a document. It's a  
16 presentation made to Mr. Chether, Mr. Downey on  
17 November 23rd, 2005. It's an Iatan 2 project procurement  
18 options. And on slide 25, there's a negotiated EPC option,  
19 and if you could read the very first bullet under EPC based  
20 on Black & Veatch reference plant.

21 A. Are you referring to just the bullet?

22 Q. There. Does it appear that they were making  
23 an EPC on Iatan 2?

24 A. No.

25 Q. Recommendation?



1 A. No, absolutely not. The -- the meeting you're  
2 referring to is -- to be clear -- I was in this meeting, and  
3 we were -- we had brought Black & Veatch and Burns &  
4 McDonnell in to see what the procurement options were, and we  
5 were actually looking at both Black & Veatch and Burns &  
6 McDonnell as owner's engineer for the -- for the Iatan 1 and  
7 2 projects and when Black & Veatch -- they both presented  
8 various options for how we could proceed with contracts.

9 We had not been able to get a EPC contract or  
10 interest in the project and, in fact, Black & Veatch in this  
11 particular meeting told us they would not be able to do an  
12 EPC contract at that time. They would have to wait one year  
13 before they could make such a proposal, and even then, we  
14 would not have any cost estimate for an EPC contract.

15 Q. So that slide doesn't say that, "As an example  
16 an EPC based on Black & Veatch reference plant and that Black  
17 & Veatch has developed an 850-megawatt net supercritical  
18 reference plant with a defined cost of 1,100 to 1,300  
19 kilowatts, \$2,005"?

20 A. That's what it says. A reference plant --

21 Q. So that wasn't --

22 A. -- is not an EPC proposal.

23 Q. Then why would EPC be in the heading?

24 A. As I indicated, Black & Veatch was willing to  
25 do an EPC contract, but they had -- they had several

1 restrictions.

2 Q. But they did offer you an EPC proposal?

3 A. No, they did not.

4 Q. All right. I'll move on.

5 A. In order to --

6 Q. Thank you. I'll take that back.

7 Mr. Giles, were you in attendance at a  
8 presentation to KCP&L for an Iatan 2 expansion project on  
9 November 8th, 2005, by Black & Veatch?

10 A. No.

11 Q. Okay. Well, I'm going to show you a copy of  
12 their presentation. And in particular, if you go to the  
13 tabbed page, can I have you read that highlighted section --  
14 well, read the title and the highlighted section into the  
15 record, the two bullet points.

16 A. Okay. You want me to read --

17 Q. The title and the two bullet points.

18 A. "Please refer to our approach section of the  
19 presentation. Black & Veatch believes in order to have the  
20 best chance to reach the June 2010 milestone, KCP&L must  
21 release the engineer to complete any remaining conceptual  
22 design and to start" --

23 MR. FISCHER: Judge, can I ask that we go  
24 in-camera? I think it's probably HC and Mr. Giles is not  
25 familiar with this document, apparently. He wasn't at the

1 meeting, but I -- therefore, he can't alert me if it's HC.

2 JUDGE PRIDGIN: I understand. All right.

3 Just a moment. We'll go HC.

4 MR. MILLS: Judge, before we go in-camera, can  
5 we just have the attorneys review it to see if it is HC?

6 MR. HATFIELD: It's marked HC.

7 MR. MILLS: It appears to be -- I think we've  
8 gone in-camera a lot more than we need to, and I'm afraid  
9 we're about to do it again.

10 JUDGE PRIDGIN: Okay.

11 MR. MILLS: But if the attorneys have reviewed  
12 it and they are asserting on the record that it is highly  
13 confidential, then I guess I have no choice but to go along.

14 MR. FISCHER: Judge, that document was just  
15 handed to me for about two seconds here. Let me take a look  
16 at it. Every page is marked highly confidential. I would  
17 ask we go in-camera.

18 JUDGE PRIDGIN: All right. Hearing no  
19 objection, just a moment, please.

20 (REPORTER'S NOTE: At this point, an in-camera  
21 session was held, which is contained in volume 20, pages 1055  
22 to 1058 of the transcript.)

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1 JUDGE PRIDGIN: We are back in public forum.

2 MR. MILLS: And, Judge, before we proceed, can  
3 I get you to ask KCP&L to explain why that entire discussion  
4 of preliminary negotiations that never led to anything with a  
5 firm that wasn't involved in the project needs to be shielded  
6 from the public view?

7 JUDGE PRIDGIN: Mr. Fischer?

8 MR. FISCHER: Judge, those are clearly  
9 sensitive contract negotiations that were occurring with an  
10 outside firm that had it marked as confidential information,  
11 and they should not be spread on the public record merely  
12 because time has passed.

13 MR. MILLS: Judge, the presumption ought to be  
14 that everything is public unless there's a necessity to have  
15 it kept from the public view. I don't see that anybody will  
16 be harmed by keeping that -- would be harmed by releasing  
17 that information, and nothing in Mr. Fischer's explanation  
18 has given me any reassurance on that.

19 JUDGE PRIDGIN: All right. Well, I'm not  
20 prepared to rule from the bench on that. If that's something  
21 you want -- you know, if you want to challenge the  
22 designation of HC, you're welcome to file a motion. I'll  
23 give the company a chance to file a response.

24 MR. MILLS: Thank you.

25 JUDGE PRIDGIN: Ms. Ott, you can continue.



1 CHRIS GILES testified as follows:

2 BY MS. OTT:

3 Q. Can you tell me the reason why meeting June  
4 2010 completion date was important for completing the Iatan 2  
5 project?

6 A. Yes. I, in fact, list four reasons in my  
7 testimony. I'd be glad to go through those again. Number 1,  
8 costs were heated or the market was heated as other witnesses  
9 have testified. We knew, based on what we were already  
10 seeing, that the sooner this unit can be completed, procured,  
11 contracted, the cheaper it was going to be. But every delay  
12 was going to simply result in more costs. So that was one  
13 reason.

14 Another reason is we had committed in our  
15 regulatory plan to attempt to meet a June 2010 date, and we  
16 wanted to meet that commitment, if possible. We needed  
17 capacity, both KCP&L and our partners needed the capacity in  
18 June of 2010.

19 And there was one more reason I listed in my  
20 testimony I'm trying to recall. Oh, very important reason.  
21 The off-systems sales market at that time was, for lack of a  
22 better term, booming. The price for off-system sales was  
23 substantial, and the off-system sales market would be even  
24 further enhanced once Iatan 2 came online. So we saw that  
25 the sooner we brought this plant online, the more power we

1 could sell into the market, and that sale of that power into  
2 the market would reduce revenue requirement in every rate  
3 case going forward.

4                   So for all of those reasons, it was a date we  
5 wanted to meet, if at all possible, given -- given  
6 consideration for cost and getting it done efficiently.

7           Q.       What period does KCP&L consider to be its  
8 summer peak load?

9           A.       Summer peak can occur any time between June  
10 and September, and most all the time -- and I can't recall --  
11 maybe early in my career, outside the bounds of July and  
12 August, but typically, it's in July or August.

13          Q.       Does KCP&L have a summer rate?

14          A.       Yes.

15          Q.       And what is that period in which they're  
16 allowed to charge for the summer rate?

17          A.       I don't recall.

18          Q.       Do you know what the date of KCP&L's system  
19 peak was for this past year?

20          A.       I do not.

21          Q.       Was Iatan 2 complete to meet the majority of  
22 the summer peak load?

23          A.       No. Iatan 2 was completed as a base load  
24 unit, so yes, it has an -- it would be available on peak  
25 days. It's also very valuable throughout the year. As I

1 indicated, it would provide low cost power, low cost  
2 incremental power throughout the year, which would lower  
3 rates for customers and give the company the opportunity to  
4 sell excess power during the evening time, during non- --  
5 when our retail customers were not needing the power, we  
6 could sell it into the market at a substantial profit, and  
7 that profit is credited back against the revenue requirement  
8 in our rates -- in our rate cases.

9           So it's not -- it was not built just as a  
10 peaking unit. It was built as a base load unit to serve  
11 energy requirements throughout the year.

12           Q.       That wasn't my question. My question was:  
13 was Iatan 2 complete to meet the -- the entirety of the  
14 summer adjusted rates, the peak season?

15           A.       I, obviously, didn't understand it the first  
16 time, and I'm not understanding it this time.

17           Q.       Was it important for KCP&L to have the project  
18 completed in June to meet the summer peak?

19           A.       It was -- when we first --

20           Q.       It's yes or no.

21           A.       Well, yes, in 2005.

22           Q.       Okay. Thank you.

23           A.       It was important. That's one of the reasons I  
24 listed in my testimony.

25           Q.       Did it ever become not important for KCP&L to

1 meet --

2 A. Yes.

3 Q. -- the summer peak?

4 A. Yes. It became less important as the project  
5 progressed. We had a severe economic recession in 2007, '8,  
6 and '9, even that continues to this day that has reduced our  
7 need for peak capacity during the summertime. So as the  
8 plant progressed in its development and construction, what  
9 was perceived as a -- as a need in 2005 had changed and was  
10 not needed necessarily for the summer peak of 2010 because of  
11 the economic recession.

12 Q. In December of 2005, do you know how far  
13 behind the schedule of Iatan 2 was?

14 A. It was not behind schedule at all. We hadn't  
15 started.

16 Q. Why did KCP&L pay Alstom an incentive to meet  
17 the June 2010 date?

18 A. I don't believe we did.

19 Q. Mr. Giles, are you familiar with the R and O  
20 360, which is the JLG incident construction resurfacing?

21 A. I am familiar with the JLG resurfacing, yes.

22 Q. Did you testify in Kansas that KCP&L would not  
23 be charging the cost of this R and O to Kansas ratepayers?

24 A. I may have in the 2000 -- or the Iatan 1 rate  
25 case. I don't recall.

1 Q. So you don't recall, or you stated that you  
2 would not be charging that R and O to Kansas ratepayers?

3 A. I don't recall.

4 Q. I'm going to hand you a portion of your  
5 testimony in the Kansas rate case Docket 09-KCPE-246-RPS.  
6 It's date-stamped June 5, 2009, and this is the rebuttal  
7 testimony of Chris B. Giles, and then particularly maybe this  
8 will refresh your memory if you did or did not make that  
9 statement.

10 A. Do you want me to read this?

11 Q. Sure.

12 A. The underlying section says, "The three  
13 remaining items are those that KCP&L chose not to challenge  
14 in its rebuttal testimony, although KCP&L maintained then, as  
15 now, that its management's actions were reasonable and do not  
16 support a finding of imprudence."

17 Q. So were you making a --

18 A. I think the language speaks for itself is my  
19 testimony.

20 Q. So you did not -- you were not going to charge  
21 the Kansas ratepayers for R and O 360?

22 A. As I indicated, I just read my testimony, and  
23 that's what it says is that KCP&L was not going to challenge  
24 that particular -- and I must say what I read is -- I'm not  
25 sure what it's referring to, but what it says is, on that

1 particular topic, whatever that might have been, we weren't  
2 challenging it, but we were not admitting imprudence.

3 Q. Are you challenging -- are you charging it to  
4 Missouri ratepayers in this case?

5 A. Well, we're not charging Missouri ratepayers  
6 for anything in this case, but the question, if you're asking  
7 me is it included in our cost of the plant for this case,  
8 yes.

9 Q. Thank you. Let's go to page 14 of your direct  
10 testimony. On line 15, you discuss that -- are you there?  
11 Mr. Giles, are you -- do you see that?

12 A. Yes.

13 Q. You state that Schiff has a unique combination  
14 of skills. Do you see that? Maybe I'm on the wrong --

15 A. I don't -- I think there's a reference issue.

16 Q. Oh, sorry. I'm on page 4, line 15. I said  
17 that backwards.

18 A. Yes.

19 Q. Who at Schiff Hardin has these unique skills?

20 A. Their entire team. The team that I am  
21 familiar with would be Ken Roberts, Carrie Okizaki, Eric  
22 Gould, Amanda Schermer, Jay Wilson Associates, Dan Meyer.

23 Q. So is there unique skills on an individual  
24 basis or collectively?

25 A. I would say both.

1 Q. Do you know if there are any other law firms  
2 that specialize in construction law?

3 A. I know of one, but I'm not -- I'm not familiar  
4 with really how much of a specialty construction law is. I  
5 know I'm trying to think of their name. Duane Morris was  
6 affiliated or hired Pegasus, so I know they have some  
7 expertise specialty in construction, but that's the limit of  
8 my knowledge.

9 Q. Did you ever do analysis to determine whether  
10 there are other law firms that have construction law groups  
11 or --

12 A. I didn't, no.

13 Q. Okay. Let's go to page 4 of your rebuttal.

14 A. Okay.

15 Q. Here you state the cost overruns for Iatan 1,  
16 starting -- it's around line 21 going over to the next page.

17 A. I assume -- yes, go ahead.

18 Q. Do you see that?

19 A. Yes.

20 Q. Do you know what that number is on a  
21 percentage basis for Iatan 1?

22 A. Are you asking what was the increase from the  
23 control budget to the reforecasted budget as a percent?

24 Q. I'm asking what percentage of the cost  
25 overruns is on a percentage basis?

1 A. Well, as I stated, KCP&L used the difference  
2 between the control budget and the final actual or this case  
3 what's referred to in my testimony as a -- is the May of '08  
4 forecast, 376 million compared to 484 million. That  
5 difference is about 28 percent, I believe.

6 Q. Do you know what the labor market was in 2009  
7 and 2010?

8 A. The labor -- the extent of my knowledge, the  
9 labor market was more labor was available in '9 and '10 than  
10 was in '6 and '7.

11 Q. Do you know anything about 2008?

12 A. Well, as the economy recessed, my presumption  
13 and my observation with the project is that labor  
14 availability was not an issue.

15 Q. Okay. So at any point did the rates go down  
16 to reflect this -- or labor rates decrease reflect the  
17 availability of more employees available?

18 A. I don't know.

19 Q. Do you know if KCP&L had any reduction in  
20 labor rates to reflect the recession?

21 A. The Iatan 1 and 2 projects were union projects  
22 and paid union wages, so it's unlikely that, to the best of  
23 my knowledge, that a union would reduce their union labor  
24 rates depending on the economy.

25 Q. So if they were using union rates, then their



1 rates would have only increased every year throughout the  
2 project?

3 A. I don't know that. It would be whatever the  
4 union rate was at the time the union performed the work. I  
5 don't follow the labor union's rates.

6 Q. Let's go to page 18 of your direct.

7 A. Okay.

8 Q. There is a Q and A that says at line 16:  
9 "Were any of the increases of the Iatan 2 project costs the  
10 result of management imprudence by KCP&L?" And you say, "Not  
11 to my knowledge, no."

12 A. Are we at direct?

13 Q. Yes.

14 A. And page again?

15 Q. 18.

16 A. Line, please.

17 Q. Line 16.

18 A. Okay. I see it. Thank you.

19 Q. So is it your testimony that you disagree with  
20 all of the recommendations on Mr. Walt Drabinski?

21 A. Absolutely.

22 Q. How about, do you disagree with all of the  
23 recommended prudence adjustments from KCP&L's witness, Dr.  
24 Chris Nielsen?

25 A. It's KCP&L's position that they do disagree

1 with Mr. Nielsen and Mr. Davis has testimony on -- to that  
2 effect. I do not testify on --

3 Q. So you don't have an opinion on that?

4 A. No.

5 Q. And so, then, you also disagree with all of  
6 the adjustments made by Staff?

7 A. Yes.

8 Q. Let's go to page 22 of your direct.

9 A. Okay.

10 Q. Here, there are risks that KCP&L identified on  
11 the Iatan project, correct?

12 A. That's correct.

13 Q. And in the section for Alstom on this -- we  
14 need to go in-camera.

15 JUDGE PRIDGIN: Thank you. One moment,  
16 please.

17 (REPORTER'S NOTE: At this point, an in-camera  
18 session was held, which is contained in volume 20, pages 1070  
19 to 1073 of the transcript.)

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1 JUDGE PRIDGIN: Let me interrupt just briefly,  
2 make sure Commissioners in St. Louis are able to participate.  
3 Commissioner Gunn, Commissioner Kenney?

4 COMMISSIONER GUNN: (Inaudible.)

5 JUDGE PRIDGIN: Commissioner Gunn, I'm sorry,  
6 we didn't hear you. Commissioner Kenney?

7 COMMISSIONER GUNN: We're here. Can you hear  
8 us?

9 JUDGE PRIDGIN: Very good. Thank you.

10 COMMISSIONER GUNN: Thank you.

11 JUDGE PRIDGIN: Ms. Ott, before we resume, can  
12 I inquire roughly how much more cross you think you'll have  
13 on Mr. Giles? I'm trying to determine when to break.

14 MS. OTT: We probably should take a break.

15 JUDGE PRIDGIN: I'm showing 10:30. Let's  
16 resume at 10:45. Thank you. We are off the record.

17 (A break was held.)

18 JUDGE PRIDGIN: All right. We are back on the  
19 record. Before Ms. Ott resumes cross-examination of  
20 Mr. Giles, I just wanted to inform the parties, because we  
21 have a point-to-point connection with St. Louis now, even  
22 though we are, say, in intermission or recess and I've muted  
23 the webcast, the people at point-to-point in St. Louis can  
24 still hear you. So if there's something you don't want the  
25 folks in St. Louis to hear, you'll -- it would be safer if

1 you left the room.

2                   And in all honesty, it's probably simply safer  
3 that you leave the room anyway just in case I make an error  
4 with the technology, or like this morning we have some sort  
5 of problem with the connection. It's probably just simply a  
6 safer practice to just simply watch what you say in this room  
7 and just assume it's being broadcast to the public.

8                   Anything further before we resume  
9 cross-examination? All right. Mr. Giles, you are still  
10 under oath, sir, and Ms. Ott, when you're ready.

11 CHRIS GILES testified as follows:

12 BY MS. OTT:

13           Q.       I'm not sure if I told you to go to page 6 of  
14 your rebuttal or not, so if we could turn to page 6, line 20.

15           A.       Okay.

16           Q.       And you state that the decision to fast track  
17 was made on the basis of our quality expert advice from our  
18 external advisors. Who are these advisors you're speaking  
19 of?

20           A.       I would say Burns & McDonnell and Schiff  
21 Hardin.

22           Q.       And you state that the decision to fast track  
23 was done to meet KCP&L's early schedule milestones, correct?  
24 You see how the sentence extends?

25           A.       Yes.



1 Q. why was it so important to meet these  
2 milestones?

3 A. The early milestones, as Mr. Bell testified  
4 yesterday, those are on the critical path for the project.  
5 So it was necessary to have foundations in place in order to  
6 begin structural steel erection on the boiler.

7 Q. Was KCP&L willing to incur additional costs  
8 just to make the June 2010 goal for the completion of  
9 Iatan 2?

10 A. No. In fact, KCP&L had an opportunity to meet  
11 the June 1, 2010, date as late as mid-summer '09. And when  
12 we did the reforecast during that period, we evaluated what  
13 it would cost to meet a June 1, 2010, date and made the  
14 decision to extend the project so that we would not incur  
15 additional costs. And it was a deliberate decision.

16 Q. Would you have had to fast track the project  
17 to meet the June 2010, an additional fast track decision?

18 A. No.

19 Q. Did KCP&L not pursue the wind investment in  
20 the regulatory plan because the market conditions at the time  
21 would not make it a prudent decision?

22 MR. FISCHER: Assumes facts not in evidence  
23 that the wind -- the second wind was part of the regulatory  
24 plan.

25 MS. OTT: I'll lay the foundation.

1 JUDGE PRIDGIN: Thank you.

2 BY MS. OTT:

3 Q. Were you part of the regulatory plan  
4 negotiations?

5 A. Yes.

6 Q. Was there a section in the regulatory plan  
7 related to a wind investment?

8 A. Yes. The regulatory plan contemplated a 100  
9 megawatt wind project to come online in 2008. It was not a  
10 requirement of the regulatory plan. It was an option, and  
11 the agreement was to evaluate whether it was appropriate to  
12 build another hundred megawatts in that time frame. KCP&L  
13 did that evaluation, determined that due to market conditions  
14 it was not prudent to pursue that investment.

15 Q. Thank you. Over the past few days, there have  
16 been a lot of discussion about what a "definitive estimate"  
17 means.

18 A. Yes.

19 Q. What is your definition of definitive  
20 estimate?

21 A. I am glad you asked that because I have been  
22 waiting patiently to answer it.

23 Q. Did you memorize it last night?

24 A. I have to answer that by going back to 2005  
25 when KCP&L, and myself included, were negotiating the

1 regulatory plan and the document that, obviously, was created  
2 as a result of those negotiations. At that time, that  
3 particular topic -- and I know this was a question of at  
4 least Commissioner Kenney -- there was -- that was the least  
5 discussed topic of any item contained in that regulatory  
6 plan, and to explain why that was the case --

7 Q. But I want to know what your definition is. I  
8 don't -- are you trying to give me your definition in 2005 or  
9 what you think the definition is today?

10 A. well, if you would allow me to finish.

11 Q. well, I'm asking for the definition, not  
12 the --

13 A. I don't have a definition today and I didn't  
14 have one then.

15 Q. Okay. Thank you.

16 A. But I'm explaining to you why.

17 Q. I didn't ask why you don't have a definition.  
18 I just want to know what your definition was.

19 A. well, I will correct my testimony.

20 Q. I --

21 A. The definition to me --

22 MS. OTT: Judge, this is not responsive.

23 JUDGE PRIDGIN: Yeah, I'll sustain. I mean,  
24 just try -- I know she's giving you quite a bit of leeway in  
25 asking you to explain, but I think the question was, you

1 know, do you have a definition and then --

2 THE WITNESS: well, there are -- well --

3 BY MS. OTT:

4 Q. You stated you didn't have an answer.

5 A. In 2005 --

6 MS. OTT: Judge --

7 JUDGE PRIDGIN: Okay. Go back and -- can you  
8 rephrase your question, Ms. Ott?

9 BY MS. OTT:

10 Q. I said, what was your definition of definitive  
11 estimate in 2005? I believe you said you didn't have one and  
12 you don't have one today.

13 A. well, I was attempting to correct the "have  
14 one today." I don't have one today, but the industry that  
15 Mr. -- has one. I wasn't aware in 2005 of an industry  
16 definition, and I had no definition, and there was not a  
17 definition contained in the regulatory plan.

18 Q. You stated you had been around in rate cases  
19 over several years with KCP&L, correct?

20 A. Yes.

21 Q. would you have been involved in a rate case  
22 back in 1980 in ER-81-42?

23 A. I believe -- well, I was definitely here and  
24 I'm familiar with that docket number, yes.

25 Q. Do you know who Mr. David McCoy is?

1 A. Mr. McCoy was a long-time employee of KCP&L.

2 Q. I have a copy of Mr. McCoy's direct testimony  
3 from that case. Now, on page 3 of Mr. McCoy's direct  
4 testimony, he defines what a definitive estimate is. Can you  
5 read how Mr. McCoy, back in 1980, defined a definitive  
6 estimate?

7 A. Page 3 of his testimony is actually the  
8 Case No. ER-81-42, definitive estimate, and I don't know that  
9 he's not quoting something here.

10 Q. well, if you don't feel comfortable reading it  
11 --

12 A. I don't feel comfortable reading it because  
13 there's a lot of testimony that precedes this where he  
14 qualifies what this means.

15 MS. OTT: Judge, can I (sic) take  
16 administrative notice of Mr. McCoy's testimony?

17 JUDGE PRIDGIN: That was filed in the docket  
18 that --

19 MS. OTT: In the '81 case. It's a Commission  
20 case.

21 MR. MILLS: Judge, I'm going to object again  
22 because there's, obviously, a lot of testimony there. I have  
23 not had an opportunity to see it. I think part of the  
24 procedure under 536 is that parties have an opportunity to  
25 look at something that the Commission is considering taking

1 official notice of, and there may be, just looking at the  
2 document, it appears to be 50, 60 pages long, and there may  
3 be a great deal of stuff that's irrelevant to this case, and  
4 I object to it both on the basis that I haven't seen it and  
5 on the fact that there may be a great deal of irrelevant  
6 information.

7           If Ms. Ott wants to narrowly focus the portion  
8 with respect to the definitive estimate, I may not have an  
9 objection. But without reviewing the document, I don't know.

10           MS. OTT: well, on page 1, it is a  
11 construction budget manual, and it's citing the construction  
12 budget manual. We can take official notice of the entire  
13 budget manual if that would make everyone happy.

14           MR. FISCHER: I would join Public Counsel in  
15 that objection. It's not an order of the Commission, and I  
16 think certainly that person's not available for  
17 cross-examination.

18           JUDGE PRIDGIN: well, I'm going to overrule.  
19 I mean, I think Commission can take notice of what has been  
20 filed in its cases. I mean, whether it's -- whether it's  
21 relevant or whether it is persuasive in any way is another  
22 question, but it's notice of what has been filed as testimony  
23 in a prior case in the Commission's records.

24           MR. MILLS: So, Judge, you're not taking this  
25 into this case as evidence; you're simply taking notice that

1 this was filed in a previous case?

2 JUDGE PRIDGIN: That's correct. It hasn't  
3 been offered as evidence. I was asked to take notice.

4 BY MS. OTT:

5 Q. Let's go to page 8 of your rebuttal testimony.  
6 On line 22, you mention the R&Os -- strike that. I've  
7 already covered it.

8 Do you know if the Iatan project team  
9 employees are still making trips to Iatan 2?

10 A. I don't.

11 Q. Do you know if mileage has been charged since  
12 the in-service date for mileage to Iatan 2?

13 A. I don't.

14 Q. Do you know if other expense reports are --  
15 people are submitting under the project after it's been in  
16 service?

17 A. would you restate?

18 Q. Do you know if there are expense reports still  
19 charged to the Iatan 2 project?

20 A. I don't know.

21 Q. Now, you're familiar with section Q of the  
22 regulatory plan of the stipulation and agreement, correct?

23 A. I believe, if that's the cost control system  
24 language, yes.

25 Q. Okay. Is it possible for KCP&L to create a

1 list, whether it be five pages, ten pages, a hundred pages,  
2 that lists all the cost overruns and explains why they were  
3 incurred? It's a yes-or-no question.

4 A. I don't know of any format -- I can't conceive  
5 of a format --

6 Q. So no?

7 A. -- where one could do that.

8 Q. Okay. Okay. I want to go back to something  
9 we were talking earlier when you said that Schiff had some --  
10 Schiff employees were all uniquely experienced.

11 Can you tell me how Ms. Schermer is uniquely  
12 experienced for this project?

13 A. I don't have Ms. Schermer's resume in front of  
14 me. I know Ms. Schermer is a very knowledgeable, very  
15 articulate and thorough attorney regarding contracts,  
16 contract administration and construction projects.

17 Q. So do you know if she's had any experience on  
18 large power plant construction projects before?

19 A. I know Ms. Schermer from my work with her.

20 Q. But you don't know anything about her  
21 credentials?

22 A. I do not.

23 Q. Okay. How about Ms. Okizaki, do you know  
24 anything about her credentials?

25 A. No. I have worked with Ms. Okizaki throughout



1 the life of the project, extremely bright, intelligent  
2 attorney that very much knows the construction industry and  
3 practices in contracts.

4 Q. But you don't know what her experience was  
5 prior to your Iatan 2 project involvement?

6 A. No.

7 Q. Do you know if Ms. Schermer has any prior  
8 experience working on rate cases?

9 A. No.

10 Q. And the only rate case she's worked on with  
11 you is this current rate case?

12 A. I don't know what Ms. Schermer has done in her  
13 past. I know what she did for us on the project.

14 Q. Is she doing rate case work or just  
15 construction -- work related to the construction project?

16 A. She's not doing rate case work that I'm aware  
17 of.

18 Q. So you're not aware if she's billed KCP&L for  
19 doing work on this rate case?

20 A. All of the Schiff Hardin attorneys, as well as  
21 our attorneys, review and comment on testimony, so to the  
22 extent you're terming testimony preparation as rate case  
23 work, then yes, she's done that.

24 Q. So are they billing them to the Iatan project,  
25 or are they billing them to rate case expense?

1 A. My understanding is, if they were working on  
2 testimony, it would be rate case expense.

3 Q. Okay. Now, since you were involved in the  
4 stipulation and agreement to set up the regulatory plan, you  
5 were aware that the construction project was going to be  
6 subject to regulatory review, correct?

7 A. Could you restate that? I'm not sure I  
8 understand the question.

9 Q. Okay. Well, since you were involved from the  
10 beginning of setting up the regulatory plan, you were aware  
11 that the Iatan construction projects would be subject to  
12 regulatory review?

13 A. Yes.

14 Q. Okay. Now, yesterday there was several  
15 comments that your consultants and auditors would give verbal  
16 reports. Wouldn't it be prudent, if you know you're subject  
17 to regulatory review, to have some documentation to support  
18 the assessments given by auditors?

19 A. You'll have to be more specific. I don't  
20 understand.

21 Q. If you know you're subject to regulatory  
22 review, if you know that Staff is going to ask you data  
23 requests and ask for documentation to prove expenses, if  
24 you're going to have expenses charged and there's no  
25 documentation to support it because it was given verbally,

1 you knew you were subject to regulatory review, why wouldn't  
2 you document those conversations or those assessments?

3 A. I'm not aware that KCP&L ever verbally  
4 approved an expense receipt or an expense charge. I'm not --

5 Q. Maybe I'm not being clear. Mr. Davis had  
6 stated that Lawgon or -- for example, would give verbal  
7 reports of their audit and not write -- put something in  
8 writing.

9 So if you know you're subject to regulatory  
10 review, why wouldn't you ask Lawgon or whatever auditor or  
11 assessor, Strategic Talent Solution to document the work they  
12 were doing, knowing you were subject to regulatory review?

13 A. Lawgon did not do an audit.

14 Q. Assessment. I mean, an assessment, an audit,  
15 a review.

16 A. Like I said, Lawgon did not do an audit.

17 Q. But they did an assessment. If they did a  
18 verbal assessment and you knew you were subject to regulatory  
19 review, why wouldn't you have that memorialized in writing?

20 A. I'm not trying to be argumentative with you,  
21 but assessment of what?

22 Q. Did Lawgon do assessments of the project?

23 A. I don't know.

24 Q. who's Mr. John Grimwade?

25 A. Mr. Grimwade, again, was a long-term employee

1 of KCP&L. He had a variety of roles within the company  
2 during my career there.

3 Q. What was his relationship to the Iatan  
4 construction project?

5 A. Initially, Mr. Grimwade was senior director, I  
6 believe was his title, of construction.

7 Q. Is he currently with KCP&L?

8 A. No, he's not.

9 Q. How about Terry Murphy?

10 A. Terry Murphy reported to John Grimwade early  
11 in the project. I'm not sure what his title was.

12 Q. Is he with KCP&L anymore?

13 A. No.

14 Q. And Bill Riggins, he was general counsel; is  
15 that correct?

16 A. Did you ask me if Bill Riggins was general  
17 counsel?

18 Q. Yes.

19 A. Yes.

20 Q. And he's no longer there anymore?

21 A. No.

22 Q. How about Carl Churchman?

23 A. Carl Churchman was vice-president of  
24 construction. He left the company shortly upon completion of  
25 the construction work.

1 Q. And when was that?

2 A. I believe he left the company mid-summer 2009.

3 Q. And Mr. Jerry Reynolds, he was the attorney in  
4 regards to construction?

5 A. Mr. Reynolds was onsite at the Iatan project  
6 for most of the time the project was progressing, yes.

7 Q. He was an attorney?

8 A. Yes, he was.

9 Q. And he's no longer there?

10 A. No.

11 Q. And Lora Cheatum, what was her role?

12 A. Ms. Cheatum was -- I believe her title was  
13 vice-president of procurement early in the project.

14 Q. And is she an employee of KCP&L?

15 A. No.

16 Q. And Steve Easley, who is Steve Easley?

17 A. Mr. Easley was vice-president, and perhaps his  
18 title was senior vice-president of production, and at one  
19 time production and construction.

20 Q. And he's no longer employed with KCP&L?

21 A. No, he's not.

22 Q. Now, would you say these individuals gained  
23 valuable experience working on the Iatan construction  
24 project?

25 A. I can't speculate to what they gained.

1 Q. Do you know if KCP&L did anything to retain  
2 these employees before they left?

3 A. I know in one particular case, Mr. Churchman,  
4 I know Mr. Downey attempted -- I should say not  
5 Mr. Churchman. It was Mr. Price. Mr. Price was  
6 vice-president of construction, and I know Mr. Downey  
7 attempted to retain  
8 Mr. Price.

9 Q. But you don't know if KCP&L tried to retain  
10 any of the other employees?

11 A. No, I don't know.

12 Q. Let's go to page 13 of your rebuttal, I think.  
13 And you're discussing how many -- the change orders in which  
14 Mr. Elliott reviewed.

15 Now, he only was provided change orders of the  
16 dollar value of \$50,000 or greater?

17 A. That's correct.

18 Q. Okay. How many change orders were there under  
19 the dollar value of \$50,000?

20 A. I don't know.

21 Q. Do you have a guess of how many there would  
22 be?

23 A. No.

24 Q. Do you know if that would be voluminous to  
25 provide to Staff?

1 A. I don't know.

2 Q. Do you know who would know that?

3 A. Mr. Archibald.

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

5 JUDGE PRIDGIN: Ms. Ott, thank you. Let me  
6 see if we have any bench questions. Commissioner Jarrett?

7 EXAMINATION

8 QUESTIONS BY COMMISSION JARRETT:

9 Q. Yes. Good morning, Mr. Giles.

10 A. Good morning.

11 Q. It's still morning, barely. I want to just  
12 start out, do you still have Exhibit 252? That's that chain  
13 of e-mails that Ms. Ott had given you earlier.

14 A. I do.

15 Q. All right. If you would go down to the bottom  
16 e-mail, which is from Wess Henderson to Bill Downey and Chris  
17 Giles, with a copy to Steve Dottheim, subject Iatan  
18 construction project.

19 A. Yes.

20 Q. And that is addressed to Mr. Downey and you;  
21 is that correct?

22 A. That's correct.

23 Q. And Mr. Henderson indicates that this is a  
24 follow-up on your phone call to Steve Dottheim and myself  
25 last Wednesday, February 20th.

1 Do you recall that February 20th phone call?

2 A. I do. I mean, I recall that we made a phone  
3 call and invited the Staff to observe the process, yes.

4 Q. What process was that?

5 A. We were engaged in identifying all of the  
6 costs. At this point in time we knew we had exceeded the  
7 contingency for Unit 1, and the reforecast process was about  
8 to embark for both Unit 1 and Unit 2. Unit 2, by that time  
9 frame, was roughly 70 percent engineered and Unit 1 was 100  
10 percent engineered.

11 So we were embarking upon this critical time  
12 frame where we knew the reforecast would have significant  
13 value to understanding how the costs were progressing and  
14 why. So that -- that's why we made the call.

15 Q. All right. And then Mr. Henderson asked for  
16 more specificity and wanted to know what had changed to have  
17 the Staff become more involved. Is your prior answer  
18 basically --

19 A. Basically, that's what I was explaining to  
20 Mr. Henderson was that we were at a critical juncture here  
21 and there would be a lot of significant discussion on cost  
22 and schedule at that point and wanted to make sure they had  
23 the opportunity to understand it.

24 Q. And basically, that is what you put in writing  
25 and responded to Mr. Henderson's e-mail, which is the next



1 e-mail up, dated March 4th -- from 2008, March the 4th, from  
2 you to Mr. Henderson and Bill Downey with a carbon copy to  
3 Steve Dottheim, Bill Riggins and Terry Bassham?

4 A. Yes. That was my written response to inform  
5 Mr. Henderson of -- of why -- it wasn't -- it wasn't that  
6 things had -- it wasn't that we were trying to get Staff more  
7 involved. We were hoping to have Staff involved from the day  
8 one of the project, and Mr. Elliott had been onsite beginning  
9 in about 2007.

10 No one from the auditing or accounting staff  
11 had been onsite or had any discussions with us. So this was  
12 a way -- other than our quarterly meetings, I should say. So  
13 this was our way to say, look, we were at a critical juncture  
14 here. Mr. Elliott's been onsite. We'd like to have the  
15 accounting staff come up as well, or anyone, basically, Staff  
16 wanted to come.

17 Q. All right. And then I think you indicated  
18 that instead of a face-to-face meeting, you had a phone  
19 conference with Mr. Henderson?

20 A. I believe we talked by phone after that. I  
21 somehow got the definite impression Staff would not be taking  
22 us up on our offer, and they did not. We never scheduled a  
23 time for them to come and review anything at that time. As  
24 the work was progressing, they did not attend any of those  
25 sessions.

1 Q. Do you recall, was something said by anyone  
2 from Staff that led you to get that impression?

3 A. I don't recall that -- you know, we had these  
4 quarterly meetings that were ongoing, and I don't remember  
5 if -- perhaps in one of those quarterly meetings it was  
6 brought up and said, well, we're not -- we're not going to do  
7 it, or if it just sort of went away, you know.

8 Q. Okay.

9 A. We were -- we were reporting to Staff every  
10 quarter, and at this particular time frame, we completed --  
11 this was in February/March of '08. We came down and  
12 presented the reforecast in May of '08. So the next meeting  
13 might have been, well, here it is, we're finished with it.

14 Q. Okay. I'm finished with 252, so you can put  
15 that aside.

16 Now, Ms. Ott had asked you several questions  
17 about discovery requests, data requests where she -- her  
18 questions -- several of her questions talked about KCP&L  
19 withholding information.

20 How many rate cases would you say you've been  
21 involved in, in your career, ballpark? I know it's a lot.

22 A. Fifteen, twenty.

23 Q. And as part of your job with KCP&L, would you  
24 normally assist in answering or answering data requests in  
25 rate case discovery?

1 A. Yes.

2 Q. In your experience in those 15 to 20 rate  
3 cases, would it be common for the company to claim  
4 attorney-client privileges on some data requests?

5 A. Yes. It's -- it would be, I believe, in every  
6 case, there's a certain amount of attorney-client privilege  
7 that is -- I don't know the term, but yes.

8 Q. Right. And I know you're not a lawyer, so I'm  
9 not asking for a legal opinion, but just given your  
10 experience in that many rate cases and in answering and  
11 assisting in answering data requests, is it your  
12 understanding that a proper attorney-client privilege claim  
13 is a legitimate response to a discovery request?

14 A. Yes. That's been my experience, and unlike a  
15 lot of the past cases I've been involved with, in this  
16 particular case, one, we had a hearing last April on this  
17 very topic of attorney-client privilege, and the Commission  
18 found in that case that the company was forthcoming.

19 Since that time, we've also had a special  
20 master appointed, and to my knowledge, the special master has  
21 withheld -- or upheld the company's claims most of the time.  
22 There's a few things he's found that we should give up. The  
23 ones that I've observed, as I stated earlier, none of it  
24 would have impacted the Staff's ability to do its audit and  
25 its prudence determination.

1 Q. Right. And I believe the special master  
2 received probably 60 or 70,000 documents from KCP&L. Does  
3 that sound about right to you?

4 A. I would say yes.

5 Q. And did the special master complain that you  
6 didn't give him what you were ordered to give him?

7 A. No, not that I'm aware of.

8 Q. All right. And in your experience in these  
9 rate cases, is it common for there to be discovery disputes  
10 between staff and the company?

11 A. It's very common. It's very common in  
12 Missouri, yes.

13 Q. And are those usually worked out?

14 A. Yes.

15 Q. All right. Ms. Ott asked you a little bit  
16 about the definitive estimate.

17 A. Yes.

18 Q. I think you were in the middle of explaining  
19 what you believed about the definitive estimate, and so I  
20 will just ask you: Tell me what you want to tell me about  
21 the definitive estimate.

22 A. I'd be glad to. In 2004, 2005 when we were  
23 negotiating the regulatory plan, the stipulation and  
24 agreement, Mr. Featherstone and I had both experienced the  
25 Wolf Creek case, and we had experienced it together.

1 Mr. Featherstone and I had a very brief conversation that  
2 basically said, look, Wolf Creek did not have documentation.  
3 They did reforecasts that you couldn't document what they  
4 did.

5           At the end of the day, Mr. Featherstone had to  
6 get the company to create what he called these reconciliation  
7 packages, which basically was go back after the fact and  
8 explain everything. He indicated he did not want that in  
9 Iatan 1, and my thought process at that time was I certainly  
10 don't want it either. And what I wanted, my goal was I want  
11 to give you every document, every decision-making process,  
12 everything we do on this project as we are doing it.

13           And we will create a cost control system that  
14 we will manage to -- I mean, that will be our management  
15 day-to-day of this project, and we will explain -- and at the  
16 time it was any cost identified, explain any cost overruns,  
17 at any point in time, whether it's three months after the  
18 project or five years when it's completed, you won't have to  
19 wait until the end. You'll have it every step of the way.

20           So that was the mind-set. And when we  
21 selected the term "definitive estimate," it wasn't defined.  
22 It wasn't even discussed what that meant. To me, what it  
23 meant, we will get you the budget that we're going to manage  
24 to as soon as we decide this is the budget. And we called it  
25 definitive estimate in the document. It could have been

1 called anything. It's the budget we're going to give you to  
2 track to.

3           As we were completing the evaluation and  
4 vetting the control -- what we call the control budget, which  
5 was completed in December of '06, I learned for the first  
6 time from Mr. Meyer, who was helping us with this progress,  
7 with this estimate, he said, you know, Chris, definitive  
8 estimate in the industry is when a project is more like 70  
9 percent engineered. So you got a bit of a problem here.

10           And I said, well, I understand that, but it  
11 doesn't really matter because this is what we're going to  
12 track to, this December '06 control budget that was 20 to 25  
13 percent engineered at that time. And so when we went down to  
14 explain to the Staff and the other parties, we had the  
15 budget, it's now January of '07, right after the board had  
16 approved it, and I said to the Staff, I did not want anyone  
17 thinking we were pulling a fast one, that, hey, now they're  
18 saying the definitive estimate's not going to be known for  
19 two more years. I didn't want that.

20           So I went into that meeting and said, look,  
21 definitive estimate in the industry is later, but I don't  
22 care. Doesn't matter. We're going to track to this budget  
23 I'm handing you, and we're going to call it control budget  
24 estimate, and it's going to be, for purposes of tracking, the  
25 same as the definitive estimate in this document. We went

1 through all that. There was no confusion. Nothing.

2 Q. And who did you go through that with, if you  
3 recall?

4 A. It was everybody that was involved with the  
5 project up to that point. Mr. Henderson would have been  
6 there, Mr. Elliott, Mr. Warren Wood. I don't believe  
7 Mr. Hyneman was there or Mr. Schallenberg.

8 Q. Was Mr. Featherstone?

9 A. Mr. Featherstone was, yes.

10 Q. Okay. Do you recall the questions from  
11 Ms. Ott regarding the fast-tracking?

12 A. Yes.

13 Q. Why did the company decide to use the  
14 fast-tracking method?

15 A. We really didn't have any choice from the  
16 standpoint of meeting a summer even of 2010 timeline. We did  
17 not have -- in order to get an EPC contractor, prepare bids  
18 and get it out on the street and get responses, that would  
19 have taken about a 12-month period. We didn't have time to  
20 do that, so in order to meet the June or summer 2010  
21 deadline, it could be done, but the early -- early  
22 engineering would have to proceed immediately and continue.  
23 For instance, Burns & Mc said we can design the foundations,  
24 get them on schedule, and continue to work on the other items  
25 as you build the foundations.

1                   And I think Mr. Bell, as he testified  
2 yesterday, it's common to do that. I've been working  
3 recently with some more construction projects and -- and the  
4 interesting thing is that, even on an EPC contract -- and I  
5 asked this of Mr. Bell -- aren't they also fast tracked? And  
6 his response was yes, they are all fast tracked because  
7 they're not going to wait a year to start construction. It's  
8 just the normal way you do it today.

9                   Q.       And Ms. Ott also asked you some questions  
10 regarding EPC versus multi-prime methods?

11                  A.       Yes.

12                  Q.       Can you describe the process the company used  
13 to decide which of those methods to use?

14                  A.       Yes. We had a considerable amount of  
15 discussion and right off the -- and one thing that's been a  
16 little bit confusing, I think, is you can do an EPC for the  
17 entire project, you know, it's called a full-wrap EPC,  
18 engineer, procure, construct.

19                         We had no interest from anyone in doing that  
20 kind of a project. So the -- there just wasn't anyone at  
21 that point in time that could do it that would take on that  
22 risk given the market conditions, the lack of having built  
23 coal units for some time. So they kind of all pulled back  
24 and said, well, we're not going to build that.

25                         The next best option for KCP&L, then, was can



1 we get major components of the project under an EPC. And  
2 that's when the company went out and got the bid from Alstom  
3 and others to do the boiler and AQCS equipment for both units  
4 all under an EPC contract and were able to secure that. And  
5 then went out and got the turbine from Toshiba in a process.

6           So what was remaining, then -- and I'm getting  
7 a little more technical than I should, but it's basically the  
8 balance of plant, how do you connect all this stuff together,  
9 you know, the electrical, mechanical, water, all this stuff  
10 that's not part of these packages.

11           And KCP&L had thought we could go out and get  
12 individual packages on, for instance, say we'll get a  
13 mechanical, we'll get an electrical, we'll develop these  
14 packages and put them out for bid. We did not have anyone  
15 interested in EPC for that scope of work, the balance of  
16 plant work. So we were progressing down this path to have  
17 multiple contractors for the balance of plant, and that's  
18 when Kiewit had a job cancel and came in and said, look,  
19 we'll do it for you, we'll take that as basically an EPC and  
20 do all of that balance of plant work.

21           And we were fortunate that Kiewit became  
22 available because we're not even sure, when we hired Kiewit,  
23 that we would have enough competition for those packages  
24 even. So that's -- that's kind of the progression of the  
25 whole contracting strategy.

1 Q. All right. Do you recall how many firms you  
2 contacted about the possibility of entering into an  
3 EPC contract?

4 A. My recollection is that Mr. Jones was the  
5 individual that did that, but there were all of the large  
6 ones. I mean, it was -- which is about five to six. I mean,  
7 there are not a lot of them. Bechtel, Fluor, Washington  
8 Group, Kiewit. All the big ones were contacted.

9 Q. You were here yesterday when I was -- when  
10 Mr. Jones was on the stand --

11 A. Yes.

12 Q. -- were you not? And listened to all of his  
13 testimony?

14 A. I did.

15 Q. I want to ask you about the reporting from  
16 KCP&L to Staff. He indicated you may have some more  
17 information about how that worked. And my understanding is  
18 that there were quarterly reports given to Staff.

19 Those were called -- I can't remember -- K  
20 Reports or something like that?

21 A. Yes. There were -- beginning in, I believe it  
22 was in the first quarter of '06, we started preparing  
23 quarterly -- what we called the quarterly report, and it  
24 included as part of that report the cost portfolio or the K  
25 Report was attached, which is essentially the cost report.

1 So the quarterly report was an extensive narrative of  
2 everything that had happened in that quarter at the project  
3 and everything we projected was going to happen in the future  
4 as far as risks, opportunities, the status of it.

5           There was about a 45-day delay from the end of  
6 the quarter until we got the report prepared and sent to  
7 staff and the other parties. So once we gave them the  
8 report, we had a team of people come to Jefferson City every  
9 quarter to answer questions on that report and at the same  
10 time give all the parties an update since it's now 45 days  
11 later. We would cover that 45 days in that meeting and say,  
12 well, since the report, here's what's happened, whether this  
13 cost went up, this cost went down, we've identified a  
14 potential issue here and here's how we're going to mitigate  
15 it.

16           So that was really, as it turned out, the most  
17 valuable -- to me, the most valuable item discussed in those  
18 meetings was not what we had written, but what had happened  
19 since we had written it. And we spent a lot of time  
20 discussing that.

21           Q. All right. So, for example, using I think one  
22 of Mr. Mills's examples, if a pump had been designed,  
23 engineered and it was put in upside down in the design and it  
24 was discovered and there had to be extra expense incurred in  
25 fixing that, something like that would be in that quarterly

1 report and Staff would be made aware of that?

2 A. Yes.

3 Q. And then I think he also -- Mr. Jones also  
4 said something about there were monthly reports as well?

5 A. Yes. We also prepared monthly status reports  
6 and K Reports. We were not providing that to anyone  
7 throughout the project development and execution, but as part  
8 of the discovery process, Staff requested and got all of  
9 those monthly reports as well.

10 Q. Okay. And I don't know if you may know this  
11 or not, but are you aware that City Utilities of Springfield  
12 is currently constructing a coal-fired generation plant?

13 A. I was not aware of that.

14 Q. I won't ask you about it then.

15 were you involved in the prudence review in  
16 Kansas Corporation Commission regarding the prudence of the  
17 Iatan project?

18 A. I was, yes.

19 Q. All right. And did Mr. Drabinski, was he the  
20 person hired by the Staff to perform the prudence audit?

21 A. Yes, that's correct.

22 Q. Did you have any big discovery disputes and  
23 trouble over information with him and his Staff?

24 A. None, with him or the KCC Staff themselves.  
25 Mr. Drabinski was a consultant hired by them to -- to do part

1 or all of the prudence review, but they also had a team of  
2 accountants and engineers that we also answered data requests  
3 related to the project, both Unit 1 and Unit 2, and we never  
4 had any disputes regarding discovery.

5 Q. Do you recall, did -- did he ask KCP&L or his  
6 Staff ask KCP&L for information on Schiff Hardin and their  
7 legal bills? Did they review those as part of their audit?

8 A. I don't believe Mr. Drabinski did. Whether  
9 their Staff did or the accounting staff did or not, I'm not  
10 sure, but I don't believe Mr. Drabinski focused on Schiff  
11 Hardin.

12 Q. Did Mr. Drabinski focus on any gifts or  
13 gratuities that employees might have gotten at KCP&L?

14 A. Nothing, no.

15 COMMISSIONER JARRETT: All right. I don't  
16 have any further questions of Mr. Giles. Thank you.

17 JUDGE PRIDGIN: Commissioner Jarrett, thank  
18 you very much. Commissioner Gunn.

19 EXAMINATION

20 QUESTIONS BY COMMISSIONER GUNN:

21 Q. Hi. Can you hear me okay?

22 A. I can.

23 Q. Great. Thank you. I don't have too many. I  
24 just have a couple. I want to clarify some things.

25 Your explanation between the CBE and the

1 definitive was very helpful, but in terms of the CBE versus  
2 the reforecast, when we're talking about being 15 percent  
3 over, are we talking about the CBE or are we talking about  
4 the reforecast?

5 A. The CBE.

6 Q. Okay. So the 15 percent is the -- is the  
7 reforecast?

8 A. No. The -- if you looked at the -- the CBE  
9 was a 1.685 billion.

10 Q. Okay.

11 A. The current projected estimate at completion  
12 is 1.948 billion.

13 Q. Okay.

14 A. And that difference between the control budget  
15 1.685 and 1.948 is about 15 to 16 percent.

16 Q. Okay.

17 A. The reforecast that was completed in May of  
18 2008 was 1.901 billion, and the difference between that  
19 reforecast and the current estimate at completion, I believe,  
20 is less than two percent.

21 Q. Thank you. That's helpful.

22 I want to talk a little bit about the change  
23 orders with Mr. Elliott.

24 A. Okay.

25 Q. And, in general, has it been -- Staff

1 described kind of this dual process where the engineering was  
2 approved as a change order, which is a separate inquiry from  
3 the financial or auditing function.

4 Has that -- has that been your understanding  
5 about how that process has worked in the past?

6 A. No, not in the past. And I'm going to need to  
7 clarify this a little bit. In the past, Mr. Elliott had done  
8 most of the analysis as far as change orders and anything to  
9 do with the -- what I would call the construction side of the  
10 audit.

11 Now, Mr. Elliott and Mr. Featherstone, who  
12 typically was the primary Staff person in the audit or  
13 accounting side, would work and discuss things together and  
14 come up with a recommended disallowance or not. Now, that  
15 doesn't mean they couldn't disagree and doesn't mean  
16 Mr. Featherstone didn't put something in on his own, but they  
17 always worked together and they always talked.

18 what -- what I have observed on this project  
19 is the Staff has now defined Mr. Elliott's work as  
20 engineering work. The Staff auditors, as a separate cost,  
21 sort of work and never the two shall meet or talk. And that  
22 is what I've observed and based on Mr. Elliott's deposition  
23 is what has occurred on this project. Mr. Elliott --

24 Q. So --

25 A. -- said that he did not talk and Staff

1 auditors did not talk to him. My --

2 Q. So previously, it was a joint  
3 recommendation -- any disallowance was a joint recommendation  
4 between engineering and the auditor?

5 A. I have never seen -- I mean, basically, what I  
6 want to explain, I have never seen a disallowance proposal  
7 that was separate, yes. It was a Staff-recommended  
8 disallowance.

9 Q. Have you seen -- I'm sorry, go ahead. Please  
10 go ahead. I'm sorry.

11 A. I just wanted to add that in the -- in the  
12 past, whatever Mr. Elliott had recommended, whether he  
13 recommended a disallowance or not, was what the auditors or  
14 accounting staff adopted. There was -- there was never any  
15 difference.

16 Q. So that was going to be my question -- my next  
17 question. So you have never had an incident where an  
18 engineering change order was accepted by Mr. Elliott and  
19 disallowed by the auditing staff in any previous -- your  
20 experience in any previous project?

21 A. Not that I'm aware of.

22 Q. Okay. Thank you. I want to -- just a quick  
23 question on the EPC that you talked about.

24 Now, you said you contacted -- you went out  
25 and there was no interest on the EPC, and through



1 Commissioner Jarrett's questions, you said you talked to  
2 about five or six companies.

3           was that a formal kind of RFP process, or was  
4 it just an informal picking up the phone, are you-guys  
5 interested in bidding on this?

6           A.       My understanding is that it was picking up the  
7 phone conversation at that point. It never -- and  
8 Mr. Roberts or Mr. Downey may be able to confirm this.  
9 Typically, on a project like the Iatan 1 and 2 project, you  
10 would send out some sort of a request for interest and  
11 qualifications.

12                   In this particular instance, when the -- the  
13 way you get that interest list is to make the phone calls.  
14 So early on, when Mr. Jones and others made the phone calls,  
15 they could not get anyone even interested in an EPC contract  
16 because of the market and the risk that they all perceived  
17 and the fact they hadn't done these for so long was also a  
18 part of it. But to answer your question, I don't believe it  
19 was a formal RFP.

20           Q.       Do you know, did that take place when you were  
21 looking for interest for the entire project as well as when  
22 you had the balance of plant issues, or did it just happen at  
23 the very beginning?

24           A.       There were -- there were two separate calls.  
25 Initially, it was the -- the call to -- for the entire

1 project. Once no interest was there for that, then there was  
2 a second period of, once we went out and said we're going to  
3 go out and do an EPC on the boiler and AQCS. Now let's go  
4 out and see if there's any interest in the balance of plant  
5 as an EPC contract.

6 That was a separate event that occurred later  
7 and was performed by Mr. Jones, and that's when he found  
8 there's no interest, even in the balance of plant piece of  
9 the work, and we didn't have any interest until Kiewit  
10 contacted us and said let's -- we've had a job cancel and  
11 we're looking for work, basically.

12 Q. Okay. All right. I'm going to move on to the  
13 regulatory plan. When you were negotiating the regulatory  
14 plan, was there any understanding reached about how the  
15 adequacy of the cost control plan would be judged?

16 A. Absolutely no discussion whatsoever. There  
17 was no discussion of what definitive estimate was or meant.  
18 There was no discussion of what cost overruns meant, and  
19 there was no discussion of what format or what documents or  
20 what process would be used in the cost control system.

21 Q. Internally to KCP&L, when you were developing  
22 the cost control system, did you have discussions about  
23 adequacy or how you would -- you would present it to the  
24 Commission or the Commission Staff?

25 A. My instructions and conversations with the

1 folks that were working on the cost control system document,  
2 which included Mr. Jones and Schiff Hardin, my instructions  
3 to them was exactly what I was thinking when I signed it --  
4 when we signed agreement, which was I want the Staff to be  
5 able to see every decision and every document and every  
6 decision point we make on this project.

7           So even if -- and the -- and they told me,  
8 well, you know, we're going to put in everything that's --  
9 they entered in the industry. And when I looked at it and  
10 saw that there was reforecast, you know, that typically you  
11 do a reforecast once the unit is closer engineered and I was  
12 told 70 percent, again at 90 percent, and my instructions was  
13 make this system flexible enough that it can cover what we  
14 are going to use to manage this project day-to-day.

15           So that if Staff walks in one day and says, I  
16 want to know where your budget is today and I want to know  
17 what you expect it to be tomorrow and are you going to be  
18 over or are you going to be under, we can answer that  
19 question.

20           Q.       So under that -- you just mentioned that in  
21 the cost control system, you were putting in what you believe  
22 to be industry standards plus things in order to achieve that  
23 transparency?

24           A.       Yes.

25           Q.       How much of that was kind of brand new that

1 had never been seen by the Missouri Staff before?

2 A. I believe all of it. And that was one of the  
3 problems we had -- or not a problem. That was one of the  
4 concerns Mr. Featherstone had when we first set out to do the  
5 regulatory plan. The last case that -- the last big project  
6 we had was Wolf Creek, and it had no cost control system at  
7 all.

8 Q. So this -- so as far as you can tell, this was  
9 a brand new from beginning to end? Even though the industry  
10 had used it for Missouri, this was a brand new process?

11 A. Yes.

12 Q. All right. Thank you. I'm going to move on  
13 to Schiff Hardin a little bit. Had you worked with them  
14 before in previous projects?

15 A. No. My first time was this project with the  
16 Iatan Unit 1 and 2.

17 Q. Were you involved in their selection?

18 A. I was involved in a -- in a couple of -- of  
19 ways. One, I was a member of the executive oversight  
20 committee as an officer of the company, and that committee  
21 approved the hiring of Schiff Hardin. I was also involved  
22 working with Mr. Downey very closely, and I recall an  
23 interview we had with Mr. Roberts and Mr. Gould, I believe,  
24 and may have been other Schiff Hardin people.

25 But I -- I fully understood what Mr. Downey

1 was or hoping to accomplish with Schiff Hardin. And based on  
2 my experience with prior construction projects, you know, it  
3 was absolutely necessary to hire someone like Schiff Hardin  
4 for this project given not only relatively inexperienced  
5 senior management with construction but also in knowing how  
6 past construction projects had progressed.

7           And if I may, the way I can explain that, in  
8 past large construction projects, KCP&L -- and I assume this  
9 is probably other utilities as well -- didn't involve their  
10 senior management and definitely someone in my position as  
11 vice-president of regulatory affairs, they weren't involved  
12 in the project. In other words, the -- the construction  
13 group, the senior leadership went off and built it, and you  
14 hoped at the end of the day it came back on schedule and on  
15 budget.

16           And to his credit, Mr. Downey did not want  
17 that to happen on this project. He wanted oversight not only  
18 from himself and the EOC, the officer committee, he wanted an  
19 expert in the industry to come in and also provide that  
20 independent oversight and knowledge of project controls and  
21 costs so that, not only was senior management not ever  
22 surprised, neither would be the regulators because we were  
23 going to maintain that same transparency with them.

24           In past projects, the best way I can describe  
25 it is there were lots of surprises, and no one in today's

1 environment wants a surprise at the end of the day.

2 Q. So would you say you have -- you understood  
3 what Mr. Downey was trying to do, that's what you just  
4 described what he was trying to do?

5 A. Yes. He wanted not only to have oversight  
6 from KCP&L officers; he wanted assistance. And the company  
7 needed assistance from an expert such as Schiff Hardin that  
8 knew the contract law, knew the contractors themselves, had  
9 experience with them so that when Alstom came in and said,  
10 look, here's my story on this, you've got a Schiff Hardin  
11 sitting there saying, look, I know that's not the case.

12 You know, they had that oversight ability to  
13 not only ferret out what the contractors were saying, but to  
14 some extent even our own construction personnel. So it was  
15 sort of an independent. You know, you may have a project  
16 leader out there to protect his own interest, doesn't tell  
17 you everything you need to know until it's too late. And  
18 part of Schiff Hardin's responsibility was to ensure that  
19 didn't happen.

20 Q. So you've made a couple references to experts  
21 like Schiff Hardin or an expert such as Schiff Hardin. What  
22 was the EOC's understanding as to why there was no  
23 competitive process to determine who that expert was going to  
24 be?

25 A. Well, initially, on the decision to hire

1 someone like Schiff Hardin, it was pretty well-described at  
2 the EOC that this was the top firm, this was the firm that  
3 had the contacts with the vendors, had the contacts with the  
4 contractors that was best for the work.

5           At the time that we actually hired Schiff  
6 Hardin, I don't think anyone on the EOC anticipated the scope  
7 of their work as it ended up. So that we -- we at first  
8 expected that this project would not be a \$20 million Schiff  
9 Hardin bill, but more like a, you know, \$10 million Schiff  
10 Hardin bill or even \$5 million at one point when I first was  
11 involved. So there wasn't -- seemed to be a necessity to go  
12 out with an RFP and get bids.

13           As the project progressed and contract work,  
14 contract administration project controls, all of those items  
15 continued to be a focus, you know, basically the Schiff  
16 Hardin bills ended up being larger than what we had  
17 anticipated. Had we known that back in 2005, probably should  
18 have and would have done an RFP.

19           Q.       So who -- who was it that convinced or  
20 educated the EOC that Schiff Hardin was the top firm?

21           A.       I recall that our general counsel was very  
22 involved at that point, Mr. Bill Riggins. Mr. Downey had  
23 considerable contacts with his former employer, Commonwealth  
24 Edison, and his boss there, Mr. Tom Maiman, and I believe  
25 Mr. Maiman, who was very familiar with that end of the

1 business because he had built many more projects at  
2 Commonwealth than KCP&L had. So -- and you can probably get  
3 this better clarified from Mr. Downey when I think he follows  
4 me as a witness.

5 But I think Mr. Downey would tell you that  
6 Mr. Maiman and his knowledge of the industry was largely  
7 based on -- on his decision to hire Schiff.

8 Q. Okay. So Commonwealth Edison had the  
9 experience with Schiff Hardin, Mr. Downey had experience with  
10 Commonwealth Edison, received a referral, then Mr. Downey and  
11 Mr. Riggins told the EOC that Schiff Hardin was the top firm?

12 A. Correct.

13 Q. Okay. Now, so you said that -- that bills  
14 were anticipated to be initially between \$5 million and \$10  
15 million; is that correct?

16 A. Correct.

17 Q. Was that contemplated in the CBE?

18 A. I believe that was in the -- and I can't say  
19 for sure. Mr. Archibald could give you a better number. By  
20 the time we did the CBE, I think the estimate that Schiff had  
21 provided to us was, for both projects, somewhere between 13  
22 and 17 million.

23 Q. Okay. So had Schiff already been hired by the  
24 time that estimate had been given?

25 A. Yes.



1 Q. So they -- so they were -- the EOC said we  
2 think it's going to be \$5 million to \$10 million. You retain  
3 Schiff Hardin, then they give you the estimate of 13 to 17  
4 million, and then you include that in a CBE?

5 A. That's my recollection, yes.

6 Q. Okay. So even though you had a potential \$12  
7 million increase in the budgeting for this, was there any  
8 questioning of that?

9 A. That, I can't -- I don't know.

10 Q. Was there any question and discussion of that  
11 at the EOC?

12 A. Not that I'm aware of.

13 Q. So the EOC had no problem with the difference  
14 of the original estimates and those that were included in the  
15 CBE?

16 A. I don't know that the executive or the  
17 oversight committee had any knowledge of the -- the number of  
18 13 to 17. It was just rolled into the budget in the -- I  
19 mean, no, I don't know of any questions specifically that  
20 said, well, how much of this is Schiff Hardin.

21 Q. Did the EOC review the CBE in detail?

22 A. It did. And, again, Mr. Archibald or  
23 Mr. Downey could give you more specifics, but I don't think  
24 it would have been a line item on the -- on the budget the  
25 EOC was looking at. It would have been in the indirect

1 costs. I could be wrong.

2 Q. So typically, for other vendors, when you have  
3 a \$5 million to \$10 million bill, do you still not go through  
4 a competitive -- any competitive processes in order to  
5 determine who would give you the best product, best service  
6 value?

7 A. I think on services, it's probably reaching  
8 the point where you should probably do an RFP. But I -- I --  
9 I am probably the wrong individual to ask that. It's  
10 probably Forrest or Mr. Downey.

11 Q. Well, let me ask you this: Did the EOC -- was  
12 there any discussion or questions about having a non- --  
13 having a competitive or non-competitive award?

14 A. Not that I recall.

15 Q. Okay. So were there any questions at the  
16 EOC about rates or volume discounts or anything like that  
17 that Schiff Hardin may have been provided?

18 A. No, not that I can recall.

19 Q. Was any direction given to Mr. Downey and  
20 Mr. Riggins from the EOC regarding hiring Schiff Hardin?

21 A. No, other than, you know, the EOC was  
22 comfortable that Schiff Hardin was -- was needed, and would  
23 be an asset. There was not much discussion, if any, on their  
24 individual bills.

25 Q. So let me -- let me ask you this about the

1 EOC: What issues, if any, did they question regarding this  
2 project? I mean, if a \$5 million to \$10 million expenditure  
3 wasn't questioned or didn't have any discussion, what items  
4 actually did have discussions?

5 A. Any items that would be of any significance on  
6 the project, the relationships with the contractors, Alstom,  
7 the settlement with Alstom. Just about any major issue or  
8 concern on the construction side of the -- of the project  
9 would have been discussed, reviewed, and approved by the EOC.  
10 It's not atypical that services type contracts would not be a  
11 focus on a construction project.

12 Q. Was there any -- was there any item brought to  
13 the -- would Mr. Downey typically bring items to the EOC for  
14 approval and discussion?

15 A. Typically, it would be the leadership team of  
16 the project.

17 Q. Was there any -- was there ever an item  
18 brought by the leadership team to the project that was not  
19 approved by the EOC?

20 A. Yes. There were various projects -- you know,  
21 various items or issues that would come before the EOC where  
22 the EOC would instruct the project team to no, we don't --  
23 what you're providing to us is not selling us on this  
24 decision. You need to go back and figure out and do some  
25 more work. And then it would come back and either be

1 approved in a revised format or be done a different way,  
2 perhaps.

3 Q. what types of issues were those?

4 A. well, one of the main ones I can think of is  
5 later on in the project when we were -- and since this is the  
6 most recent example, when we entered into the startup  
7 process, the startup team and the project leadership team had  
8 a date that they thought they could realistically set for the  
9 project. And that particular date was so far out from where  
10 we were focused, we said no, that's not -- you know, just  
11 telling us to put this date out there and this is where we  
12 think we're going to come in. The EOC ordered the -- or  
13 directed the leadership team to do a risk assessment and that  
14 risk assessment was to be evaluated.

15 Everything that could go wrong in startup and  
16 identify a best case and a most likely case of a worst case  
17 of various items that would delay the startup of the unit.  
18 And rather than just accepting the farthest out date the  
19 startup team had given us, went back and said, look, I want  
20 to know what would cause this delay and what's the  
21 probability of it happening.

22 And so that's -- that's a real good example of  
23 the EOC saying no, we're not going to accept that, and we  
24 want you to come back with a probabilistic risk assessment of  
25 why you think this date could be met and what's the

1 likelihood of it being met.

2 COMMISSIONER GUNN: Thank you, sir. I think  
3 that's all I have.

4 JUDGE PRIDGIN: Commissioner Gunn, thank you.  
5 Commissioner Kenney?

6 EXAMINATION

7 QUESTIONS BY COMMISSIONER KENNEY:

8 Q. Good morning. We still have five more minutes  
9 into morning, so good morning. How are you?

10 A. Good morning. Fine.

11 Q. Oh, my watch seems to have stopped.

12 JUDGE PRIDGIN: Or perhaps time stopped, I'm  
13 not sure.

14 BY COMMISSIONER KENNEY:

15 Q. All right. Mr. Giles, I won't take up too  
16 much more of your time. I want to start by talking about the  
17 discussion you just had with Commissioner Gunn about the  
18 contract for Schiff's services because I'm a little confused  
19 as to the timing. There's a document that we have that was  
20 attached to somebody's testimony, and it's an HC document,  
21 but it's the contract for legal services between Kansas City  
22 Power & Light and Schiff.

23 Do we need to go in-camera to discuss it?

24 JUDGE PRIDGIN: Counsel?

25 MR. FISCHER: You're fine for now,

1 Commissioner.

2 COMMISSIONER KENNEY: Well, I just want to  
3 talk about the date of execution of the contract.

4 MR. FISCHER: That's fine.

5 COMMISSIONER KENNEY: So I don't think that's  
6 too controversial.

7 BY COMMISSIONER KENNEY:

8 Q. The date of execution is January 17, 2007, but  
9 all the discussions we've been having indicate that Schiff  
10 was hired in 2005 or 2006.

11 Are you aware of another contract for legal  
12 services that was executed prior to the one that I'm looking  
13 at?

14 A. No, I'm not aware of -- of either, actually.  
15 I'm not aware of the contract, the one you're referring to.  
16 But Mr. -- Schiff Hardin was actually hired in August of 2005  
17 and had started work in August 2005. I don't know, and  
18 Mr. Downey or Mr. Roberts could better give you dates.

19 Q. Okay. Fair enough. But as far as you know,  
20 they were hired in August '05?

21 A. Yes. They were -- I know for a fact they were  
22 working on the project in August of '05.

23 Q. Okay. Now, you discussed earlier the whole  
24 conversation about the control budget estimate as you  
25 understood it and its relationship to the definitive estimate

1 and your understanding of the control budget estimate of 2006  
2 was intended to be the definitive estimate against which cost  
3 overruns would be measured, correct?

4 A. Correct. Yes, sir.

5 Q. And you mentioned a conversation in which you  
6 went back to Staff and said, you know, I don't want anybody  
7 to think we're trying to pull the wool over anybody's eyes or  
8 pull a fast one. Here's my understanding of what definitive  
9 estimate means. I have since come to learn that it's a term  
10 of art that has a different meaning in the industry and you  
11 attempted to clear that up with Staff. Is that a fair  
12 summary of your testimony?

13 A. Yes. That's exactly what I did.

14 Q. And you said Mr. Featherstone was present at  
15 that discussion, right?

16 A. Yes, he was.

17 Q. And you may have said this, I just missed it.  
18 whom else from our Staff would have been present during the  
19 discussion, that specific discussion?

20 A. Anyone attending the -- the budget meeting  
21 and -- there were signup sheets in those meetings that we  
22 could probably get and verify exactly, but based on the  
23 timing of events at that time, Mr. Henderson would have been  
24 there, Mr. Warren Wood. I don't know -- I'm very -- well, I  
25 don't know Mr. Schallenberg was in that meeting or not. I

1 don't believe Mr. Hyneman was because Mr. Hyneman didn't come  
2 on to the project until '09.

3 MR. FISCHER: Judge, can I approach the  
4 witness with an exhibit that's been introduced in the case  
5 that does have the signup sheet on the cost control meeting?

6 JUDGE PRIDGIN: You may.

7 COMMISSIONER KENNEY: Is that the July 11,  
8 2006, meeting, Mr. Fischer?

9 MR. FISCHER: Maybe this is not the same  
10 meeting then. I'm sorry. I apologize. I thought that was  
11 the meeting he was discussing.

12 COMMISSIONER KENNEY: That's what I want to  
13 ask.

14 BY COMMISSIONER KENNEY:

15 Q. Is that the meeting you're referring to,  
16 Mr. Giles, or is this a different meeting?

17 A. No. This would have been -- not when we  
18 presented the --

19 Q. The cost control system?

20 A. Right. But when we actually presented the  
21 control budget estimate, and that meeting occurred in January  
22 of 2007.

23 MR. FISCHER: I'm sorry. We don't have a  
24 signup sheet for that.

25 THE WITNESS: But I know Mr. Henderson,



1 Mr. Warren Wood, Mr. Dave Elliott, Mr. Cary Featherstone were  
2 all in that meeting.

3 BY COMMISSIONER KENNEY:

4 Q. And it's your recollection that a sign-up sheet  
5 does exist for that meeting?

6 A. Yes. Staff typically always has a sign-up  
7 sheet and, I assume, keeps those sign-up sheets.

8 Q. Okay. What is your -- what is your  
9 understanding of the significance of the definitive estimate  
10 being based upon the 2006 control budget estimate?

11 A. I don't think it has any significance. I  
12 don't think it -- what -- what the -- what the document was  
13 intended to do was to say when are you going to start  
14 tracking costs, and the way the document in Q was set up, we  
15 called that -- we would track costs above the definitive  
16 estimate, and it doesn't matter what you call it. We ended  
17 up calling it the control budget estimate, but it was the  
18 first budget we presented to Staff, and it was the budget we  
19 always tracked costs to throughout the life of the project.

20 Q. So the significance of it is the timing at  
21 which Kansas City Power & Light began tracking costs?

22 A. Yes.

23 Q. Not necessarily the dollar amount?

24 A. Correct.

25 Q. Okay. Is it fair to say that it was always

1 understood that that budget would increase because only 20  
2 to 25 percent of the engineering had been completed at that  
3 point?

4 A. I wouldn't personally characterize it as  
5 saying we knew the budget would increase. I think the -- we  
6 knew it was 20 to 25 percent engineered at that time. We  
7 knew we needed to do a reforecast when it was further  
8 engineered. I personally can't say that I anticipated it  
9 would increase, but we would look at it.

10 Q. Okay. Did you think it wouldn't increase?

11 A. My -- my expectations were it was much more  
12 likely to increase than anything. And basically, it's  
13 because we were 20 to 25 percent engineered. The market was  
14 very competitive and very at risk for price increases, and  
15 I -- I would expect it to have gone up. But I -- I can't say  
16 that it was not the best estimate we could come up with at  
17 the time. The control budget estimate was a very thorough  
18 and very much vetted and reviewed budget with a contingency.

19 So on the -- on the basis of all the  
20 information we had at the time, we felt it was a good budget  
21 but recognized that we would need to relook when the project  
22 was closer to 70 percent engineered.

23 Q. And then there was another forecast done in  
24 April of 2010 when it was about 90 percent engineered or  
25 almost to completion?

1 A. Yes. There was actually a -- a reforecast  
2 done in the summer of 2009.

3 Q. Okay.

4 A. And that was to -- when the project was 90  
5 percent engineered, that particular budget didn't change the  
6 total cost. It came in the same and -- which is not  
7 surprising. We've gone from 70 to 90 percent, and a year  
8 later the budget was still good at 1.901. Then we did an  
9 estimate at completion in November 2010 that brought it up  
10 to 1.948.

11 Q. Gotcha. I want to talk a little bit about  
12 the -- and I don't remember who you had this conversation  
13 with, but you were discussing -- I think it was with  
14 Ms. Ott -- the discussion of the invoices from Schiff.

15 Do you remember having a discussion regarding  
16 the invoices you received from Schiff Hardin?

17 A. I do, yes.

18 Q. Were you a part of the process of reviewing  
19 those invoices before they got paid?

20 A. No, I was not involved at all with invoice  
21 review of Schiff.

22 Q. Okay. There was some discussion regarding  
23 whether Kansas City Power & Light would be requesting the  
24 costs of the May 23rd, 2008, crane accident. Do you recall  
25 that discussion?

1 A. Yes, I do.

2 Q. what is KCP&L's position as you understand it  
3 to be today?

4 A. As I understand it today, they're -- and I can  
5 say this potentially because I'm not sure. My understanding  
6 is there is some potential costs that KCP&L may incur as a  
7 result of some sort of insurance dispute.

8 Q. Is this highly confidential information since  
9 it's an ongoing commercial dispute?

10 A. I think it probably is.

11 JUDGE PRIDGIN: Counsel, can you verify?

12 MR. FISCHER: Yes, sir.

13 (REPORTER'S NOTE: At this point, an in-camera  
14 session was held, which is contained in volume 20, pages 1128  
15 to 1130 of the transcript.)

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1 CHRIS GILES testified as follows:

2 BY COMMISSIONER KENNEY:

3 Q. I just want to make sure that we all are  
4 defining our terms the same way. So the comprehensive energy  
5 plan and the stip in that case was the same thing?

6 A. Yes. The way that -- the way I used to  
7 characterize it and still do is the comprehensive energy plan  
8 was the -- the investment in the five-year business plan for  
9 KCP&L. The regulatory plan enabled us to implement it.

10 Q. Gotcha. Okay. But all that's embodied in  
11 that stipulation and agreement from the 2005 case?

12 A. Yes.

13 Q. were you involved directly with the  
14 negotiation of that stipulation and agreement?

15 A. Yes, I was.

16 Q. And then let me ask you this question, then.  
17 If you know, you know; and if you don't, that's okay. who  
18 typically would take the first stab at drafting that  
19 document? would it be our Staff, would it be Kansas City  
20 Power & Light or one of the other parties?

21 Do you know who actually sat down at the word  
22 processor and cranked out the first draft of the stipulation  
23 and agreement?

24 A. I believe the -- you know, maybe the very  
25 first draft, I recall, was drafted by KCP&L.



1 Q. Okay.

2 A. But to give you an idea of how that process  
3 went, we actually got in a room together, KCP&L staff, all  
4 the other parties that were involved, put it up on a -- I  
5 guess it's called an ELMO, and actually wrote that document  
6 together page-by-page all the way down to punctuations and  
7 language. So however it started out, it was definitely a  
8 group effort when it was completed.

9 Q. Well -- so let me make sure I understand you.  
10 The first draft was drafted by Kansas City Power & Light, and  
11 that was put up on an ELMO and you-all went page-by-page,  
12 line-by-line?

13 A. Yes. And that occurred over a period of days.

14 Q. Several days?

15 A. Yes.

16 Q. Were you present at all those drafting  
17 sessions?

18 A. Yes, I was.

19 Q. Let me -- do you have a copy of the plan?

20 A. I do not in front of me.

21 COMMISSIONER KENNEY: Can somebody provide it  
22 to Mr. Giles, please.

23 MR. FISCHER: Yes, sir.

24 JUDGE PRIDGIN: Mr. Fischer is getting it.

25 BY COMMISSIONER KENNEY:

1 Q. Let's look at Paragraph Q on page 28, Roman  
2 numeral three, capital B, number one, Paragraph Q, the --  
3 what is now becoming the infamous cost control process for  
4 construction expenditures paragraph.

5 A. Yes, I see it.

6 Q. who drafted that particular paragraph? would  
7 that have been in the initial draft that Kansas City Power &  
8 Light drafted?

9 A. I believe so, yes.

10 Q. Okay. And I'm really getting into the weeds  
11 here. Do you know specifically who at Kansas City Power &  
12 Light would have drafted the first draft?

13 A. Probably Mr. Fischer.

14 Q. Okay. All right. Do you know if that  
15 paragraph changed at all substantively -- well, not even  
16 substantive. I don't want to qualify it.

17 Do you know if that paragraph changed at all  
18 from how it was presented in the very first draft, drafted by  
19 Mr. Fischer until the ultimate draft that was signed by the  
20 parties, if you know?

21 A. The only thing I can say is I would not  
22 anticipate it had changed at all because we did not have any  
23 discussion on this paragraph at all. This was the least  
24 discussed topic of many topics in this -- in this drafting.  
25 It was not a concern. It did not appear to be a concern to

1 anyone.

2 Q. That's funny how these things turn out, that  
3 the least discussed paragraph is now morphed into one of the  
4 most discussed paragraphs.

5 A. You're exactly right. And, you know, and that  
6 really goes to the heart of the argument because --

7 Q. Yes, it does.

8 A. -- had we known, I think we would have spent  
9 more time defining these terms.

10 Q. My thoughts exactly. So there was -- and this  
11 is probably redundant, but I just want to be clear.

12 It was never discussed how cost overruns would  
13 be identified and explained?

14 A. Never.

15 Q. Are you aware of whether there is any  
16 construction industry standard for identifying and explaining  
17 cost overruns?

18 A. No, I'm not aware of any. Mr. Meyer may have  
19 a better idea, but I know Mr. Meyer in his testimony has said  
20 that KCP&L's is in the top 25 percent of the industry.

21 Q. Kansas City Power & Light -- I'm sorry, Kansas  
22 City Power & Light what?

23 A. Cost control system.

24 Q. Oh. And, similarly, the phrase "definitive  
25 estimate" was never discussed and what that meant?

1 A. No, not at all. I know at the time that  
2 phrase was used in the wolf Creek order, but I also know that  
3 the Kansas statute currently has a definition of definitive  
4 estimate, and that definition, as clearly as it defines it,  
5 is the original estimate. But no, we --

6 Q. That's defined in the Kansas order or Kansas  
7 statute?

8 A. Kansas statute.

9 Q. Before or after this agreement was entered  
10 into?

11 A. That would have been before this agreement.

12 Q. But it was never discussed that the intention  
13 would be to have that definition apply to this phrase in this  
14 document, right?

15 A. No, not at all. It wasn't discussed at all.

16 Q. All right. Okay. You said that Kansas City  
17 Power & Light's cost control system is ranked in the top 25  
18 percent, and that's Mr. Meyer's testimony?

19 A. Yes.

20 Q. It's ranked by what entity or whom?

21 A. I think that was Mr. Meyer's opinion rather  
22 than --

23 Q. Oh.

24 A. He's indicating that, of all the systems he's  
25 seen, he would rank it within the top 25.

1 Q. Oh, I see. Okay. Were you involved in the  
2 drafting of the comprehensive energy plan, construction  
3 projects, cost control system?

4 A. Yes.

5 Q. And were you involved in that -- go ahead, I'm  
6 sorry.

7 A. My involvement was really instructions as to  
8 what -- what I expected in my review of the final product. I  
9 didn't work day-to-day on putting it together.

10 Q. Were you at the July 11th, 2006, meeting when  
11 this was presented to Staff for the first time?

12 A. I was not in that particular meeting. Mr. Tim  
13 Rush, who reported to me at the time, led that meeting.

14 Q. Okay.

15 A. I believe I had some other commitment.

16 Q. And that's the meeting for which we do have  
17 the sign-in sheet, right?

18 A. Yes.

19 Q. Okay. Give me just a second here. Okay.  
20 Just so I'm clear on a couple of things, we were talking  
21 about the engineering, procurement, construction contracts  
22 for the boiler in the AQCS.

23 That was the only portion of the project that  
24 had an EPC, correct?

25 A. Yes. The balance of plant was not an EPC. It

1 was what would be called a construction contract. Burns &  
2 McDonnell did the engineering, and Kiewit did the execution  
3 and construction.

4 Q. Okay. And you guys did the procurement?

5 A. Yes. There were -- I believe Kiewit did do  
6 some procurement as well in the DOP, but KCP&L had already  
7 procured most of the primary equipment.

8 Q. Now, I think I read testimony somewhere that  
9 Kansas City Power & Light hadn't embarked on a construction  
10 project of this size since the Wolf Creek plant, and then  
11 maybe the rebuilding of Hawthorn 5 was close but not exactly  
12 as large. Is that your recollection?

13 A. Yes.

14 Q. Do you recall -- well, and let me backup. And  
15 there was also some testimony that Ernst & Young did an audit  
16 of the relationship among the various contractors, and there  
17 was also an entity called Strategic Talent Solutions that did  
18 an assessment of the relationship between the contractors.  
19 Do you remember that?

20 A. Yes.

21 Q. Are you aware of whether outside auditors or  
22 consultants were brought in on the Wolf Creek project to  
23 assess the relationship between the parties?

24 A. I don't recall whether they were brought in  
25 for that purpose or not. I know there was a significant

1 amount of turnover in KCP&L's internal audit group itself  
2 during that case.

3 Q. Okay. Do you know if it's standard to pay  
4 outside consultants to assess the relationship among  
5 contractors on projects of this size, if you know?

6 A. I don't really know, but I could say that  
7 Ernst & Young was really KCP&L -- was supplementing KCP&L's  
8 own internal audit group. Our internal audit group at that  
9 time didn't have the construction background and resources,  
10 so Ernst & Young wasn't really there other than to supplement  
11 KCP&L's own internal auditing group. With the Strategic  
12 Talent Solutions group, they had been on KCP&L's list of  
13 doing environment or leadership profiles and 360 feedback  
14 type things for human resources long before the project  
15 began.

16 Q. Oh, I see.

17 A. So it was -- it wasn't like Strategic Talent  
18 Solutions, we went and hired them for this purpose. They  
19 were always already onsite and doing work for KCP&L. So  
20 when -- when the executives discovered that, not  
21 surprisingly, you've got a lot of people working together for  
22 the first time in a lot of different cultural backgrounds,  
23 there might be some tensions, and STS was instructed to do  
24 this study to go see what could be improved.

25 COMMISSIONER KENNEY: Gotcha. Thank you for

1 your time, sir. I don't have any other questions.

2 JUDGE PRIDGIN: Commissioner Kenney, thank  
3 you. I don't have any questions either. This looks to be a  
4 pretty natural break to break for lunch. Is there anything  
5 further from counsel before we adjourn for lunch? All right.  
6 we will stay in recess until 1:45. I'll see if we have  
7 anything further from counsel, and then we will resume  
8 Mr. Giles's examination. Thank you.

9 COMMISSIONER KENNEY: Judge, real quick. I  
10 asked about this -- this can or cannot be -- I don't think it  
11 needs to be on the record.

12 (An off-the-record discussion was held.)

13 JUDGE PRIDGIN: Good afternoon. We are back  
14 on the record. When we adjourned for lunch, I believe bench  
15 questions were finished for Mr. Giles and we are back for  
16 recross-examination. Is there anything from counsel before  
17 we begin? Recross, Mr. Schwarz?

18 MR. SCHWARZ: Yes.

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

20 MR. SCHWARZ: Thank you.

21 JUDGE PRIDGIN: Mr. Schwarz, this is HC,  
22 correct, that you're putting on the board? It's not being  
23 broadcast, that's why I'm asking.

24 MR. SCHWARZ: I'm not going to put it on the  
25 board. There's no Commissioners, I'm not sure they can read



1 it anyway.

2 RE-CROSS-EXAMINATION

3 QUESTIONS BY MR. SCHWARZ:

4 Q. Good afternoon, Mr. Giles.

5 A. Good afternoon.

6 Q. You talked at length about the control budget  
7 estimate, did you not?

8 A. I did.

9 Q. And I've handed you what is the control budget  
10 estimate, have I not?

11 A. Um.

12 Q. Let me represent that it is. Take a look at  
13 it and see if you're familiar with that.

14 A. Yes, there are four columns on this and the  
15 last column is titled December '06 control budget estimate.

16 Q. Okay. would you take a look at number -- down  
17 the left-hand side, there are numbers numbering the groupings  
18 of the cost estimates. would you take a look at number  
19 seven, and the one, two, three, four -- fifth, sixth and  
20 seventh items down, "escalation for labor, non-boiler APC,"  
21 "escalation materials, non-boiler APC" and "escalation  
22 indirects;" is that correct?

23 A. Correct.

24 Q. And if you go over to the CBE column, it  
25 indicates that those are all included, does it not?

1 A. Yes.

2 Q. Likewise, if you look at number eight on  
3 owners's indirects under -- it's the second line from the  
4 bottom, it says "Escalation on indirects," does it not?

5 A. Yes.

6 Q. And that, too, is included in the right-hand  
7 column?

8 A. Yes.

9 Q. And then line number ten is "project costs  
10 without contingency and financing?"

11 A. Correct.

12 Q. And the total of that is 1 billion, 465  
13 million?

14 A. Yes.

15 Q. Okay. So if you add up all those costs  
16 including the expected escalation of those costs, in December  
17 of '06 you come up with 1.465 billion; is that correct?

18 A. Yes, excluding contingency.

19 Q. Excluding contingencies and financing?

20 A. Correct.

21 Q. A non-trivial item?

22 A. Correct.

23 Q. And there has been much testimony that at the  
24 time of this December '06 control budget estimate, there was  
25 already a billion dollars under contract on the project, do

1 you recall that?

2 A. I believe that's correct.

3 Q. So that would suggest that maybe 465 million  
4 was still on contract?

5 A. Correct.

6 Q. Okay. And if you go just below that, you have  
7 an owner's contingency of a 145 million and a low probability  
8 high impact contingency of 75 million, correct?

9 A. Correct.

10 Q. That totals 220 million?

11 A. Yes.

12 Q. And that's additional contingencies over the  
13 project costs including the expected escalations?

14 A. Yes.

15 Q. And I want to continue from over here, if I  
16 may. And these figures would have been vetted by Schiff  
17 Hardin? Schiff Hardin was on board at this stage?

18 A. Yes.

19 Q. And Burns & McDonnell?

20 A. They provided input, yes.

21 Q. And the executive oversight committee?

22 A. Yes.

23 Q. And the project team?

24 A. Correct.

25 Q. You suggested in one of your answers to one of

1 the Commissioner's questions that Mr. Jones had talked to  
2 five or six possible EPC contractors. Do you recall that?

3 A. I do.

4 Q. Are you aware that Mr. Jones only identified a  
5 single EPC contractor in his testimony of Washington Mutual  
6 that he had spoken to?

7 A. I discussed two different queries by Mr. Jones  
8 and the query that I was referring to, I saw an e-mail where  
9 he had contacted more than one.

10 Q. Okay.

11 MR. SCHWARZ: I think that's all that I have.

12 JUDGE PRIDGIN: Mr. Schwarz, thank you. Mr.  
13 Mills?

14 RE-CROSS-EXAMINATION

15 QUESTIONS BY MR. MILLS:

16 Q. The two -- just to follow-up, the two  
17 different sets of inquiries about EPCs, the first one was  
18 about an EPC for the entire project, correct?

19 A. Correct.

20 Q. Is it your testimony that for that one,  
21 Mr. Jones talked to five or six contractors or for the second  
22 one?

23 A. My understanding, it was for the first one.

24 Q. Okay. Now one of the questions that you had,  
25 I believe it was from Commissioner Gunn, had to do with the K

1 reports. when did the K reports start being produced?

2 A. would have been first quarter after the  
3 control budget.

4 Q. Okay. I thought you had testimony that there  
5 were some in early 2006?

6 A. There were K reports for other projects, but I  
7 don't believe there was one for Iatan --

8 Q. Okay.

9 A. -- until the control budget was established.

10 Q. Because by definition, the K reports track  
11 changes from the control budget?

12 A. Correct.

13 Q. Okay. Now you had a number of questions about  
14 the Schiff Hardin expenses, and with respect to charging to  
15 plant as opposed to expense in this rate case expense, did  
16 KCP&L take the same approach in Missouri as it did in Kansas?

17 A. To the best of my knowledge, yes.

18 Q. In response to one of the Commissioner's  
19 questions, you made reference to a project leader who doesn't  
20 tell you what you need to know until it's too late. Do you  
21 recall that?

22 A. I do.

23 Q. Did a situation like that ever arise on the  
24 Iatan projects?

25 A. No. I believe I was referring to other

1 projects, past projects where that could happen.

2 Q. Has it ever happened in your experience at  
3 KCP&L?

4 A. I wasn't nearly as involved with the other  
5 projects as this one, but, you know, subject to saying I'm  
6 speculating, I'm sure it happened on at least Wolf Creek.

7 Q. Now with respect to the definitive estimate as  
8 that term is used in the CEP, isn't the significance for  
9 calling for a definitive estimate in the CEP that the parties  
10 thought a definitive estimate would be an accurate estimate  
11 and early in the process?

12 A. No, that was not discussed at all.

13 Q. So how do you know what the other parties  
14 thought it meant?

15 A. I don't. I know it was not discussed and I  
16 know it's not what I took it to mean.

17 Q. Okay. You took it to mean something other  
18 than what the industry standard definition is; is that  
19 correct?

20 A. No, at that time I didn't even know what the  
21 industry standard was.

22 Q. Do you now?

23 A. Yes.

24 Q. And at the time that you drafted the CEP, did  
25 you take it to mean something other than what the industry

1 standard you have later learned?

2 A. Yes.

3 Q. Okay. So with respect to your understanding  
4 of the use of the term "definitive estimate" in the CEP, it  
5 was your understanding that that meant that you'd come up  
6 with a pretty good budget within six months of the deadline.

7 A. It was my understanding we would come up with  
8 the best budget we could within that six-month period and  
9 that would be what we tracked to for the project, yes, that's  
10 correct.

11 Q. Now you had some questions, I believe they  
12 were from Commissioner Kenny, about the actual drafting  
13 process of the CEP. Were either Bob Schallenberg or Cary  
14 Featherstone present during some or all of those drafting  
15 sessions?

16 A. Yes.

17 Q. Both of them?

18 A. I am not sure about Mr. Featherstone, but I  
19 recall Mr. Schallenberg being at every meeting, yes.

20 Q. Now you were also asked some questions about  
21 the cost control document that was provided to the parties in  
22 July of 2006. Do you recall that?

23 A. I do.

24 Q. Was that document provided to the parties  
25 significantly in advance of the July 11, 2006 meeting?

1 A. I don't recall.

2 Q. Is it possible it was provided to parties at  
3 the meeting?

4 A. I don't have any knowledge or recollection  
5 when it was provided.

6 Q. You don't have any memory of sending it out in  
7 the advance of the meeting?

8 A. No.

9 Q. Okay. If it had been provided either at or  
10 shortly before the meeting, would that perhaps explain the  
11 lack of immediate feedback?

12 A. I don't know that I've said there was any lack  
13 of immediate feedback.

14 Q. It's a fairly lengthy document, is it not?

15 A. It is.

16 Q. Fair amount of detail, correct?

17 A. Very thorough.

18 MR. MILLS: That's all I have. Thank you.

19 JUDGE PRIDGIN: Mr. Mills, thank you.

20 Ms. Ott?

21 RE-CROSS-EXAMINATION

22 QUESTIONS BY MS. OTT:

23 Q. Mr. Giles, going back to the definitive  
24 estimate, did Schiff Hardin ever define "definitive estimate"  
25 for you?



1 A. I believe I testified that Mr. Meyer, who is a  
2 subcontractor to Schiff, was the individual that first  
3 pointed out to me that in the industry, here is what a  
4 definitive estimate typically represents, so yes, Mr. Meyer  
5 was the individual that pointed that out to me.

6 Q. Did any employee of Schiff Hardin, not a  
7 contractor of Schiff Hardin, ever define what definitive  
8 estimate meant to you?

9 A. No.

10 Q. Okay.

11 A. Mr. Meyer.

12 Q. But he's a contractor, he's not an actual  
13 employee of Schiff Hardin?

14 A. Correct.

15 Q. Now did the control budget have contingencies  
16 because the project wasn't significantly engineered?

17 A. That would be one of the reasons, yes.

18 Q. You were talking about the quarterly reports.  
19 who developed the reports that you provided during those  
20 quarterly meetings?

21 A. The contents of the report were a shared  
22 responsibility of various individuals on the project  
23 leadership team and their subordinates. They would do a  
24 draft of the -- of the report. The report would be reviewed  
25 by myself, Schiff Hardin -- a number of people. And

1 ultimately, it was reviewed by Mr. Downey as well before it  
2 was transmitted.

3 Q. So KCP&L employees did the first draft of  
4 those reports?

5 A. Yes.

6 Q. Okay. With Commissioner Gunn, you had some  
7 discussions with change orders and Mr. Elliott. Have you  
8 ever seen Mr. Elliott sponsor an adjustment in a case?

9 A. I don't know.

10 Q. Have you ever seen Mr. Elliott sponsor a  
11 disallowance in a case?

12 A. I don't know.

13 Q. Now, you also with Mr. -- Commissioner Gunn  
14 spoke of the controlled budget estimate. Did that control  
15 budget estimate include \$40 million for unit trains,  
16 railcars?

17 A. Yes, it did, 37 million.

18 Q. Did -- and KCP&L decided not to obtain those  
19 railcars, correct?

20 A. Not to own the railcars. Our decision in  
21 economic evaluation indicated it would be more cost effective  
22 to lease them.

23 Q. Did KCP&L ever adjust this control budget  
24 estimate to not reflect the purchase of those railcars?

25 A. No.

1 Q. Now, going back to Mr. Elliott, did he ever  
2 inform you that he did not look at the cost of the -- of  
3 Iatan?

4 A. Not me personally. I understand he did inform  
5 Mr. Davis of that, but he never discussed it with me  
6 directly.

7 Q. With Commissioner Jarrett, you were having  
8 some discussions about Mr. Drabinski and Burns & Mc, and  
9 there wasn't any discovery issues at the KCC. Did KCP&L  
10 prevent Mr. Drabinski from meeting with Burns & Mc?

11 A. No.

12 Q. Were you aware of any other parties in the  
13 Kansas rate case that had concerns about information being  
14 withheld about Schiff Hardin?

15 A. Not that I'm aware of.

16 Q. Now, you were having conversations about  
17 Mr. Maiman and Mr. Downey and Schiff Hardin, how that  
18 relationship was established. And I just want to be clear.  
19 Mr. Downey and Mr. Maiman were contacts or former co-workers  
20 from Commonwealth Edison, correct?

21 A. Mr. Maiman and who did you say?

22 Q. Mr. Downey.

23 A. That's my understanding, yes.

24 Q. And then Maiman is the one who recommended  
25 Mr. Downey to you at Schiff Hardin?

1 A. That's my understanding. Mr. Downey will  
2 follow me, he's probably better to answer that, but that's my  
3 understanding.

4 Q. And Mr. Maiman is a contractor for Schiff?

5 A. I don't know that he was at that time or not.  
6 And he's not today. He was at some point. Mr. Downey can  
7 give you more detail.

8 Q. Okay. Going back to the control budget  
9 estimate that was drafted when it was 20 to 25 percent  
10 engineered. Wasn't the point of the contingency within that  
11 control budget to capture the increases that would go above  
12 and beyond the control budget estimate?

13 A. Yes.

14 Q. Now, you were also discussing that you  
15 expected there to be budget increases with the project. So  
16 when you were talking about "expected," are you talking about  
17 expected over the 200 -- 200 million contingency or was that  
18 meant to be you expected increases because of the  
19 contingency -- there was a contingency built in?

20 A. I think that was in response to a question  
21 from, I believe, Commissioner Gunn, and I believe my response  
22 was that the control budget estimate was the best estimate we  
23 had at the time. And including the contingency, I didn't  
24 think it was accurate to say that we didn't believe that was  
25 a good budget. Mr. Gunn inquired whether I expected it to go

1 up. I believe my response was I would expect it to go up, if  
2 anything.

3 Q. Above the contingency?

4 A. Above the 1.685 total budget.

5 Q. So you didn't think the amount built in for  
6 the contingency was adequate to recover what you thought the  
7 cost of the plant would be?

8 A. At the time -- as I stated, at the time we did  
9 the budget, we thought we had a good budget. And I was  
10 responding to his question in retrospect. And given that the  
11 commodity market was increasing beyond what we had  
12 anticipated in the control budget, I would have expected the  
13 budget to go up rather than down.

14 Q. You were also having some conversations where  
15 you and Mr. Featherstone had worked on Wolf Creek together  
16 and had some concerns with the reconciliation packages. And  
17 then you were talking about the drafting of the CEP. Did you  
18 have any discussions with Mr. Featherstone prior to, I  
19 believe you said Mr. Fischer drafted the CEP, that -- about  
20 what should be contained within that document?

21 A. Well, the only discussions we had were as I --  
22 as I've testified. We both wanted some language that we  
23 would have a cost control system that explained overruns and  
24 we put the language in and that was the end of the  
25 discussion. It didn't last more than five minutes.

1 Q. Was that prior, though, to Mr. Fischer  
2 drafting -- taking the first draft?

3 A. Yes.

4 Q. Okay. Going back to the crane accident and  
5 you said that the only thing would be the accrual on the  
6 books. Did KCP&L pay Schiff and Packer Engineering any money  
7 related to the crane accident?

8 A. I believe we did.

9 Q. Do you know how much money that was?

10 A. No. I don't know if it got charged to the  
11 project or not.

12 Q. You were also discussing EPC and multi-prime,  
13 and you stated that the only EPC was the boiler in the AQCS.  
14 Do you know if the Pullman Power had an EPC for the chimney?

15 A. I don't know if Pullman was an EPC. I know  
16 subsequent to my testimony, it's been pointed out to me that  
17 there were smaller EPC contracts other than Alstom on the  
18 project. I was focused mainly on the large ones.

19 MS. OTT: I have nothing further.

20 JUDGE PRIDGIN: Ms. Ott, thank you. Redirect?

21 MR. FISCHER: Thank you, Judge.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MR. FISCHER:

24 Q. Mr. Giles, I think I'd like to begin with  
25 where we began, the regulatory plan itself. There were a lot

1 of questions about that. Could you give a little more  
2 background on how that regulatory plan came to be, since  
3 you're the primary witness that was there?

4 A. Sure. The regulatory plan was the culmination  
5 of a long process that KCP&L undertook beginning in  
6 late-2003, early-2004. KCP&L actually developed a tentative  
7 comprehensive energy plan, a five-year plan based on input  
8 from a variety of stakeholders, consumers, commissions,  
9 regulatory staffs, the public in general.

10 Once that preliminary CEP, or comprehensive  
11 energy plan, had been developed, I did a presentation along  
12 with John Grimwade in April, 2004, to the Commissioners in an  
13 open agenda session. And in that presentation, I indicated  
14 that in order for KCP&L to move forward with any of these  
15 projects, we needed a collaboration with the Staff, the OPC,  
16 and any other public that would be interested in joining  
17 that. I believe it was in May of 2004, the Commission opened  
18 a workshop docket.

19 At the same time, the Kansas Commission also  
20 opened a workshop docket. And it was the expectation that  
21 during these collaborations, we would be able to come to an  
22 agreement in a stipulation, in separate agreements, one for  
23 Missouri and one for Kansas, that would enable the KCP&L to  
24 move forward and actually implement and execute the  
25 comprehensive energy plan. We began that process after the

1 Commission's Order, which was sometime in May or June of '04,  
2 and we did not culminate that process with an agreement in  
3 Missouri until I believe it was May of '08. In Kansas, it  
4 was August, '08.

5                   And then subsequent to that agreement, we had  
6 an amended agreement in Missouri to reflect any items the  
7 Missouri parties wanted to pick out of the Kansas agreement.  
8 So the final amended agreement, I believe, was in August  
9 of '08.

10           Q.       The actual drafting of that particular  
11 agreement was of interest to one of the Commissioners. Do  
12 you recall how long it took for us to get to a final draft of  
13 that agreement?

14           A.       Yes, it took -- it took probably six months of  
15 collaboration to even get to the point where we could begin  
16 to draft the agreement. It took another three months to  
17 actually draft the agreement.

18           Q.       Do you recall the original piece of paper that  
19 we looked at was pretty thin?

20           A.       Yes, it was very thin. We worked day after  
21 day and after a certain period of time, we all sat in the  
22 same -- we decided we had to speed this up. We all got in  
23 the same room, got it on an ELMO and went line-by-line for a  
24 period of days on the language.

25           Q.       And nights, if I recall?



1 A. Yes, late into the evening.

2 Q. What were some of the provisions that were  
3 added that we hadn't thought about? Do you recall some of  
4 those?

5 A. Some of them, for instance, that the parties  
6 requested, no, we would not be able to use a rider, a single  
7 issue rate-making item that came out of the Senate Bill 379,  
8 I think it was -- or 179, I can't recall -- but we would not  
9 be able to use that until the year 2015. There were other  
10 provisions such as the amortization, the rate case schedule.  
11 We had programs for demand-side management, we had  
12 transmission and distribution projects. There were a number  
13 of provisions both the company received -- as I would  
14 characterize it, benefits to the company and benefits to the  
15 parties.

16 Q. There were a number of appendices that were  
17 added later on, not the original draft; is that right?

18 A. Correct. We -- we had appendices that  
19 discussed pension trackers, amortization, credit metrics,  
20 financing, credit rating, rate freeze with both a moratorium  
21 on a rate reduction and a limit to the number of cases we  
22 could file and what time period. It was a pretty exhaustive,  
23 difficult negotiation.

24 Q. And I believe you indicated you had  
25 discussions with one of the staff people about that, what

1 became Paragraph Q; is that right?

2 A. Yes. That language was added based on a  
3 conversation Mr. Featherstone and I had had and it was the  
4 least talked about issue anywhere in the document.

5 Q. Would that have been likely one that was added  
6 on the ELMO while we were talking those nights?

7 A. No, I believe it was in the document very  
8 early on.

9 Q. Okay. And we were doing this in what year,  
10 what year were we drafting?

11 A. We were drafting this document in 2005, in the  
12 March, April time frame.

13 Q. And then after that stipulation was actually  
14 signed, were there -- were there further hearings or  
15 proceedings to consider it?

16 A. Yes, the stipulation was done unanimous. And  
17 in terms of we didn't know what parties were interested that  
18 had not participated, for instance, and I believe a couple of  
19 parties requested a hearing. The Commission ordered a  
20 hearing on the stipulation and agreement and I don't recall  
21 all the parties, but I believe Sierra Club may have been one  
22 that wanted that hearing. The hearing was held. The  
23 Commission ultimately approved the agreement.

24 Q. Do you recall if any -- if that order got  
25 appealed?

1 A. I do recall the order was appealed. I don't  
2 recall which party appealed, but I recall all the appeals  
3 were -- were not granted.

4 Q. well, it sounds like a big effort. why did  
5 KCP&L go through all that trouble of trying to work out a  
6 regulatory plan?

7 A. Much like the situation KCP&L's in today,  
8 there is no predetermination statute or provision in  
9 Missouri. And used to be in -- the last time we built power  
10 plants, both Iatan 1 and wolf creek, utilities typically made  
11 the decision based on their resource needs, plan the  
12 capacity, built it, and then filed a rate case to recover the  
13 costs.

14 In the environment that KCP&L was operating in  
15 in 2004, that's not -- that was not possible to do. Credit  
16 rating agencies, investors have a much more visible presence  
17 with utilities. And to announce a major project, let alone a  
18 comprehensive energy plant project of the magnitude and the  
19 dollars KCP&L had planned, absent some assurance that the  
20 prudence of going forward was supported, we would have been  
21 downgraded by our credit rating agencies and potentially  
22 downgraded below investment grade.

23 Q. To your knowledge, had the Commission  
24 previously approved such a comprehensive regulatory plan?

25 A. No. We were the first to have such an

1 approval in Missouri and Kansas, and to my knowledge, the  
2 first in the country to have such a plan. We actually --  
3 KCP&L actually won an award from the Edison Electric  
4 Institute for this innovative approach to regulatory.

5 Q. Was this a collaborative approach with a lot  
6 of different parties of the Commission?

7 A. It was a collaborative approach and obviously  
8 KCP&L could not have obtained what it needed without the  
9 support and cooperation of the Commission Staff, consumer  
10 counsels, and other parties.

11 Q. Was a similar effort going on in Kansas at the  
12 same time?

13 A. Yes, a parallel effort was ongoing in Kansas  
14 and initially the workshop collaborations were held jointly  
15 until we got far enough down the -- the path that we were  
16 negotiating individual agreements. At that time, the  
17 meetings broke up to separate collaboration; one with  
18 Missouri, one with Kansas.

19 Q. Was there a provision in the Missouri  
20 regulatory plan that parties could bring back provisions from  
21 the Kansas regulatory plan if they found it desirable?

22 A. Yes. The agreement that was struck in  
23 Missouri -- since we were in continuing discussions with  
24 Kansas -- the parties wanted what was termed or most favored  
25 "nation clause," which essentially said that once we approve

1 this agreement or the Commission approves it, if Kansas  
2 approves a different agreement, we have the ability to read  
3 through that agreement and take any provision out of it that  
4 we deem should be in the Missouri agreement.

5 Q. Were there also provisions about joint owners  
6 in the regulatory plan in Missouri?

7 A. Yes, there were. There was -- at that time,  
8 many individual utility companies and cooperatives were  
9 interested in coal capacity, and particularly in Iatan 2. We  
10 had a variety of partners that would have taken various  
11 shares. And in that agreement, we identified the partners  
12 and the shares based on a, at that time, I believe  
13 800-megawatt unit.

14 And subsequently, when we became aware of  
15 another party interested, we expanded that to a 50 -- an  
16 850-megawatt unit and added another partner that was not part  
17 of the Missouri list but became a part of the Kansas, which  
18 was KEPCO.

19 Q. There was discussion about the concept of  
20 transparency. What does that mean to you?

21 A. What transparency means to me, and it was  
22 inherent in my mind at the time of the 2005 agreement and  
23 throughout the construction of the project is that KCP&L  
24 would provide ongoing contemporaneous data to the parties, to  
25 the staff as the project was developed and executed so that

1 they knew every decision we were making, when we made it, why  
2 we made it. And any cost increase in the scheduled  
3 deviations were documented and Staff had access to all of  
4 those thought processes and decisions.

5 Q. Were those provided to the signatory parties  
6 in Missouri on a quarterly basis?

7 A. Yes, we used the quarterly reports to inform  
8 all the parties and we subsequently followed up with a  
9 face-to-face meeting with all the parties that chose to  
10 attend. And in those meetings, we not only went through the  
11 quarterly report but gave a realtime update as of that very  
12 morning of any activities, problems, issues, cost of the  
13 plant.

14 MR. FISCHER: Judge, I'd like to have an  
15 exhibit marked.

16 JUDGE PRIDGIN: Do you have a number?

17 MR. FISCHER: Is it 71 or is it -- it would be  
18 a -- I guess still an HC exhibit.

19 JUDGE PRIDGIN: I'm not showing a 71, but I  
20 could be wrong. Mr. Fischer, I think this is 70.

21 (Exhibit No. 70-HC was marked for  
22 identification by the Court Reporter.)

23 BY MR. FISCHER:

24 Q. Mr. Giles, would you take a look at what has  
25 been marked as Exhibit 70-HC and describe what that is?

1 A. This is the strategic infrastructure  
2 investment status report, 2006, dated April 28th, 2006, in  
3 Case No. EO-2005-0329 and this is the quarterly report that I  
4 was referring to. This would be the first quarter it was  
5 prepared, which was as it indicates, 2006, first quarter.

6 Q. were you involved in the preparation of this  
7 document?

8 A. Yes, I was.

9 Q. what kind of information is included in this  
10 document, if you could summarize in a high level?

11 A. There is an introduction in this particular  
12 one and that may have been because it was the first  
13 exhaustive summary. It details the wind project status,  
14 actual plant expenditures, wind project schedule, bid  
15 specifications, contracts, transmission studies,  
16 interconnection agreement. It does a similar for the La  
17 Cygne SER project, which was active at that time. Describes  
18 in detail the bid specifications, contractor selection  
19 evaluation, milestone project schedule.

20 There are exhibits attached that show  
21 projected and actual expenditures through the quarter and the  
22 variance and percent, various A -- B&W Babcock Wilcox  
23 critical path project schedule, summary of activities. Then  
24 we begin with the Iatan project status update, describes  
25 Unit 2, steam turbine and generator, requests for proposal

1 that went to GE, Mitsubishi, Siemens and Toyota, updates the  
2 status of the Unit 2 boiler and SER system, unit 12 AQCS  
3 systems. Again, bid specifications, project permits, summary  
4 of actual planned expenditures, milestone schedule, and then  
5 that's followed with the same type of review for the T and D  
6 projects and --

7 Q. I notice there on Page 33 as an Exhibit A.  
8 what does that relate to?

9 A. Exhibit A is the pro -- Iatan project cost  
10 summary. This precedes the control budget development, so  
11 basically what is shown here is the KCP&L costs to date,  
12 engineering services, and legal and financial services. It  
13 shows in this first quarterly report the total expenditures  
14 were about \$8.1 million.

15 MR. FISCHER: Judge, I'd move for the  
16 admission of 70-HC.

17 JUDGE PRIDGIN: 70-HC is offered, any  
18 objections? Hearing none, 70HC is admitted, and that's KCP&L  
19 70HC.

20 (Exhibit No. 70-HC was received into  
21 evidence.)

22 BY MR. FISCHER:

23 Q. Mr. Giles, were there other quarterly reports  
24 that were filed -- excuse me, that were distributed to the  
25 signatory parties along the way?



1 A. Yes, this same format was used and a report  
2 was prepared and provided to all the parties each and every  
3 quarter. I believe the December, 2010 report is being worked  
4 on as we speak.

5 Q. would -- would this document show the  
6 evolution of the project, the schedules, the costs, and all  
7 the essential information that you provided to the signatory  
8 parties?

9 A. Yes.

10 MR. FISCHER: Judge, I'd ask that we reserve  
11 another exhibit, 71. We'd like to -- I don't have copies  
12 yet, but I'd like to reserve an exhibit to introduce into the  
13 record, the other exhibit -- the other quarterly reports that  
14 were provided.

15 JUDGE PRIDGIN: And I'm sorry, those would be  
16 all of the remaining quarterly reports?

17 MR. FISCHER: There would be 23 others, I  
18 guess.

19 JUDGE PRIDGIN: Okay. Thank you.

20 BY MR. FISCHER:

21 Q. And would you -- would you be involved in the  
22 preparation of those other quarterly reports?

23 A. Yes, I have reviewed and been involved in each  
24 report since this first one to the last one that's being  
25 worked on right now. I should also point out that in

1 addition to these reports, when we met with the parties  
2 quarterly, we provided them the latest schedule for the  
3 project, level one schedule and we also provided them the  
4 most recent cost data that we had available.

5 Q. That would be the K report?

6 A. Yes.

7 Q. And that schedule document was a large  
8 document, wasn't it, that had the critical path and a lot of  
9 the information on it?

10 A. Yes.

11 Q. Okay. Was any of this done in the spirit of  
12 transparency?

13 A. Absolutely. It was all done in the spirit of  
14 transparency and it was the company's objective -- KCP&L's  
15 objective and my personal objective that that's how we set  
16 the process up and that's how we were going to do it. And  
17 it's exactly what we did.

18 Q. There was some questions on cross-examination  
19 about that topic and the withholding of information, I  
20 believe. When KCP&L asserted its legal privilege related to  
21 attorney-client information, was that an indication of the  
22 lack of transparency?

23 A. No, not at all. It's -- there was nothing in  
24 the agreement and nothing to my knowledge in the vein of  
25 transparency that obligates the company to give up its legal

1 rights under -- under either.

2 Q. Did the Commission hold a proceeding that  
3 ended up with an order that addressed whether KCP&L was being  
4 unreasonable in withholding documents from the Staff as  
5 related to the Iatan audits?

6 A. Yes. That hearing was held, I believe in  
7 April of 2009 -- or pardon me, 2010. I'm getting my years  
8 mixed up here. And it was a direct result of a response  
9 KCP&L had made to the Commission Staff's December 31, 2009,  
10 audit report. And in that report, Staff made allegations  
11 that they could not complete their audit, one, because of  
12 withheld documents; and two, because the cost control system  
13 somehow was inadequate. So KCP&L responded to that and the  
14 Commission held a hearing.

15 The Commission found that KCP&L had not been  
16 withholding documents and upheld the Commission's position.  
17 At that time, the Commission did not rule on whether the  
18 cost -- the -- not the class --

19 Q. Cost control?

20 A. -- the cost control system was appropriate or  
21 not, therefore, Staff has continued to assert that.

22 Q. At the time of that hearing, what was your  
23 impression of where -- or slightly before that hearing in the  
24 depositions that occurred, what was your impression of where  
25 the audit status -- what was the audit status? What was your

1 impression?

2 A. well, the -- the audit did not actually begin,  
3 my understanding, on Unit 1 until after the rate case was  
4 concluded. I'm aware from depositions Mr. Hyneman joined  
5 that audit effort in August of '08. When the audit report  
6 was issued in December 31, 2009, other than various expense  
7 reports, mileage charges of that nature, give some  
8 gratuities, the audit staff had not completed what I would  
9 call a prudence audit.

10 Q. Had you seen Mr. Elliott involved out in the  
11 plant before that time?

12 A. Yes, Mr. Elliott was onsite in early '07 and I  
13 believe he had at least monthly site visits. And he was well  
14 aware of daily, if not weekly, activities at the plant.

15 Q. what was your impression of what Mr. Elliott  
16 was doing during that period?

17 A. Up until the time the Staff filed its  
18 testimony in the last rate case, ER-0089, which I think was  
19 in February of 2008, I may be wrong on my date. But in any  
20 event, my understanding was Dave Elliott was actually up at  
21 the site doing what I anticipated when I drafted the  
22 regulatory plan. He was going to follow this project from  
23 its inception and was going to be onsite looking at the  
24 documents and reviewing those documents and seeing how the  
25 company was running the project and what kind of decisions it

1 was making and whether those decisions were explained or not.

2 Q. Did Mr. Elliott generally attend the quarterly  
3 meetings that we held in Jefferson City as well?

4 A. Yes, he did.

5 Q. There was some discussion, I think, with one  
6 of the Commissioners and we were looking for an attendance  
7 sheet about a meeting where you talked about the -- the  
8 reforecast process.

9 A. Yes.

10 MR. FISCHER: I'd like to have an exhibit  
11 marked.

12 JUDGE PRIDGIN: I believe we're up to 72?

13 (Exhibit No. 72 was marked for identification  
14 by the Court Reporter.)

15 BY MR. FISCHER:

16 Q. Mr. Giles, will you take a moment to look at  
17 what this document is?

18 A. Yes. This is the document that details the  
19 presentation outline to the regulatory plan signatories on  
20 January 22nd, 2007, and this would have been the meeting that  
21 we presented the cost estimate for Iatan 2. And the  
22 particulars on this is an introduction by myself; status  
23 update Iatan 2 and Iatan 1 was Brent Davis; level 1 and 3  
24 schedules cost control system, Terry Foster; cost estimate  
25 Iatan 2, and this was the December '06 estimate, Davis; cost

1 control system La Cygne, John Grimwade. And attached to this  
2 is a sign-up sheet.

3 This is the meeting I referred to when I  
4 explained to the Commission Staff and the other parties all  
5 the people that attended this meeting, that KCP&L was using  
6 this control budget estimate to track costs. And as part of  
7 its regulatory plan stipulation and agreement, this is the  
8 budget that is referred to as the definitive estimate.

9 Q. I may have misspoke whenever I asked about  
10 that. It's not the reforecast meeting, it's the original  
11 meeting?

12 A. This is the original control budget meeting.

13 Q. And is Mr. Dave Elliott's name listed on the  
14 attendance list?

15 A. Yes, Mr. Elliott, Mr. Warren Wood, Mr. Bob  
16 Schallenberg, Mr. Wess Henderson, Ms. Lena Mantle are the  
17 attendees I see from Staff, and also Mr. Warren Wood from  
18 Staff at that time. Mike Taylor, who's an engineer that  
19 works with Mr. Elliott. I believe that's all the Staff  
20 personnel.

21 MR. FISCHER: I'd move for the admission of  
22 the exhibit.

23 JUDGE PRIDGIN: 72 has been offered, any  
24 objections? Hearing none, 72 is admitted.

25 (Exhibit No. 72 was received into evidence.)

1 BY MR. FISCHER:

2 Q. Mr. Giles, I believe you had some questions  
3 about the -- what the EOC does from the Commission --  
4 Commissioners?

5 A. Yes, I did.

6 Q. Could you explain or elaborate upon what  
7 the -- what the EOC's involvement was in reviewing the  
8 particular costs in the CBE or the process generally?

9 A. In general, the EOC did not run the project.  
10 The project leadership team and the -- whether it was the  
11 senior director or vice-president of construction would run  
12 the project. In the EOC meetings, there was always an update  
13 and identification of potential risks, cost increases,  
14 schedule deviations, plus everything else that was going very  
15 well with the project and the status update. The EOC did not  
16 approve or disapprove of routine management decisions at the  
17 site. It was kept apprised and any decisions it made were  
18 very substantial strategic type decisions.

19 Q. I think there was some questions about Schiff  
20 Hardin in that process and whether what the expectations were  
21 in terms of total budget. A \$20 million expenditure on a \$2  
22 billion project would be approximately what percent?

23 A. One percent.

24 Q. would you expect if you didn't have the  
25 expertise of a Schiff Hardin or someone similar to that, that

1 costs could have gone up by more than one percent?

2 MR. MILLS: I object, calls for speculation.

3 JUDGE PRIDGIN: Mr. Fischer?

4 BY MR. FISCHER:

5 Q. Well, based on -- based on your experience at  
6 the -- at Iatan 1 and 2, do you have an opinion about whether  
7 it was important to have proper management in place?

8 A. Absolutely. The value Schiff team -- Schiff  
9 Hardin's team brought to the project saved the company and  
10 its customers well over, in my opinion, what we paid for  
11 their services. At the time we hired Schiff Hardin and  
12 included their fees in costs under control budget, as I  
13 testified earlier, I believe it was between \$5 and \$10  
14 million. And after -- in hindsight, would we have gone out  
15 for an RFP, we probably should have and would today. On the  
16 other hand, do I think we would have still hired Schiff  
17 Hardin? Absolutely.

18 Q. The company's cost control system that we've  
19 been talking about, is that the same cost control system  
20 that's used in Kansas?

21 A. It's the same system in Kansas, it's the same  
22 system we used for each CEP project, including the wind  
23 project, the SER project at La Cygne.

24 Q. Did Mr. Drabinski at the KCC proceeding use  
25 this cost control system to your knowledge?



1 A. Yes, he did.

2 Q. You were asked a question by -- by Ms. Ott  
3 about whether you disagreed with Walt Drabinski. Do you  
4 remember that question?

5 A. I do.

6 Q. And I believe you said you did; is that  
7 correct?

8 A. I do disagree with his conclusions.

9 Q. Would you explain why you disagree?

10 A. Mr. Drabinski did not conduct a, what I would  
11 call a prudence audit and what our experts have described as  
12 a prudence audit. Mr. Drabinski took what he describes  
13 himself as a holistic approach and basically by using certain  
14 information early on in the project, early audit reports,  
15 early project conclusions or risks that were identified, he'd  
16 take some of those risks as absolutes that they happened when  
17 I know in fact the risk never materialized and the company  
18 mitigated many of those risks, if not all of them.

19 So Mr. Drabinski would take an audit finding,  
20 for instance, and say, well, this must have cost some money,  
21 has no basis to support that. He did not identify imprudent  
22 decisions and follow-through to the next step and identify  
23 the consequences of those decisions.

24 Q. Is that -- do you have an understanding of  
25 what Missouri law requires at all on the two-step process?

1 A. Yes, I have read Mr. Blanc's testimony and I  
2 am -- I understand the two-step process and agree with what  
3 Mr. Blanc had written.

4 Q. Okay. Do you have other -- other comments  
5 about Mr. Drabinski and why he was wrong?

6 A. Mr. Drabinski ignores and totally obscures  
7 substantial information the company has provided to him in  
8 assessing his disallowance. For instance, he believes,  
9 evidently, that the project definition report set the cost  
10 for the plant. He believes that the schedule, even, that  
11 was --

12 MR. SCHWARZ: I'm going to object at this  
13 stage as calling for speculation. What Mr. Drabinski  
14 believes is reflected in his testimony and the Commission is  
15 certainly encouraged to read that. And the speculations of  
16 Mr. Giles as to what Mr. Drabinski may or may not mean or  
17 understand by the words he's written is nothing more than  
18 speculation.

19 MR. FISCHER: Let me rephrase the question.

20 BY MR. FISCHER:

21 Q. Mr. Giles, will you explain why you believe  
22 Mr. Drabinski's analysis is incorrect?

23 A. Yes. Mr. Drabinski ignores facts that have  
24 been provided to him by the company, that the -- for  
25 instance, the project definition report was nothing more than

1 a conceptual coal plant that was used in the very initial  
2 resource analysis back in 2004 conducted by KCP&L to  
3 determine whether the CEP should contain a coal plant. That  
4 was never a budget for the plant.

5 The schedule contained in that document was  
6 never a schedule that was contemplated or ever could have  
7 been obtained because the schedule actually had construction  
8 starting before we had a regulatory plan that would allow us  
9 to start construction. So that's just one example. But  
10 overall, Mr. Drabinski doesn't have an imprudent  
11 decision-making and a nexus to connect costs to that decision  
12 anywhere in his report or his testimony.

13 Q. And I believe your surrebuttal testimony goes  
14 into that in some more depth, does it not?

15 A. Yes, it does.

16 Q. You were also asked a question, I believe,  
17 regarding whether you disagreed with the Staff's adjustments.  
18 Do you recall that question?

19 A. I do.

20 Q. I know you don't address every Staff  
21 adjustment in your testimony, but do you have some that you  
22 would like to elaborate on why you disagree?

23 A. Well, the -- first of all, the idea that any  
24 costs that exceeded the control budget estimate is certainly  
25 unfounded based on the -- Staff's allegation that they could

1 not track the costs, or as they specifically state, KCP&L did  
2 not explain the cost overruns. That's simply incorrect. It  
3 has been provided to Staff, all the documents that do contain  
4 those explanations, including the key document, the  
5 reforecast document that led up to the May of '08 budget  
6 number of 1.09 billion. So that particular adjustment is  
7 totally without merit.

8 Q. Mr. Giles, before you go on to the next point,  
9 have you ever seen an adjustment in your 35 years with KCP&L?

10 A. Yes, 35 years, I've never seen a  
11 recommendation to disallow all costs above the control budget  
12 estimate --

13 Q. Okay.

14 A. -- in any proceeding.

15 Q. Go right ahead.

16 A. The adjustment Staff proposes for the Alstom  
17 settlement has no basis. Obviously in my mind, Mr. Elliott  
18 examined that construction and what -- what was occurring  
19 during that time. He had the basis and the knowledge to make  
20 such a recommendation, which he did not. I don't believe the  
21 Staff auditors and accountants took the time and effort to  
22 figure out exactly what that settlement was about.

23 Q. Now you're talking about the Alstom Unit 1  
24 settlement; is that right?

25 A. That's correct.

1 Q. And that's about two-thirds of their  
2 adjustments on Unit 1; is that right?

3 A. That's correct. Another related adjustment is  
4 Staff proposes to impose LDs, liquidated damages, that it  
5 proposes KCP&L could have received from Alstom, had it asked  
6 for them, when in fact, they make no determination that the  
7 LD clauses would ever have been hit. That's another example.  
8 In fact, there's extensive company testimony on those two  
9 issues that identify that one, the LDs could not be  
10 implemented, and two, the value of that settlement was worth  
11 more than the settlement payment.

12 Another one as an example, Staff is proposing  
13 to disallow mileage charges to the site of KCP&L employees  
14 that actually were transferred to the site or volunteered for  
15 such and primary location of their homes was in the Kansas  
16 City area. And obviously to me, it is patently unfair to  
17 require an employee that lives in Independence, Missouri to  
18 relocate for five years to Iatan and not pay them mileage to  
19 drive that distance.

20 Q. Did you see a lot of data requests on that  
21 topic in the audit?

22 A. In the Iatan 1 and Iatan 2 audits, we were  
23 immersed in data requests related to mileage charges. Staff  
24 requested every log at the gate to Iatan, to check whether  
25 individuals were actually at the site when they drove to the

1 site. We have many of those. Similar data requests for  
2 Burns & McDonnell employees who were under a separate  
3 contract --

4 Q. Ms. Ott asked you about that, I think she  
5 suggested you initially withheld that information. Do you  
6 remember that conversation?

7 A. I do.

8 Q. Can you describe what they were asking for  
9 that you had a question about?

10 A. Yes. Under the terms of Burns & McDonnell's  
11 contract, they would pay their employees mileage if they  
12 weren't already on a per diem to travel to the Iatan site.  
13 What staff was requesting the company provide was the home  
14 address of every Burns & McDonnell employee that traveled to  
15 the site.

16 Q. Did they want that on a monthly basis?

17 A. Yes.

18 Q. And why did they want that?

19 A. I can only suppose they wanted to check to see  
20 if the mileage from, say, Overland Park to the Iatan site  
21 was, in fact, 50 miles versus 45 or 55.

22 Q. Do you have any idea how many documents you  
23 provided in relationship to mileage issues?

24 A. Thousands.

25 Q. Well that brings up a question. How many

1 documents would you have to review to understand the cost  
2 control system?

3 A. It would be less than a thousand would be my  
4 guess. Change orders, recommendation to award, purchase  
5 orders, contingency log. Maybe a large three-ring binder,  
6 three or four of those would all be required.

7 Q. Is that what Mr. Drabinski would have  
8 reviewed?

9 A. Yes. We provided Staff over 1,200 expense  
10 reports of individuals. So we have provided thousands and  
11 thousands and thousands of documents to the Staff. Whether  
12 they looked at them all, I can't say. But it would  
13 certainly -- the documents they were needing to look at that  
14 were provided to do their audit is substantially less than  
15 what they have been provided.

16 Q. There was also a question I believe from Staff  
17 regarding whether you adjusted the CBE to take out railcars,  
18 do you recall that?

19 A. I do.

20 Q. Did you adjust the CBE for any reason?

21 A. Absolutely no reasons. We did not adjust it.  
22 We felt like our agreement was to track costs to that budget.

23 Q. Increases and decreases?

24 A. Increases and decreases, and that's what we  
25 did.

1 Q. And then when the company did the reforecast,  
2 did you continue to track it to, what?

3 A. We tracked both to the control budget estimate  
4 and the reforecasted budget estimate because that's how we  
5 were managing the project. We managed the project and we  
6 provided all the data that we used to manage the project to  
7 the staff and tracked to both budgets.

8 MR. FISCHER: Thank you very much, Mr. Giles.  
9 I appreciate your patience.

10 JUDGE PRIDGIN: Mr. Fischer, thank you. Mr.  
11 Giles, thank you. You may step down. This looks to be a  
12 convenient time as any to break. If I'm not mistaken, Mr.  
13 Downey will be the next witness?

14 MR. FISCHER: Yes.

15 JUDGE PRIDGIN: All right. Anything further  
16 from counsel before we break?

17 MS. OTT: Yes, I'm not sure if I offered  
18 Exhibit 252 into the record. If I didn't, I'd like to do it  
19 at this time.

20 JUDGE PRIDGIN: I show that you did not. 252  
21 has been offered. Any objections? Hearing none --

22 MR. STEINER: What exhibit is that?

23 JUDGE PRIDGIN: I'm sorry, 252 has been  
24 offered. That's the e-mail.

25 MR. SCHWARZ: Before we break, I would like to



1 ask counsel if they actually want hard copies of the  
2 schedules for Mr. Drabinski's testimony? You've got them  
3 electronically, and I'm going to bring them in at some stage.  
4 I'm in the process of vetting them for the company's HC  
5 markings. Do you want -- the direct and rebuttal are about  
6 260 pages altogether, and I'll bring in copies of those  
7 together.

8                   But does anybody want hard copies of  
9 schedules? Do Commissioners want hard copies of schedules?  
10 It's about two, three feet.

11                   JUDGE PRIDGIN: Before we go off the record, I  
12 think Ms. Ott made an offer.

13                   MR. FISCHER: No objection, Your Honor.

14                   JUDGE PRIDGIN: No objection. It is admitted  
15 and I'm sorry, thank you very much. We'll go off the record.

16                   (Exhibit No. 252 was received into evidence.)

17                   (A break was held.)

18                   JUDGE PRIDGIN: We're back on the record. I  
19 understand Mr. Downey is our next witness and he's at the  
20 witness stand. He needs to be sworn in. Is there anything  
21 before I administer an oath and he stands examination? All  
22 right, hearing nothing, Mr. Downey, if you'll raise your  
23 right hand to be sworn, please.

24                   (The witness was sworn.)

25                   JUDGE PRIDGIN: Thank you very much, sir.

1 Mr. Fischer or Mr. Hatfield?

2 MR. FISCHER: Mr. Hatfield.

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. HATFIELD:

5 Q. Could you state your name for the record,  
6 please?

7 A. William Downey.

8 Q. And Mr. Downey, are you the same William H.  
9 Downey who's filed testimony in this case?

10 A. I am.

11 Q. And you filed -- did you file both direct and  
12 rebuttal?

13 A. Yes, I did.

14 Q. Is that the only testimony you filed?

15 A. Yes.

16 Q. And your direct testimony has been marked for  
17 the record as Exhibit 21 and your rebuttal as Exhibit 22. Is  
18 the testimony you gave in those exhibits still true and  
19 accurate today?

20 A. Yes.

21 Q. Do you have any -- do you need to update or  
22 change that testimony in any way?

23 A. I do not.

24 Q. And are there exhibits attached to your  
25 testimony?

1 A. There are.

2 Q. Do they accurately reflect what you were  
3 trying to depict with those exhibits?

4 A. Yes.

5 MR. HATFIELD: Judge, I'm sure there's no  
6 cross, but I'll tender him anyway.

7 JUDGE PRIDGIN: Mr. Hatfield, thank you.

8 MR. HATFIELD: Did I offer the exhibits?

9 JUDGE PRIDGIN: I don't believe you did.

10 MR. HATFIELD: Let's offer them.

11 JUDGE PRIDGIN: Exhibit 21 and 22, both NP and  
12 HC are offered. Any objections?

13 MR. SCHWARZ: No objections from the MRA,  
14 Judge.

15 JUDGE PRIDGIN: Hearing none --

16 MR. WILLIAMS: Let me make an inquiry first.

17 JUDGE PRIDGIN: Yes, you may.

18 MR. WILLIAMS: Is this the only time that  
19 Mr. Downey will appear in the hearing?

20 MR. HATFIELD: what's that?

21 MR. WILLIAMS: Is this the only time Mr.  
22 Downey's testifying? He's not going to be testifying again  
23 later?

24 MR. HATFIELD: I believe that's correct. He's  
25 only listed on schedule for this portion of the hearing.

1 MR. WILLIAMS: I have no objection.

2 JUDGE PRIDGIN: All right. No objections  
3 being voiced. 21 and 22-NP and -HC are admitted.

4 (Exhibit Nos. 21 and 22, both NP and HC, were  
5 received into evidence.)

6 JUDGE PRIDGIN: He's been offered for cross.  
7 Mr. Schwarz?

8 MR. SCHWARZ: Thank you, Judge.

9 CROSS-EXAMINATION

10 QUESTIONS BY MR. SCHWARZ:

11 Q. Good afternoon, sir.

12 A. Good afternoon.

13 Q. You were here yesterday afternoon for  
14 Mr. Jones's testimony?

15 A. Yes, I was.

16 Q. And I thought it was very helpful he explained  
17 that there can be, like, a matrix for reporting, some for  
18 governance and then some for specific operational or  
19 functional activities. Do you recall that? So he reported  
20 to Ms. Cheatum for governance and to Mr. Easley, I think it  
21 was, for the project purposes?

22 A. He reported to the project director to  
23 implement the purchasing function.

24 Q. Right.

25 A. He reported to Ms. Cheatum, who was in charge

1 of corporate purchasing for purchasing, process, procedure,  
2 governance.

3 Q. Right. And in your direct testimony, you  
4 defined executive management as the chairman, the president,  
5 the chief operating officer, chief financial officer and the  
6 executive vice-presidents. And I'd like to ask you, and my  
7 frame of reference will be the first quarter of 2006, okay?  
8 How many executive vice-presidents were there?

9 A. At that point, there may have been none.

10 Q. Okay. And when is the first time that you  
11 recall that you had an executive vice-president?

12 A. Probably 2008.

13 Q. Okay. And who -- executive vice-president,  
14 I'm not much of a corporate kind of guy, so executive  
15 vice-presidents are typically executive vice-presidents of  
16 HR, some kind of functional --

17 A. Actually, often those are senior  
18 vice-presidents. The executive vice-president, our company  
19 has a broader operational role across --

20 Q. would the title just be executive  
21 vice-president?

22 A. It could be.

23 Q. well, going to the first quarter of 2008, how  
24 many executive vice-presidents did you have?

25 A. One.

1 Q. And what was that title?

2 A. Executive vice-president, utility operations;  
3 John Marshall was the individual.

4 Q. Okay. And then the senior management was the  
5 same individuals plus the other vice-presidents. How many  
6 other vice-presidents -- and going back to the first quarter  
7 of 2006, how many other vice-presidents would there be?

8 A. Are you referring to the company in total --

9 Q. I --

10 A. -- or the executive oversight committee?

11 Q. I'm talking about company. I'm trying to  
12 figure out who constitutes senior management.

13 A. The senior management is the group that you  
14 just mentioned. The vice-presidents would not be considered  
15 senior management. They might have been included -- some  
16 vice-presidents, as I think I've indicated before, may have  
17 been included on the executive oversight committee for  
18 specific reasons.

19 Q. Well, I'm looking at page 2 of your direct,  
20 and it says, "Senior management consists of the same  
21 individuals plus the company's other vice-presidents." It's  
22 line 17, I think.

23 A. I see what you're saying. The officer group  
24 constitutes the senior group of executives in the company and  
25 we -- we subdivided a bit.

1 Q. Let me rephrase. I think I'm getting a little  
2 better feel. In the first quarter of 2006, who constituted  
3 senior management?

4 A. I believe my statement there indicates the  
5 chairman and myself, the CFO. And it says executive  
6 vice-presidents. Could have said senior vice-presidents.  
7 That's probably a correction.

8 Q. Okay. That's the --

9 A. Mr. Easley was a senior vice-president at the  
10 time.

11 Q. Right. So you would have considered him  
12 executive management?

13 A. Yes.

14 Q. And who would have been considered senior  
15 management? I take it that's a step lower?

16 A. Yes, so that would include the other corporate  
17 officers who might be corporate vice-presidents. Lora  
18 Cheatum was a vice-president.

19 Q. How many vice-presidents? And I'm not going  
20 hold you to it.

21 A. I don't remember the exact number, six to  
22 eight.

23 Q. Okay. That's helpful. And then the executive  
24 oversight committee would have been drawn from that group?

25 A. That's correct.

1 Q. And was there a finite number of people on  
2 the -- I mean, on the executive oversight committee?

3 A. No, and it adjusted over time depending on the  
4 roles people played, changes that were made in management.

5 Q. On page 4, you state that in the summer of  
6 2005, you named Steve Easley, who is the senior  
7 vice-president of supply -- actually, you say you place the  
8 CE projects under his control. For purposes of the CEP  
9 projects, as the head of that, would he have had -- would he  
10 have been chair of the project team? How would he have been  
11 referenced as -- as head of the CEP projects?

12 A. He had direct line authority over the  
13 functional -- or the people who were doing the project.

14 Q. Okay. And in his capacity as head of the CEP,  
15 to whom did he directly report?

16 A. He was not head of the CEP. I chaired the  
17 CEP. CEP was a policy-level oversight group. Mr. Easley had  
18 direct authority -- direct line authority for the work.

19 Q. Okay. And who were his direct reports, say in  
20 the first -- late 2005, early 2006?

21 A. Mr. Grimwade, who was senior director for the  
22 comprehensive energy planned projects would have reported  
23 directly to Mr. Easley.

24 Q. And would that have been his only direct  
25 report, with respect to the projects?



1 A. I believe so.

2 Q. would Mr. Easley at that stage still have had  
3 other people as direct reports who weren't project related?

4 A. Yes, he would.

5 Q. Okay. And would that have included other  
6 vice-presidents?

7 A. I can't recall his exact organization, but  
8 very likely, yes.

9 Q. Okay. So if I understand the EOC was -- I  
10 don't want -- it changed as time went on and as circumstances  
11 warranted, is that safe to say?

12 A. Yes.

13 Q. I also understand that it -- the membership  
14 was not determined ex-officio, that is if you were the VP of  
15 this or the VP of that, you were on the EOC. That was  
16 something -- people were selected individually for their  
17 individual strengths and so forth to be on the EOC; is that  
18 correct?

19 A. Yes.

20 Q. Okay. Now, in -- I didn't notice in your  
21 testimony any definition or description of the project team,  
22 the Iatan project team. I have in front of me a March 31,  
23 2006, comprehensive energy plan report where some names are  
24 listed. If it's not HC -- but it lists, for instance, John  
25 Grimwade as senior director of construction projects.

1 A. Yes.

2 Q. And when was Mr. Grimwade a member of the  
3 project team, his dates?

4 A. I don't recall the exact dates, although he  
5 was part of the initial organization as we were launching it.  
6 He would have been the first head of the projects.

7 Q. Okay. And operationally, anyone working -- he  
8 was at the top of the chain of command of anyone who was  
9 working on the Iatan projects?

10 A. Yes.

11 Q. Okay. It lists Terry Murphy as director of  
12 construction, Iatan 2. When was Terry Murphy there?

13 A. Pardon me, I'm -- keeping dates in my head is  
14 interesting. Mr. Murphy would have joined us in February of  
15 2006.

16 Q. Okay. And he didn't stay for the entirety of  
17 the project?

18 A. No, he was there briefly.

19 Q. And when he left, would it have been likely he  
20 would have been replaced on the project team?

21 A. That's correct.

22 Q. And would it -- whoever replaced him also have  
23 been director of construction?

24 A. Yes.

25 Q. Okay. Jeffrey Fleenor, when -- was he there

1 the entire project time?

2 A. No, he was initially the head of  
3 engineering --

4 Q. Okay.

5 A. -- for the project.

6 Q. Steven Jones, procurement manager, and we've  
7 had him yesterday, I don't need -- David Darevan (phonetic),  
8 who's identified as the start up manager of Iatan 2. I  
9 wouldn't assume he was very active at that stage.

10 A. No.

11 Q. Okay.

12 Q. But he was on the team?

13 A. Yes.

14 Q. And then it has remaining staff positions,  
15 project controls manager, cost engineer, lead scheduler,  
16 major project leads, electrical, mechanical, et cetera, and  
17 safety manager, those would have been people who reported to  
18 one of the above, one of the earlier, Mr. Murphy, Mr.  
19 Fleenor, Mr. Jones and Mr. Darevan?

20 A. Yes.

21 Q. Okay. So, the impression that I have is that  
22 Grimwade, Murphy, Fleenor, Jones, Darevan were the management  
23 level -- senior management level of the project and then  
24 there were other managers of individual functions who  
25 reported to them and likely people under those, would that be

1 accurate?

2 A. Yes.

3 Q. Okay. And on the same page, it says Burns &  
4 McDonnell owners engineers, but Burns & McDonnell was never  
5 considered part of the project team, were they?

6 A. They were owners engineer for the project and  
7 they also provided additional supplemental staff.

8 Q. Right, but the KCP&L project was KCP&L  
9 employees?

10 A. That's correct.

11 Q. Okay. Thank you. I'm not done, but thank  
12 you.

13 A. That was a good fake, though.

14 Q. I got your hopes up. Do you have your  
15 testimony with you?

16 A. I do.

17 Q. Sorry. Now would you look at page 77?

18 A. Of my direct?

19 Q. Of rebuttal. I'm in rebuttal. What you say  
20 on line 16 is -- and I'll read it -- "The CBE has been the  
21 basis for comparing the Project's cost velocity and variances  
22 since that time that," time being December of 2006?

23 A. Uh-oh. I think I've got the highly  
24 confidential version. What line, 16?

25 Q. Lines 16 and 17 on page 77 of your rebuttal.

1 A. And what's the sentence again?

2 Q. "The CBE," do you have that?

3 MR. HATFIELD: May I approach, Judge, just to  
4 make sure?

5 JUDGE PRIDGIN: You may.

6 THE WITNESS: Okay.

7 BY MR. SCHWARZ:

8 Q. So, that's your testimony there, "the CBE is  
9 the basis for comparing the Project's cost velocity and  
10 variance since" December of 2006?

11 A. Yes.

12 Q. Okay. Now, if you would turn to the last line  
13 on page 44 of that rebuttal testimony, carrying over to the  
14 second line.

15 A. Let me just get organized here.

16 Q. Well you're not a lawyer, it shouldn't take  
17 you as long. Are you a lawyer?

18 A. No, I am not.

19 MR. WILLIAMS: Mr. Schwarz, is what you're  
20 referring to designated as HC?

21 MR. SCHWARZ: It is indeed.

22 THE WITNESS: Page 44, line. --

23 BY MR. SCHWARZ:

24 Q. It's line 23, that sentence, and going over to  
25 the next page.

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MR. SCHWARZ: I'm going to ask a question, I think it involves HC material. I'd ask that we go in-camera.

JUDGE PRIDGIN: All right. Just a moment, please.

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JUDGE PRIDGIN: We are back in public forum,  
Mr. Schwarz, when you're ready.

MR. SCHWARZ: I do not have much more.

BY MR. SCHWARZ:

Q. You were here in the room when I went over the  
CBE with Mr. Giles, were you not?

A. I believe I was.

Q. And if I ask you those same questions, your



1 answers would be essentially the same as his?

2 A. I'm not quite sure how to answer that.

3 Q. Well, and that's a perfectly good answer.

4 Have you had a chance to look at it?

5 A. Yes.

6 Q. And would you agree that on line 10, the  
7 project costs without contingency and financing as of the  
8 December 6 CBE was 1 billion, 465 million?

9 MR. HATFIELD: And Judge, I'm sorry to  
10 interrupt. Just to keep our record clear, can we refer to it  
11 by exhibit number?

12 MR. SCHWARZ: This is the CBE that is in  
13 Mr. Grabinski's Schedule 2.

14 MR. HATFIELD: Thank you, Mr. Schwarz.

15 THE WITNESS: That's what this document says.

16 BY MR. SCHWARZ:

17 Q. Is there any doubt in your mind that this is  
18 the 2006 CBE that was provided to Mr. Drabinski by KCP&L?

19 A. I've none seen it before. It hasn't crossed  
20 my desk.

21 Q. You haven't seen the 2006 CBE?

22 A. I did, I haven't seen this piece of paper.

23 Q. Okay. And that's fine. All right.

24 A. I don't disagree with the number on it.

25 Q. Yes. And under number seven, it has

1 provisions for escalation of three items and it indicates  
2 that they're included in the numbers.

3 A. Yes.

4 Q. And the same for number eight down there,  
5 second from the bottom, it has an indication that escalation  
6 on indirects is included in that number?

7 A. Yes.

8 Q. And if you tot up the owner's contingency and  
9 low probability high impact contingency under number 10, that  
10 totals \$220 millions?

11 A. Yes.

12 Q. And the grand total is one billion, six  
13 hundred eight-five million?

14 A. Yes.

15 Q. And it is -- the buck stops with you as far as  
16 KCP&L is concerned, does it not, sir?

17 A. Yes.

18 Q. And it is the company's position, despite the  
19 various apparently personal positions espoused by other  
20 witnesses, it is the company's position this document is the  
21 definitive estimate required by the regulatory agreement?

22 A. The number is the definitive estimate.

23 Q. Do you recall when you alerted the partner --  
24 the partners in the Iatan project of the change from the  
25 partner closing to the December 6 estimate?

1 A. I do not recall those specific dates.

2 Q. Okay. Okay.

3 MR. SCHWARZ: I think that's all that I have.

4 Thank you, sir.

5 JUDGE PRIDGIN: Mr. Schwarz, thank you.

6 Mr. Mills.

7 MR. MILLS: Thank you.

8 CROSS-EXAMINATION

9 QUESTIONS BY MR. MILLS:

10 Q. Mr. Downey, just to follow-up with a couple of  
11 questions on that same document, if you take -- Mr. Schwarz  
12 had you look at line number ten, which is the project costs  
13 without contingency and financing, and that totals 1 billion  
14 465 million; is that correct?

15 A. Yes.

16 Q. Now, do you see that the first item under  
17 number eight, the railcars?

18 A. I do.

19 Q. And as the project developed, KCP&L did not  
20 actually buy those railcars; is that correct?

21 A. That's correct.

22 Q. So -- and you can either do the math or take  
23 my word for it, but if you take the 37 million away from the  
24 1 billion, 465 million that's shown on line ten, you would  
25 have 1 billion, 428 million. Do you either agree with it or

1 accept it?

2 A. The math sounds about right.

3 Q. Ultimately, Iatan 2 will come in at about 1.9  
4 billion or a little bit more; is that correct?

5 A. Yes.

6 Q. Roughly half a billion dollars higher than we  
7 just talked about without the railcars, correct?

8 A. Off of which number, the 1,465?

9 Q. Taking the railcars out --

10 A. But you're not putting the contingency --

11 COURT REPORTER: One at a time, please.

12 BY MR. MILLS:

13 Q. You're absolutely correct, I'm not including  
14 the contingency in that number.

15 A. Sounds about right.

16 Q. Okay. Where did that half a billion dollars  
17 go and why?

18 A. Well, I think we have a number of witnesses,  
19 and particularly Mr. Archibald and Dan Meyer, who will walk  
20 through that in great detail. There are many puts and takes  
21 to this original budget and they can go through all of them  
22 painfully for you, but they fall into a series of categories  
23 including design maturity, price escalation, scope growth,  
24 among others.

25 Q. And how much of that half a billion is in each

1 of those three?

2 A. I would say that the largest part is in design  
3 maturation. And there's a pie chart somewhere in somebody's  
4 testimony, I think probably Mr. Meyer's that will go through  
5 all that.

6 Q. Now, is it your understanding that you -- that  
7 as the progress -- as the project goes on, that you would  
8 write somebody a check labeled design maturation?

9 A. No, I think that the category comes from very  
10 detailed analysis, particularly as we reforecasted multiple  
11 times as the project progressed. These were analytical  
12 frameworks that helped us to understand the changes that were  
13 occurring in the project.

14 Q. Okay. So with more specificity, what sorts --  
15 what specific changes under design maturation and how much of  
16 that encompasses the half a billion dollars?

17 A. As I said, I don't have a number in my head.  
18 It's in Mr. Meyer's testimony and Mr. Archibald's.

19 Q. From your broad perspective as the CEO, what  
20 is your understanding, where did that half a billion dollars  
21 go and why?

22 A. Design maturation, which transferred into  
23 growth and quantities, growth in the labor that installed  
24 those quantities was a principle driver, scope growth in the  
25 project as the design matured and we -- there was new

1 understanding about new things that had to be done and added  
2 to the work, that was another category. Price escalation,  
3 2006, '7, saw enormous price escalation in this whole  
4 construction arena, so that was another driver.

5 Q. Let me stop you there. Is there not several  
6 lines for escalations already in that number that we're  
7 talking about, that 1.4?

8 A. And we would have referred to those as  
9 known-unknowns. For example, in 2005 and '6 when we were  
10 putting escalation numbers in for price, we would have been  
11 looking at what we knew from traditional cost escalation.  
12 But it turned out that '6 and '7 were anything about normal.  
13 If you look backward and tried to forecast price escalation  
14 in 2006, 2007, you'd have been totally inaccurate.

15 Q. Okay.

16 A. Because the industry experienced something we  
17 were not aware of when we were doing the original estimates.

18 Q. So what prices escalated?

19 A. Virtually every component, every piece of  
20 material that went into the plants.

21 Q. Okay.

22 A. There were 124 plants where orders were placed  
23 in this time frame. One utility even announced 11. Now,  
24 they all were subsequently not built, but the market in this  
25 period of time became bizarre and prices escalated wildly. I

1 think in 2007, prices in general on this stuff escalated 40  
2 percent.

3 Q. But you had some of this stuff under contract?

4 A. We did.

5 Q. Okay. And you had some escalations already  
6 built into this estimate?

7 A. Yes.

8 Q. Now, I believe you said that the largest  
9 category was design maturation.

10 A. Yes.

11 Q. Isn't a layman's -- isn't it accurate that a  
12 way to describe design maturation from a layman's point of  
13 view is we now know more than we did when we started?

14 A. I think that's one way of looking at it. For  
15 a person who's not involved in power plants, if you think  
16 about when you redo your kitchen, and you know, you and your  
17 wife set the original budget and then you get into the job --  
18 having personally experienced this myself, I remember the  
19 overrun. You know, that's the kind of thing that happens.  
20 You get into the job and things happen and the complexity of  
21 this facility is enormous. And so during that maturation,  
22 you learn a lot of things and things change and you see that  
23 kind of growth.

24 Q. And isn't the point of escalations to try to  
25 deal with some of that, at least?

1 A. Yes.

2 Q. Okay. Now as you pointed out, the numbers  
3 that I've been talking about did not include the \$220 million  
4 worth of contingencies. But ultimately the plant came in  
5 significantly above even the numbers for the contingencies;  
6 is that not correct?

7 A. Fifteen percent.

8 Q. In terms of dollars, that is several hundred  
9 million, correct?

10 A. Yes.

11 Q. Do you have in your own mind a breakdown of  
12 the amounts that are over and above even the contingencies  
13 included in the control budget estimate or do you look at it  
14 more of a point from numbers above the line items here? Is  
15 that question clear to you?

16 A. No.

17 Q. It's probably not. I can tell from your  
18 expression that it wasn't. There was a -- this number that  
19 we've been talking about that doesn't include the  
20 contingencies, and the contingencies really are unspecified,  
21 they are the unknown-unknowns. When you try to, in your own  
22 mind, track where the overruns went, do you make any  
23 distinction between the numbers that are assigned to that  
24 contingency amount and the overruns that are above the  
25 contingency amount?



1 A. I don't believe that I do. I know, for  
2 example, that in the purchasing that we did on a lot of the  
3 engineered products, that the end result was very close to  
4 our original budget. So the escalation occurred on a number  
5 of those other things. But I don't break it out. I don't  
6 have in my head a sort that tries to end that. You have to  
7 go through multiple iterations to get there.

8 Q. And just in conclusion, have I given you an  
9 adequate opportunity for you to tell me how you understand  
10 where that half a billion dollars went and why?

11 A. Well, I gave you some general categories of  
12 area. And as we work through the project, each and every  
13 week, each and every month, you know, I think we -- I and the  
14 members of the team had a good understanding of where costs  
15 were growing and why. And I've tried to summarize them in a  
16 couple of key categories for you.

17 Q. And I guess my next question will be, then:  
18 Can you give me as much detail now as you possibly can,  
19 please?

20 A. I don't have in my head or I don't have in  
21 front of me the whole group of things. I've given you the  
22 general categories and I am not sure what kind of detail you  
23 want.

24 Q. As much detail as you have in your head.

25 A. This is a \$1.9 billion project over five years

1 with lots of growth in lots of different areas. I've  
2 summarized it at a high level for you.

3 MR. MILLS: Those are all the questions I  
4 have, thank you.

5 JUDGE PRIDGIN: Mr. Mills, thank you.  
6 Mr. Williams.

7 MR. WILLIAMS: Thank you, Judge. I have  
8 several questions, in fact.

9 CROSS-EXAMINATION

10 QUESTIONS BY MR. WILLIAMS:

11 Q. Mr. Downey, why are projects sometimes started  
12 before design is completed?

13 A. Because the decision is made that it's prudent  
14 to do that. It takes into account the environment in which  
15 you're doing it and it's best practice on very large  
16 projects, particularly with long lead time, items to do that.

17 Q. Well, is one of the reasons to avoid price  
18 escalations by locking into prices?

19 A. Yes.

20 Q. And wasn't that one of the reasons Kansas City  
21 Power & Light Company gave for fast tracking the Iatan  
22 project?

23 A. It was an important reason, yes.

24 Q. Was that reason accomplished?

25 A. I believe so for a significant part of the

1 project.

2 Q. Kansas City Power & Light Company hired  
3 Dr. Neilsen to review the Iatan project costs, did it not?

4 A. Yes.

5 Q. And Dr. Neilsen recommended some  
6 disallowances, did he not?

7 A. Yes.

8 Q. why didn't Kansas City Power & Light -- or did  
9 Kansas City Power & Light accept those disallowances?

10 A. I believe that we, you know, we put his  
11 testimony forward, obviously, but we had disagreements with  
12 some of the conclusions.

13 Q. why didn't you accept his disallowances?

14 A. Because our -- our own team of experts  
15 disagreed.

16 Q. what was the basis of the disagreements other  
17 than the dollar amount?

18 A. I think Brent Davis, who was up before,  
19 testified and there were decisions made and there was a  
20 different point of view with regard to those decisions.

21 Q. who made the decision to accept or reject  
22 Dr. Neilsen's recommendations on disallowances for Iatan  
23 costs?

24 A. I believe the collective wisdom of the team  
25 came together, and as we presented that testimony, we felt we

1 went with the positions of the experts that we had in our own  
2 group. There were two decisions that were involved in each  
3 case. There was an interpretation of our own management team  
4 that was different from Dr. Neilsen's.

5 Q. Who were the -- who were the members of the  
6 team? You're referring to "team."

7 A. The project leadership team in particular. I  
8 think Mr. Davis, for example, had some disagreements with the  
9 disallowances that Dr. Neilsen recommended.

10 Q. So Mr. Davis made the decision about whether  
11 to accept the disallowances?

12 A. No, he made the case and it was accepted.

13 Q. And who was it that he made the case to, the  
14 individuals or individual?

15 A. Well, generally, ultimately it rests with me  
16 as to how we present it, but also our regulatory team and  
17 general counsel and group that's involved in coming forth on  
18 these cases.

19 Q. So if I understand you correctly, ultimately  
20 you made the decision?

21 A. Ultimately.

22 Q. Is that a yes?

23 A. Yes.

24 Q. Give me a minute here. Mr. Downey, have you  
25 taken any college courses or do you have a college degree in

1 project management?

2 A. No, I do not.

3 Q. Have you taken any college courses or do you  
4 have a college degree in project cost management?

5 A. No, I do not.

6 Q. Have you taken any college courses or do you  
7 have a college degree in project integration?

8 A. No, I do not.

9 Q. Have you taken any college courses or do you  
10 have a college degree in project schedule management?

11 A. No, I do not.

12 Q. Have you taken any college courses or do you  
13 have a college degree in project time management?

14 A. No, I do not.

15 Q. Have you taken any college courses or do you  
16 have a college degree in project quality management?

17 A. No, I do not.

18 Q. Have you taken any college courses or do you  
19 have a college degree in project procurement management?

20 A. No, I do not.

21 Q. Have you taken any college courses or do you  
22 have a college degree in project risk management?

23 A. No, I do not.

24 Q. Are you a project management professional?

25 A. No, I'm not.

1 Q. Are you familiar -- do you know what a project  
2 management professional is?

3 A. Yes.

4 Q. What is it?

5 A. It's someone with a certification with regard  
6 to the skills and the educational component of techniques for  
7 managing large, complex projects or even small projects.  
8 There's a discipline to it and they're trained in courses for  
9 it and certifications.

10 Q. Have you taken any of those courses or  
11 training?

12 A. No, I have not.

13 Q. Do you know who issues that certification?

14 A. I don't.

15 Q. Do you consider yourself an expert on matters  
16 of accounting?

17 A. No.

18 Q. Do you consider yourself an expert on matters  
19 of auditing?

20 A. No, I do not.

21 Q. Do you consider yourself to be an expert on  
22 matters of cost accounting?

23 A. No, I do not.

24 Q. Do you consider yourself to be an expert on  
25 matters of cost engineering?

1 A. No, I do not.

2 Q. Back whenever the Iatan project was started,  
3 what was the scope of your responsibilities with Kansas City  
4 Power & Light Company?

5 A. I was the president and chief executive  
6 officer of Kansas City Power & Light, the operating company,  
7 and I was president and chief operating officer of our  
8 holding company, Great Plains Energy.

9 MR. WILLIAMS: Judge, may I have an exhibit  
10 marked?

11 JUDGE PRIDGIN: You may.

12 (Exhibit No. 253 was marked for identification  
13 by the Court Reporter.)

14 MR. WILLIAMS: May I approach the witness?

15 JUDGE PRIDGIN: You may.

16 BY MR. WILLIAMS:

17 Q. Mr. Downey, I'm providing you a copy of what I  
18 believe has been marked as KCP&L 253. would you take a look  
19 at that exhibit, if you have not already?

20 A. I have.

21 Q. And do you recognize it?

22 A. I do.

23 Q. what is it?

24 A. It's an organizational chart dated December,  
25 2009.

1 Q. And does it accurately reflect the  
2 organization of Kansas City Power & Light Company at the date  
3 shown in December of 2009?

4 A. Yes.

5 MR. WILLIAMS: I would like to offer Exhibit  
6 KCP&L 253 at this time.

7 JUDGE PRIDGIN: 253 is offered, any  
8 objections?

9 MR. HATFIELD: No, sir.

10 JUDGE PRIDGIN: KCP&L 253 is admitted.

11 (Exhibit No. 253 was received into evidence.)

12 BY MR. WILLIAMS:

13 Q. Now, turning your attention to that exhibit,  
14 on the level at which your name appears as president and  
15 chief operating officer, on that same level, is Mr. Bassham  
16 shown as executive vice-president, finance and strategic  
17 development, chief financial officer?

18 A. Yes.

19 Q. And is W.G. Riggins shown as general counsel  
20 and chief legal officer?

21 A. Yes.

22 Q. And is B.B. Curry shown as senior  
23 vice-president, human resources and corporate secretary?

24 A. Yes.

25 Q. And they're all at the same level as you were



1 at that point in time in that organization chart, are they  
2 not?

3 A. I'm not sure what you mean by that. No,  
4 they're not. I mean, because they are on the same line in  
5 the org chart?

6 Q. well, what do those lines in the  
7 organizational chart reflect?

8 A. well, it's a typical organizational chart, but  
9 you said "same level." I'm not sure what you mean by  
10 "level."

11 Q. well, you-all reported to the chairman and  
12 chief executive officer, Mr. Chesser, did you not?

13 A. Yes.

14 Q. Did you have the same levels of responsibility  
15 or were they different?

16 A. They were different.

17 Q. And how were they different?

18 A. I was the chief operating officer and all the  
19 utility operations reported to me, up through me. And  
20 Mr. Bassham, as is fairly typical in organizations, had the  
21 financial organization reporting to him. Mr. Riggins was  
22 the -- had the legal organization, and some other additional  
23 duties reporting to him. But the operating organization  
24 reported to me. Barbara Curry was the head of human  
25 resources and corporate secretary.

1 Q. So how would you rank the hierarchy of  
2 Mr. Bassham, Mr. Riggins, yourself and Ms. Curry?

3 A. Mr. Bassham was head of the financial  
4 organization. I was the number two executive and still am in  
5 the company. I'm also a member of the board of directors of  
6 the company along with Mr. Chesser.

7 Q. So are you saying that you were at a level  
8 above the other -- Mr. Bassham and Mr. Riggins and Ms. Curry  
9 at that time?

10 A. Yes.

11 Q. Has the level of responsibility you have had  
12 at Kansas City Power & Light Company changed during the  
13 period of the Iatan construction project?

14 A. When we acquired Aquila and --

15 MR. WILLIAMS: Judge, I believe that question  
16 calls for a yes-or-no response.

17 JUDGE PRIDGIN: Are you able to answer that  
18 question yes or no?

19 THE WITNESS: would you repeat the question?

20 BY MR. WILLIAMS:

21 Q. Has your level of responsibility at Kansas  
22 City Power & Light Company changed since this organization  
23 chart in December of 2009?

24 A. Yes.

25 Q. And has it declined during the period of the

1 Iatan project?

2 A. No, it's different.

3 Q. And how is it different?

4 A. We acquired an additional company and at that  
5 time the company elected to consolidate our structure to  
6 incorporate the new -- we eliminated a -- an unregulated  
7 company and we put together two regulated companies.

8 And in that process, Mr. Chesser and I changed  
9 positions relative to the -- the utility, function of the  
10 utility operating companies. My position at the holding  
11 company level did not change, we changed responsibilities  
12 inside the operating companies.

13 Q. And I -- I'm going to ask you some further  
14 questions to clarify because I don't fully understand your  
15 answer. Whenever you talk about acquiring another company,  
16 are you talking about Great Plains Energy's acquisition of  
17 Aquila?

18 A. Yes.

19 Q. And are you talking about the merger of Aquila  
20 and Kansas City Power & Light Company or something else?

21 A. No, that's what I'm talking about, the merger  
22 of those two companies.

23 Q. Well, it's my understanding they have not  
24 merged is my understanding --

25 A. Well, I used the word "acquisition." You used

1 the word "merger," so I --

2 Q. well, I'm not trying to put words in your  
3 mouth. If I've misspoken, let me know.

4 A. I said that we've acquired.

5 Q. well, you said that you acquired and you  
6 talked about merging the company, so I was trying to  
7 understand what you meant by that?

8 A. we acquired, and we have -- we have  
9 functionally put a lot of things together.

10 Q. So operationally, there have been a lot of  
11 mergers, is that what you're saying?

12 MR. HATFIELD: Judge, I'm going to object as  
13 not relevant to anything we're here to talk about today.

14 JUDGE PRIDGIN: Mr. Williams?

15 MR. WILLIAMS: I think the scope of what  
16 Mr. Downey does is relevant to what we're doing here today  
17 and that also reflects on his -- the attention he can put to  
18 Iatan 2 as well as what he's doing at Kansas City Power &  
19 Light Company. And we do have both companies involved in the  
20 cases here in front of the Commission.

21 JUDGE PRIDGIN: I'll overrule.

22 THE WITNESS: would you repeat your question?

23 MR. WILLIAMS: I would if I could.

24 COURT REPORTER: "So operationally, there have  
25 been a lot of mergers, is that what you're saying?"

1 THE WITNESS: A lot of mergers where?

2 BY MR. WILLIAMS:

3 Q. Well, let me ask it this way: who provides  
4 the operation services for Kansas City Power & Light and  
5 Greater Missouri Operations Company, which is the successor  
6 name of Aquila?

7 A. Yes, the leadership team was consolidated into  
8 a single leadership team. I hold the positions -- similar  
9 position for GMO to this one. We function as a single  
10 management team for both organizations.

11 Q. So you're saying your responsibilities have  
12 expanded because you're also providing the same function for  
13 KCP&L's Greater Missouri Operations Company?

14 A. It's a bigger set of operations, yes.

15 Q. Well, setting aside what you do for KCP&L  
16 Greater Missouri Operations Company and just focusing on  
17 Kansas City Power & Light Company alone, have your  
18 responsibilities changed since December of -- well, during  
19 the Iatan construction project, which is roughly a five-year  
20 period, have your responsibilities at Kansas City Power &  
21 Light Company itself changed?

22 A. In 2008, when we acquired Aquila, we -- we  
23 made these changes with Mr. Chesser myself.

24 Q. And what are those changes you're referring  
25 to?

1           A.       Mr. Chesser previously had been chief  
2 executive officer of our holding company. And ever so often,  
3 not only the regulated operations of KCP&L, which -- and I  
4 reported to him in that instance, but we also had an  
5 unregulated retail electric supply business that had sales in  
6 excess of a billion dollars and he oversaw that and there was  
7 a separate CEO of that business who reported in to him as  
8 well.

9                       when we sold that business and became  
10 primarily regulated in the acquisition of Aquila, he took  
11 responsibility as CEO of not only the holding company but the  
12 utilities, which we have been operating off of a common brand  
13 name and common operations.

14           Q.       And what is that common brand name?

15           A.       KCP&L.

16           Q.       Are you aware of the \$125 million advanced  
17 coal federal income tax credit that Kansas City Power & Light  
18 Company received from the Internal Revenue Service for  
19 Iatan 2?

20           A.       Yes.

21           Q.       Did not the Empire District Electric Company  
22 seek allocation of a portion of that coal tax credit for  
23 Iatan 2 based on its ownership interest in Iatan 2?

24           A.       Yes.

25           Q.       And wasn't it successful in obtaining that

1 allocation?

2 A. It did obtain that allocation.

3 Q. Do you know why KCP&L Greater Missouri  
4 Operations Company did not seek for a portion of the coal tax  
5 credit for Iatan 2 to be allocated to it based on its  
6 ownership interest in Iatan 2?

7 A. I'm not the expert on that, but I believe we  
8 applied for that prior to the acquisition and feel it's  
9 appropriate where it is.

10 Q. who are "we?"

11 A. The company.

12 Q. who is the company?

13 A. well, we have tax experts involved. I'm not  
14 the tax expert of the company.

15 Q. well, you're --

16 A. I do think Melissa Hardesty will be testifying  
17 and she would probably be the appropriate one to answer that  
18 question.

19 MR. HATFIELD: Judge, if I could just  
20 interject briefly. That issue is actually in the GMO only  
21 part of the case. I don't want to object to these questions  
22 because Mr. Downey is here to answer whatever questions you  
23 have during this portion of the case, but just in case the  
24 Commissioners were wondering, there are witnesses on that  
25 schedule to discuss that in a GMO only portion.

1 MR. WILLIAMS: I believe that issue is present  
2 in the Kansas City Power & Light Company case as well because  
3 the Staff has done a reduction of the tax credit in  
4 proportion to the ownership interest of KCP&L Greater  
5 Missouri Operations Company.

6 MR. HATFIELD: I have no objection to the  
7 questioning, Judge.

8 JUDGE PRIDGIN: Since we have no objections,  
9 we can continue.

10 BY MR. WILLIAMS:

11 Q. Well, was it your decision as to whether or  
12 not -- I'm going ask again: why didn't KCP&L Greater  
13 Missouri Operations Company also seek for a portion of the  
14 coal tax credit for Iatan 2 be allocated to it based on its  
15 ownership interest in Iatan 2?

16 A. As I said, that's a tax question. I'm not the  
17 tax expert and Melissa Hardesty, who will be a witness in the  
18 GMO case, is an appropriate person to ask that question on.

19 Q. Do you know?

20 A. I don't.

21 Q. Do Kansas City Power & Light Company and KCP&L  
22 Greater Missouri Operations Company make strategic decisions  
23 separately?

24 A. There are decisions that we have to make  
25 keeping those legal entities in mind. There are decisions we



1 make in common, there are decisions we have to make  
2 separately because of the separate legal entities.

3 Q. Well, is seeking the advance coal tax credit  
4 something that would be done on a separate basis?

5 A. Again, I refer you to Melissa Hardesty.

6 Q. You don't know if that would be something that  
7 would be done separately or jointly?

8 A. I'm not the tax expert on these issues.

9 Q. Is your answer you don't know?

10 A. I'm not the tax expert.

11 MR. WILLIAMS: Judge, would you direct the  
12 witness to respond to the question? I believe he's being  
13 non-responsive to his answer.

14 JUDGE PRIDGIN: I will sustain it. I think  
15 Mr. Williams was asking you --

16 THE WITNESS: I don't know.

17 MR. HATFIELD: Judge, we agreed to do this  
18 issue by issue, and you know, I'm being advised, maybe  
19 arguably in this case, but we agreed to do this issue by  
20 issue. I don't want him back, but I don't know how long  
21 we're going to want to spend on this when the witness has  
22 told us there's another witness on this and we have a  
23 schedule. So I mean, if you want to direct him to answer  
24 this question now at this time, obviously you're the judge.

25 JUDGE PRIDGIN: I guess I'll wait to see if we

1 have an objection to the question. So far what we're getting  
2 is questions to which Mr. Downey says he doesn't know the  
3 answer and --

4 MR. HATFIELD: I'm sorry, I thought you were  
5 directing him to answer the question.

6 JUDGE PRIDGIN: And I did, and Mr. Downey said  
7 he didn't know.

8 MR. WILLIAMS: I believe it was answered and  
9 as to agreement to try these issues by issue, my recollection  
10 is that the company chose the order in which this case is  
11 being tried.

12 BY MR. WILLIAMS:

13 Q. Do you know if Great Plains Energy, Kansas  
14 City Power & Light Company, and/or KCP&L Greater Missouri  
15 Operations Company have any plans for the merger of Kansas  
16 City Power & Light Company and KCP&L Greater Missouri  
17 Operations Company? And when I say "merge," I'm talking  
18 about a legal merger.

19 A. We certainly have talked about it and I  
20 believe we've even talked to the staff about it.

21 Q. Well, the question is whether you have any  
22 plans, not whether you've talked about it. Do you have any  
23 plans?

24 A. I believe we're talking about it and the idea  
25 that we would ultimately merge the two organizations, we are

1 thinking about it.

2 Q. Do you have any date in mind by which the  
3 merger might be accomplished or -- or when you would like to  
4 effectuate the merger?

5 A. Not specifically at this time.

6 Q. within the next ten years?

7 A. That would seem reasonable.

8 Q. within the next five years?

9 MR. HATFIELD: I believe it's been asked and  
10 answered, Judge.

11 JUDGE PRIDGIN: Overruled. I think he's  
12 trying to pin him down on a certain date.

13 THE WITNESS: I don't have a certain date.

14 BY MR. WILLIAMS:

15 Q. I am just trying to find the best date I can  
16 get. Within the next five years?

17 A. well, I know that we came into the Staff to  
18 talk about recently context of when we might do that. And so  
19 we're certainly interested in entertaining discussions about  
20 it.

21 Q. I'm just asking whether or not the companies  
22 would like to effectuate a merger within the next five years.

23 MR. HATFIELD: Judge, before we continue on  
24 merger, I think I'm going to have to ask that we go into HC,  
25 talking about combining operations and when that might

1 happen.

2 JUDGE PRIDGIN: All right. We'll go

3 in-camera. Just a moment.

4 (REPORTER'S NOTE: At this point, an in-camera  
5 session was held, which is contained in volume 20, pages 1224  
6 to 1225 of the transcript.)

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1 JUDGE PRIDGIN: We're back in public forum.

2 BY MR. WILLIAMS:

3 Q. Do you know how many hours you charged to  
4 Iatan 2 construction project in 2005?

5 A. I don't.

6 Q. would it be 0 hours?

7 A. No. It would have probably been fairly low,  
8 though, in 2005.

9 Q. How low is fairly low?

10 A. I have no idea the number.

11 Q. A hundred hours?

12 A. I have no idea.

13 Q. Did you charge 21.5 hours to the Iatan 2  
14 construction project in 2006?

15 A. I have no idea.

16 Q. Did you charge 64.6 hours to the Iatan 2  
17 construction project in 2007?

18 A. I have no idea.

19 Q. Did you charge 178.7 hours to the Iatan 2  
20 construction project in 2008?

21 A. I have no idea.

22 Q. Did you charge 343.3 hours to the Iatan 2  
23 construction project in 2009?

24 A. I have no idea.

25 Q. Did you charge 252 hours to the Iatan 2

1 construction project in 2010?

2 A. I have no idea.

3 Q. Do those hours that I've asked you about in  
4 the different years correlate or do you believe they  
5 correlate with how much time you've put in on the Iatan 2  
6 construction project in those years? And I don't mean  
7 precisely, but generally, did you work, you know, roughly  
8 three times as much in 2007 as you did in 2006 and roughly  
9 three times as much in 2008 as in 2007 and roughly twice as  
10 much in 2009 as 2008?

11 A. I suspect what they correlate to are meetings  
12 on my calendar. My secretary keeps my calendar. She records  
13 the time. What I'm sure it doesn't account for is hours that  
14 I might work in the evening or on the weekends or whenever if  
15 it's not on the calendar, it's probably not recorded there.  
16 So it would reflect meetings of the oversight committee, it  
17 would reflect my weekly trips out to the plant site. It  
18 would reflect what's on the calendar as opposed to the time I  
19 put into the project that's not on the calendar.

20 Q. So by your answer, are you saying that what  
21 you've charged to the Iatan 2 construction project or what's  
22 been charged to the Iatan 2 construction project for your  
23 time has been what's reflected on your calendar and not  
24 necessarily all of the time you've spent on the project?

25 A. If I spend four hours on a Saturday reading



1 material, that's not reflected on the -- in there. I  
2 don't -- I don't work a 40-hour week. I work almost all the  
3 time and that's not recorded in the company's book of  
4 records.

5 Q. Who prepares your time sheets?

6 A. My assistant.

7 Q. And do you review them?

8 A. I do.

9 Q. And before you sign off on them, you ensure  
10 they're correct and accurate?

11 A. Between her and I, we review them and look at  
12 it and she goes over it with me when I sign it. And as I  
13 said, it reflects what's on the calendar.

14 Q. What calendar are you referring?

15 A. She keeps my calendar.

16 Q. So it's a work calendar?

17 A. Yes.

18 Q. And what kind of information is kept in that  
19 calendar? You mentioned meetings.

20 A. It's the schedule of my time, meetings that  
21 I'm in, where I am.

22 Q. And when say your time, are you talking about  
23 a 40-hour workweek, 8:00 to 5:00?

24 A. If I have meetings that extend beyond that,  
25 they'll be in that calendar.

1 Q. So it will be the normal workday plus if there  
2 was time that went beyond the end of the normal workday?

3 A. I haven't worked a normal workday in any time  
4 since I can remember.

5 Q. But you also said you worked on weekends and  
6 that time I gather is not reflected in your calendar, so I'm  
7 trying to get an understanding.

8 A. If I go home at nights and I spend two hours  
9 sitting in a chair at home doing work, I don't put it on my  
10 calendar.

11 Q. So is what's put on your calendar when you're  
12 spending time on work at work? And when I say that, I'm  
13 talking physically at your workplace.

14 A. It could be at my workplace, could not be at  
15 my workplace. I could be in meetings -- I could be in  
16 meetings anywhere in the country.

17 Q. But it wouldn't be while you're at home?

18 A. I don't try to record the hours I work when  
19 I'm at home.

20 Q. who built wolf Creek?

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

22 Q. The wolf Creek nuclear reactor that's part of  
23 the Kansas City Power & Light Company portfolio of generation  
24 assets, you're familiar with that?

25 A. Yes.

1 Q. Do you know who built it?

2 A. Well, it was a joint venture of Westar and  
3 Kansas City Power & Light and Kansas Electric Power  
4 Cooperative.

5 Q. Who managed the construction of the generating  
6 facility?

7 A. I was not here at the time. I have no idea.

8 Q. Would you -- in your direct testimony on  
9 page 3 at lines 8 to 9, I'll give you a moment to find it.

10 A. I'm there.

11 Q. You mention there, do you not, that Kansas  
12 City Power & Light Company had engaged in a building of a  
13 number of smaller construction projects and rebuilt  
14 Hawthorn 5, do you not?

15 A. Yes.

16 Q. What are the smaller construction projects  
17 that you're referring to there?

18 A. Probably larger retrofits on existing  
19 coal-fired units. We have an annual capital budget and some  
20 of those projects can be very significant. We have one under  
21 way right now at La Cygne, at our La Cygne power plant that's  
22 very large. Those kind of projects. They'd be in the  
23 multi-million dollars in terms of scope and cost.

24 Q. You said probably retrofit to larger coal  
25 plants. Did you prepare your direct testimony?

1 A. Yes, I did. I meant -- that's what I meant.  
2 I meant retrofit work.

3 Q. So it's not probably, that is what you meant?

4 A. Yes.

5 Q. So it doesn't include the construction of  
6 combined cycle and combustion turbine generators?

7 A. Yes, we've built multiple of those stations  
8 even in the last ten years since I've been here, West Gardner  
9 facility would be one that comes to mind.

10 Q. And what retrofits of larger coal plants were  
11 you referring to?

12 A. We've done work at Hawthorn, we've done work  
13 at La Cygne, we've done projects at Montrose, more recently  
14 in the acquired organizations at Sibley.

15 Q. What type of work are you referring to that  
16 you're characterizing as retrofits?

17 A. Environmental equipment, boiler tube  
18 replacement, various components at the plant, turbine  
19 generators.

20 Q. And when you -- when you reference various  
21 components, you also said boiler tubes and turbine  
22 generators. Are those some of the components you're  
23 referring to or does components mean something else?

24 A. Yes, these plants -- we have a fleet that's  
25 aging and there are significant components to those plants

1 that we -- and we schedule maintenance and refurbishment  
2 outages, even with regard to Iatan 1 when we -- we install  
3 the -- the new environmental control equipment in the 2008  
4 time frame, we probably did 50 to 70 million dollars worth of  
5 non-CEP work inside Iatan 1 that included an entirely new  
6 digital control system and included additional equipment in  
7 the boiler and in other parts of the plant.

8 Q. And since you've mentioned a cost of some of  
9 those projects, what type of costs are you talking about for  
10 a total value of the project? Are we talking about a hundred  
11 million dollar projects to a million dollar projects?

12 A. Well, the current one at La Cygne is in the  
13 hundred million dollar neighborhood.

14 Q. And what is the current project at La Cygne?

15 A. There's a major amount of -- of work being  
16 done, a variety of items, complete gutting of much of the  
17 boiler support equipment.

18 Q. And the others you mentioned, Hawthorn,  
19 Montrose, Sibley, what kind of order of magnitude are the  
20 dollars on those projects?

21 A. Sibley, I think it's in the 70 million dollar  
22 range.

23 Q. Montrose?

24 A. Montrose, over the last decade, we've probably  
25 done 25, 30 million dollars worth of work on collective

1 projects.

2 Q. well, is 70 million you're referencing on  
3 sibley, over what time frame is that project?

4 A. Probably two years.

5 Q. And the La Cygne project you mentioned?

6 A. That's currently underway.

7 Q. How far along are you on that project?

8 A. I was actually supposed to be down there this  
9 past week and didn't get there, probably about halfway  
10 through that outage right now.

11 Q. And how long is this outage you're referring  
12 to?

13 A. About four months.

14 Q. And the Hawthorn project you referenced, how  
15 many dollars were involved in that?

16 A. I don't recall specific dollars.

17 Q. Do you recall a time frame?

18 A. It goes back a couple years.

19 Q. And rather than just specific dollars, can you  
20 ballpark it?

21 A. I don't have a number on Hawthorn.

22 Q. Did not Kansas City Power & Light Company hire  
23 an engineering firm to prepare the definitive estimate of the  
24 Iatan construction project?

25 A. Are you referring to Burns & McDonnell?

1 Q. well, that could be the engineering firm,  
2 sure. It would be.

3 A. We hired Burns & McDonnell as the owners  
4 engineer and they prepared an estimate, yes.

5 Q. Is that the definitive estimate that they  
6 prepared?

7 A. They prepared it but ultimately it was KCP&L's  
8 control budget estimate, which they prepared and had  
9 commented and was critiqued, but ultimately we own the  
10 estimate.

11 Q. If I understand your answer correctly, you're  
12 saying Burns & McDonnell prepared the definitive estimate for  
13 the Iatan construction project, but it was Kansas City Power  
14 & Light Company that adopted that estimate as the definitive  
15 estimate?

16 A. Yes.

17 Q. why was a law firm, in this case Schiff  
18 Hardin, needed to review the definitive estimate prepared by  
19 Burns & McDonnell for the Iatan construction project?

20 A. Mr. Dan Meyer in particular, and he will be  
21 testifying later, is a cost-control, cost-estimating expert  
22 in the construction industry and we wanted his input and  
23 review of it and found it very valuable.

24 Q. So you retained the law firm specifically for  
25 Mr. Meyer -- Meyer's services?

1 A. No, Mr. Meyer was one of an array of services  
2 that came together and was part of the unique skill set of  
3 that Schiff Hardin organization. It was one of a number of  
4 things that they brought to the table that we found very  
5 valuable and Mr. Meyer has, from the original control budget  
6 estimate, through every reforecast, has been a constant in  
7 terms of critiquing and evaluating and giving us an  
8 independent view of the numbers.

9 Q. Is Mr. Meyer an attorney?

10 A. Not that I'm aware of.

11 Q. On page 3 of your direct testimony, at line 17  
12 you used the term internal resources. Do you see that?

13 A. Yes.

14 Q. Where you use that term "internal resources"  
15 there, what do you mean?

16 A. Direct employees.

17 Q. What do you mean by "direct employees"?

18 A. An actual employee of KCP&L as opposed to a  
19 contractor or consultant.

20 Q. And when you say KCP&L, do you mean Kansas  
21 City Power & Light Company?

22 A. Yes.

23 Q. Do you accept responsibility for the Iatan  
24 construction project?

25 A. I am the responsible executive for the



1 project.

2 Q. Are you accountable for the Iatan construction  
3 project?

4 A. I believe so.

5 Q. Are you a member of the executive oversight  
6 committee?

7 A. I'm the chairman of it, and I have been since  
8 it was founded.

9 Q. When was the executive oversight committee  
10 founded?

11 A. Well, informally, we assembled as early as  
12 2005. We formalized that in early 2006, February of 2006.

13 Q. Would you please identify the members of the  
14 executive oversight committee when it was created and any  
15 changes in that membership of that committee since it was  
16 created?

17 A. I'm not sure that I have that in my head, but  
18 I believe it was -- I don't have the original -- maybe it's  
19 in my testimony, I can't recall. I know that Mr. Bassham was  
20 on the committee, Mr. Easley was on the committee, Mr.  
21 Riggins was on the committee, Barbara Curry was on the  
22 committee. I believe Mr. Giles was on the committee. There  
23 could have been others. Those are the names that I recall  
24 right now.

25 Q. And those names are -- you're referring to in

1 2005 when it was an informal committee?

2 A. 2006 when it was formalized.

3 Q. And you testified earlier you were also a  
4 member when it was formally designated in 2006?

5 A. Yes.

6 Q. Is Mr. Bassham still a member of the executive  
7 oversight committee?

8 A. Yes.

9 Q. Is Mr. Easley still a member of the executive  
10 oversight committee?

11 A. No.

12 Q. Do you know whenever he no longer -- became no  
13 longer a member of the executive oversight committee?

14 A. When he left the company, which would have  
15 been sometime in -- I can't recall the date he left.

16 Q. Do you know which year it was even?

17 A. 2009.

18 Q. Is Mr. Riggins still a member of the executive  
19 oversight committee?

20 A. No.

21 Q. Do you know when he became no longer a member  
22 of the executive oversight committee?

23 A. He left the company just recently.

24 Q. Was that in this last year?

25 A. Last quarter of last year.

1 Q. It's Ms. Curry, is it not?

2 A. No, it's Mrs. Curry.

3 Q. Mrs. Curry. Do you know is Mrs. Curry still a  
4 member of the executive oversight committee?

5 A. She retired last year.

6 Q. Do you know when last year?

7 A. Not exactly, but middle of the year.

8 Q. Is Mr. Giles still a member of the executive  
9 oversight committee?

10 A. No, he's not. Not officially. He's not a --  
11 he's a consultant to the company.

12 Q. Do you know when his membership in the  
13 executive oversight committee ended?

14 A. When he retired.

15 Q. Do you know when he retired?

16 A. From the company?

17 Q. Do you remember when retired from the company?

18 A. You're really testing my memory. It would  
19 have been -- I think it could have been 2008.

20 Q. So to the best of your recollection, it would  
21 have been 2008?

22 A. Somewhere in 2008, I think.

23 Q. Were Mr. Easley, Mr. Riggins, Mrs. Curry or  
24 Mr. Giles replaced as members of the executive oversight  
25 committee?

1 A. Yes, Mr. Hydebrink (phonetic), who's the  
2 senior vice-president of our supply group, which is  
3 generation that's replaced Mr. Easley on that committee.

4 Q. And would that have been about the time  
5 Mr. Easley retired?

6 A. Yes.

7 Q. Or left KCP&L?

8 A. Yes.

9 Q. I shouldn't say retired.

10 A. Yes.

11 Q. And Mr. Hydebrink is still a member of the  
12 committee?

13 A. Yes, he is.

14 Q. Did anyone else become a member of the  
15 committee?

16 A. Mr. Blanc, he's head of regulatory. Our  
17 vice-president of purchasing, Maria Jenks, is now on the  
18 committee. I'm sure I'm forgetting somebody.

19 Q. Well, Mr. Giles, I believe, was regulatory and  
20 I believe Mr. Blanc is currently.

21 A. Yes, right.

22 Q. Did Mr. Blanc become a member of the executive  
23 oversight committee about the time Mr. Giles left?

24 A. Yes.

25 Q. And Mr. Riggins, I believe, was in legal. Did

1 someone else replace him?

2 A. I don't believe we have at this point. And  
3 we're beginning to transition down as the project winds down.  
4 We haven't yet closed out the EOC, but much of the work is  
5 obviously done on that and ultimately, at some point this  
6 year, we will officially close that out for the Iatan project  
7 and the CEP projects.

8 Q. Mr. Downey, for making essential decisions,  
9 does the executive oversight committee receive all necessary  
10 information it needed on a timely basis?

11 A. The oversight committee was not necessarily  
12 the decision-making body. It was an oversight body. It was  
13 not the decision-making body. It would have been involved in  
14 hearing about decisions to be made and listening to them.  
15 But there's a line organization that is decision-making  
16 authority and responsibility. The oversight committee did  
17 not run the project, the line organization ran the project.

18 Q. But you also testified, I believe, that the  
19 executive oversight committee made recommendations?

20 A. Yes, it's part of good governance to have that  
21 group and their input and ideas. But ultimately, the line  
22 organization had decision-making responsibility.

23 Q. And did the line organization rely on the  
24 executive oversight committee's recommendations?

25 A. I would -- I would describe it as a discussion

1 and a questioning and a challenging and it clearly would  
2 listen to -- very strongly -- the input and advice of that  
3 group. But ultimately, the line organization had to make the  
4 decisions.

5 Q. well, do you know of any instance where the  
6 executive oversight committee made some recommendation that  
7 the line organization declined to adopt?

8 A. No.

9 Q. And in making its recommend -- or for making  
10 its recommendations, did the executive oversight committee  
11 receive all the information it needed to make those  
12 recommendations on a timely basis?

13 A. I believe they did.

14 Q. And what type of -- what types of information  
15 did the executive oversight committee receive for making its  
16 recommendations?

17 A. well, I think there was a standard set of  
18 reports each month. Early on, the oversight committee was  
19 meeting even as frequently as weekly. As time progressed, we  
20 moved to a monthly format in which they received regular  
21 updates on status of all sorts of issues. Early on, it was  
22 the engineering status and then the key purchasing decisions  
23 that were made.

24 As we moved to construction, it would have  
25 been construction status, they would have learned about the

1 development of the organization, they would have seen and  
2 heard about our cost control system, they would have been  
3 immersed in our earned value system and every month they  
4 would have seen the output of those -- that system. They  
5 would have seen the financial reports from the cost control  
6 system.

7           Anytime there was a major issue with a site,  
8 they would have had detailed briefings on that. When we had  
9 the crane collapse and fatality there, they would have had  
10 very detailed briefings on that. When we uncovered the  
11 metallurgical issues around T-23, we would have briefed the  
12 committee and we would have brought the independent experts  
13 in to allow the committee to question and understand those  
14 issues. So anything of significance during the project would  
15 have very timely been brought forward to the oversight  
16 committee for their awareness.

17           Q.       And you mentioned the committee's meetings  
18 gather -- I think it was meetings -- started out weekly and  
19 changed to monthly. Do you know about the time frame when  
20 that change occurred and the frequency?

21           A.       I don't recall exactly. I would say that  
22 early on in the project, as we were getting started up -- I  
23 don't recall the exact date.

24           Q.       2005, 2007?

25           A.       I'd say 2000 --

1 Q. 2007?

2 A. I would say early or late 2006.

3 Q. And you mentioned standard reports. What do  
4 those include?

5 A. The financial reporting, the earned value  
6 reporting, the schedules. You know, progress on schedule and  
7 cost. The progress on purchasing, in 2006, we committed a  
8 billion dollars of spend on the projects so they would have  
9 been hearing about that all the way through 2006, progress on  
10 engineering, progress with contractors, disputes with  
11 contractors, they would have heard all of that.

12 Q. Now whenever I asked you about the executive  
13 oversight committee making decisions, you said no, they make  
14 recommendations. You referenced line organization. What's  
15 the line organization you're talking about?

16 A. The project team, the head of construction,  
17 first Mr. Grimwade followed by Mr. Murphy, our  
18 vice-presidents of construction, Mr. Price, then Mr.  
19 Churchman. Those would have been the -- the line  
20 organization reporting first to Mr. Easley and then  
21 ultimately to me.

22 Q. Would that have -- Mr. Easley is not with the  
23 company now, is he?

24 A. That's correct.

25 Q. So whenever you're talking about those



1 individuals and those positions, are we talking about  
2 whenever the committee was first established?

3 A. No. Those were the individuals over time,  
4 over the five-year period.

5 Q. The individuals who made the decisions, is  
6 that what you're saying?

7 A. The individuals responsible for the line  
8 organization, yes. Mr. Grimwade was the first one.

9 Q. It's my ignorance, I'm still not understanding  
10 what you're meaning by line organization. Are you saying  
11 these are the individuals over what you're describing as a  
12 line organization?

13 A. Yes, so in the beginning, Mr. Easley had  
14 responsibility for -- let's just stick with the Iatan  
15 projects.

16 Q. That's fine.

17 A. And so as senior vice-president of generation  
18 and then construction as well, he was the head of the line  
19 organization. Mr. Grimwade was -- reported directly to him  
20 and then the project manager, the initial one was Terry  
21 Murphy and -- and Terry Murphy's whole organization. That's  
22 the line organization. They were responsible for the  
23 execution of the project.

24 Q. And that's the Iatan project, correct?

25 A. Yes.

1 Q. were Mr. Easley, Mr. Grimwade and Mr. Murphy  
2 all employees of Kansas City Power & Light Company?

3 A. Yes.

4 Q. were they all employees of Kansas City Power &  
5 Light Company before the Iatan project team started to be put  
6 together?

7 A. Mr. Easley and Mr. Grimwade were; Mr. Murphy  
8 was not.

9 Q. why was Mr. Murphy hired?

10 A. we were seeking an experienced large  
11 construction project executive.

12 Q. what was it about Mr. Murphy's qualifications  
13 that caused Kansas City Power & Light Company to hire him?

14 A. I think the year that we hired him, he was  
15 named one of the hundred top large project managers by  
16 Engineering News Record, so I mean, that was one of many. He  
17 was recommended, he had worked on many other projects and was  
18 recommended to us and had that kind of background.

19 Q. Do you know of any specific projects that he  
20 worked on before you hired him?

21 A. I believe he -- the Ontario project. I can't  
22 remember the specific name of the organization, but he had  
23 just come off of a large project. Not unusual for these  
24 individuals.

25 Q. Do you know if he had been -- was ever

1 characterized -- and I'm going to use some words that if  
2 they're inaccurate, tell me and how you would characterize  
3 Mr. Murphy in terms of what you understood about his  
4 activities at the -- I think it was a project for Ontario  
5 Power Generation. But had he been described as pushing  
6 management changes on the site and overhauling  
7 problem-plagued culture?

8 MR. HATFIELD: I'm going to object, it's a  
9 compound or ambiguous question. I'm not sure I understand  
10 what he wants the question to answer.

11 JUDGE PRIDGIN: I'm going to overrule. I  
12 mean, I think I understood the question.

13 THE WITNESS: would you repeat the question?

14 BY MR. WILLIAMS:

15 Q. Do you know if in terms of his activities at  
16 the Ontario project, Mr. Murphy had been characterized as  
17 having overhauled a problem-plagued culture at the committee  
18 and pushed management changes onsite?

19 A. I don't recall that specific, I don't know.

20 Q. Did you have any understanding about what  
21 Mr. Murphy had done at the Ontario power site?

22 A. My understanding was that he was successful.  
23 You know, I did not -- as I said, Mr. Easley at the time was  
24 in charge of this and was a part of the -- he was a lead as a  
25 part of this hiring. What I know is Mr. Murphy came highly

1 recommended and had a long background. I don't remember the  
2 specifics.

3 Q. So are you saying that Mr. Easley made the  
4 hiring decision for hiring Mr. Murphy?

5 A. He would have been the lead on that. Other  
6 people would have been involved. Our human resource people  
7 would have been involved. I think I probably interviewed  
8 Mr. Murphy myself and there were other people who would have  
9 interviewed. When we hire the key people, we try to have  
10 multiple inputs. That's -- hiring is one of the more  
11 challenging decisions that any organization makes and it's  
12 not an exact science, so we try to get multiple inputs.

13 Q. So you're -- basically you're saying you  
14 relied on his general reputation and other people in your  
15 organization for the hiring of Mr. Murphy?

16 A. Yes.

17 Q. Do I understand correctly that the executive  
18 oversight committee didn't have any control over the  
19 financing or authorization of expenditures on the Iatan  
20 project?

21 A. That's correct.

22 Q. Could the Iatan project manager approve  
23 expenditures on the Iatan project without the approval of the  
24 vice-president of construction?

25 A. Yes.

1 Q. Mr. Downey, you approved some settlements with  
2 Kiewit and Alstom; is that correct?

3 A. Yes.

4 Q. Did you obtain approval from the board of  
5 directors of Kansas City Power & Light Company before you  
6 approved those settlements?

7 A. If they required such approval. In some  
8 cases, they did not, depending on the level of those  
9 settlements, the dollar level.

10 Q. would the dollar level where board of director  
11 approval be highly confidential?

12 A. Yes, I think.

13 MR. HATFIELD: Okay.

14 MR. WILLIAMS: I guess go in-camera for the  
15 question.

16 JUDGE PRIDGIN: Okay. We'll go in-camera for  
17 just a moment, please.

18 BY MR. WILLIAMS:

19 Q. At what dollar level would the settlement need  
20 to be before it required board of director approval whenever  
21 you were the one approving the settlement?

22 A. I should have the specific number in my head,  
23 I don't. But I don't believe that there were any settlement  
24 agreements that reached that level. In fact, I'm certain  
25 there weren't.

1 JUDGE PRIDGIN: Is that all we need for in  
2 camera?

3 MR. WILLIAMS: Probably more than we needed as  
4 it turns out.

5 JUDGE PRIDGIN: Can we go back into public  
6 then?

7 MR. HATFIELD: I don't think that needs to be  
8 HC.

9 JUDGE PRIDGIN: We're going back to public.  
10 we are in public forum.

11 MR. MILLS: And Judge, while we were  
12 in-camera, I think counsel for KCP&L decided that that  
13 portion did not need to be HC, so can we instruct that the  
14 transcript be prepared accordingly?

15 JUDGE PRIDGIN: Any objections?

16 MR. HATFIELD: No objection, Your Honor.

17 JUDGE PRIDGIN: Okay. If I can order then  
18 that immediately proceeding in-camera session be made public.  
19 Thank you.

20 BY MR. WILLIAMS:

21 Q. And am I correct in understanding that your  
22 approving settlements with Kiewit and Alstom didn't require  
23 any approval by the executive oversight committee; is that  
24 correct?

25 A. I would have shared that -- those settlement

1 processes and outcomes with the oversight committee, but I  
2 had the authority to do it.

3 Q. You didn't have to share it with them, did  
4 you?

5 A. I did.

6 Q. I understand, but you weren't required to,  
7 were you?

8 A. I believe our culture and our informal policy  
9 would have said that, yes, I did.

10 Q. Did the executive oversight committee make  
11 recommendations regarding the settlement with Kiewit and  
12 Alstom that you approved?

13 A. I'm sorry, would you repeat that?

14 Q. Did the executive oversight committee make  
15 recommendations regarding the settlements with Kiewit and  
16 Alstom that you approved?

17 A. No, I don't believe they did.

18 Q. Why don't we do it this way: For approving  
19 the settlements in Kiewit and Alstom, what role did the  
20 executive oversight committee play?

21 A. I think the confusion, the executive oversight  
22 committee is not an unusual kind of structure in large  
23 organizations. And it's an input and advice -- they were not  
24 the line authority. They -- we wanted to make sure that our  
25 executives from across the organization understood what was

1 going on, was involved, could question and challenge. But  
2 they were not in the line of approval. Now, did we listen to  
3 them, yes, because it's important. But this is not an  
4 unusual structure in big corporations, but they are not the  
5 line authority for this.

6           There is a line organization that's very  
7 clear. The signature authorities are very clear and approval  
8 lines are very clear. The oversight committee is not in that  
9 approval line, but we consult with them and we ask for their  
10 input and we want them to be aware of all that's going on in  
11 this. We had three to 4,000 people working on this one  
12 project. We don't have -- we have about 3,000 people in the  
13 entire rest of the company.

14           This was our way of engaging our entire senior  
15 leadership team in what was going on on a very focused  
16 project. But they were -- there was not a sign-off sheet or  
17 an approval authority within the oversight committee. Their  
18 functions was very different than the line organizations  
19 function.

20           Q.     I think I'm hearing your quibbling with my use  
21 of the word "recommendation." Did the oversight committee  
22 provide its input in written format?

23           A.     No.

24           Q.     Or did it --

25           A.     No, it was in the discussion in the monthly



1 meetings.

2 Q. Mr. Downey, did Alstom provide you and your  
3 wife a trip to Pebble Beach with all expenses paid by Alstom  
4 except airfare?

5 A. I did go to Pebble Beach with the Alstom  
6 senior leadership after we successfully completed the  
7 negotiation of the contract, and I did pay for -- our company  
8 paid for the airfare. I was their guest at the -- at Pebble  
9 Beach.

10 Q. And when you said their "guest," whose guest  
11 were you?

12 A. Alstom's.

13 Q. So Alstom paid for your accommodations and  
14 whatever you did in Pebble Beach is that what you're saying?

15 A. Yes.

16 Q. And likewise, Mr. Downey, did Alstom provide  
17 you and your wife a trip to Newport, Rhode Island with all  
18 expenses paid by Alstom except for airfare?

19 A. We did go to that event and I know I paid our  
20 own airfare. I'm not sure about the hotel, whether we paid  
21 it or not, I can't recall.

22 Q. What is Pebble Beach?

23 A. Well, we stayed at a hotel there and it is a  
24 resort area.

25 Q. What kind of activities do they have at that

1 resort?

2 A. A variety of different ones, including golf.

3 Q. Is it known for any particular activity?

4 A. Golf.

5 Q. Are you a golfer?

6 A. I play golf, badly.

7 Q. I hope Alstom didn't take too much advantage  
8 of you on the golf course then.

9 when you signed the settlement agreement with  
10 Alstom for the JLG and soil stabilization settlements, did  
11 Kansas City Power & Light Company have any basis for  
12 believing that it was at fault?

13 A. The JLG settlement was part of a broader set  
14 of initiatives and strategy we had with -- with Alstom.  
15 First of all, the JLG incident raised safety issues, so --

16 MR. WILLIAMS: Judge, I think he's going  
17 beyond the scope of the question in his answer. I ask that  
18 you direct him to answer the question as posed.

19 JUDGE PRIDGIN: Okay. Just to be clear,  
20 Mr. Williams, will you ask the question again, please?

21 BY MR. WILLIAMS:

22 Q. When you signed the agreement with Alstom for  
23 the JLG and soil stabilization settlements, did Kansas City  
24 Power & Light Company have any basis for believing it was at  
25 fault?

1 MR. HATFIELD: Judge, I think we may need to  
2 be HC here.

3 MR. WILLIAMS: I'm fine with going HC.

4 JUDGE PRIDGIN: All right. Just a moment, HC.  
5 We'll go in camera for just a moment.

6 (REPORTER'S NOTE: At this point, an in-camera  
7 session was held, which is contained in volume 20, pages 1255  
8 to 1257 of the transcript.)

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1 JUDGE PRIDGIN: Because of the hour and  
2 because of the weather, I'm just inquiring how much more  
3 cross-examination do you think you have.

4 MR. WILLIAMS: A lot.

5 JUDGE PRIDGIN: All right. And Mr. Fischer, I  
6 thought I saw you grabbing a microphone, did you have  
7 somebody --

8 MR. FISCHER: Well, I was going to inquire the  
9 same thing. It looked like if Mr. Downey was going to need  
10 to come back, we probably ought to talk about scheduling of  
11 next week and I know the folks from Kansas City want to stay  
12 and get -- get as much done as we can, but if it's going to  
13 be next week, we might as well take a break.

14 JUDGE PRIDGIN: All right. I'm inclined to --  
15 to call it a night. Is there -- is there anything before  
16 counsel or any objection or anything from counsel before we  
17 go off the record?

18 MR. WILLIAMS: I'm certainly not going to  
19 stand in your way.

20 JUDGE PRIDGIN: Thank you. All right. If  
21 there's nothing further, we will readjourn at 8:30 Monday  
22 morning. Thank you. We are off the record.

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I N D E X

KANSAS CITY POWER & LIGHT'S EVIDENCE

CHRIS GILES:

Direct Examination by Mr. Fischer	1010
Cross-Examination by Mr. Mills	1012
Cross-Examination by Ms. Ott	1014
Cross-Examination by Ms. Ott (In-Camera)	1055
Questions by Commissioner Jarrett	1090
Questions by Commissioner Gunn	1104
Questions by Commissioner Jarrett	1120
Questions by Commissioner Jarrett (In-Camera)	1128
Recross-Examination by Mr. Schwarz	1140
Recross-Examination by Mr. Mills	1143
Recross-Examination by Ms. Ott	1147
Redirect Examination by Mr. Fischer	1153

WILLIAM DOWNEY:

Direct Examination by Mr. Hatfield	1181
Cross-Examination by Mr. Schwarz	1183
Cross-Examination by Mr. Mills	1198
Cross-Examination by Mr. Williams	1205
Cross-Examination by Mr. Williams (In-Camera)	1224

1	EXHIBIT INDEX	MARKED	RCV'D
2			
3	Exhibit No. 21-NP Direct Testimony of William Downey Non-Proprietary		1183
5	Exhibit No. 21-HC Direct Testimony of William Downey Highly Confidential		1183
7	Exhibit No. 22-NP Rebuttal Testimony of William Downey Non-Proprietary		1183
9	Exhibit No. 22-HC Rebuttal Testimony of William Downey Highly Confidential		1183
11	Exhibit No. 70-HC Strategic Infrastructure Investment Status Report	1161	1163
13	Exhibit No. 72 Presentation Outline to the Regulatory Plan Signatories	1168	1169
15	Exhibit No. 250-HC Recommendation to Award Letter		1010
17	Exhibit No. 252 Chain of E-mails	1020	1180
18	Exhibit No. 253 Organizational Chart	1210	1211
20			
21			
22			
23			
24			
25			

<u>\$</u>			
<b>\$1.9</b> 1204:25	1175:5	1197:9	<b>1198</b> 1260:12
<b>\$10</b> 1114:9	<b>09</b> 1076:11	<b>10:30</b> 1074:15	<b>11th</b> 1136:10
1115:14	1123:2	<b>10:45</b> 1074:16	<b>12</b> 1163:2
1116:2	<b>09-KCPE-246-</b>	<b>100</b> 1077:8	<b>1200</b> 1010:25
1117:3	<b>RPS</b> 1064:5	1091:9	<b>1205</b> 1260:12
1118:2		<b>1000</b> 1006:15	<b>1210</b> 1261:18
1171:13	<u>1</u>	<b>101</b> 1006:19	<b>1211</b> 1261:18
<b>\$12</b> 1116:6	<b>1</b> 1018:19	<b>1010</b> 1260:3	<b>1224</b> 1223:5
<b>\$125</b> 1217:16	1032:6,11	1261:15	1260:13
<b>\$2</b> 1170:21	1033:15	<b>1012</b> 1260:4	<b>1225</b> 1223:6
<b>\$2,005</b>	1034:10,11,1	<b>1014</b> 1260:4	<b>124</b> 1201:22
1052:19	4,15 1035:2	<b>1020</b> 1261:17	<b>1255</b> 1254:7
<b>\$2,500</b>	1052:6	<b>104595</b>	<b>1257</b> 1254:8
1044:9,14	1060:7	1007:23	<b>1267523</b>
<b>\$20</b> 1028:25	1063:24	<b>1047</b> 1045:25	1037:14
1114:8	1066:15,21	1046:1	<b>12-month</b>
1170:21	1067:21	<b>1055</b> 1054:21	1098:19
<b>\$200</b>	1076:11,13	1260:5	<b>13</b> 1089:12
1044:6,10	1081:10	<b>1058</b> 1054:22	1115:21
<b>\$220</b> 1197:10	1091:7,8,9	<b>1070</b> 1069:18	1116:3,18
1203:3	1096:9	<b>1073</b> 1069:19	<b>130</b> 1005:11
<b>\$40</b> 1149:15	1104:3	<b>1090</b> 1260:5	<b>13220</b> 1008:9
<b>\$5</b> 1114:10	1108:9	<b>11</b> 1123:7	<b>14</b> 1065:9
1115:14	1111:16	1146:25	<b>145</b> 1142:7
1116:2	1141:12	1201:23	<b>1464</b> 1007:20
1117:3	1158:10	<b>1100</b> 1007:7	<b>15</b> 1065:10,16
1118:2	1167:3	<b>1104</b> 1260:6	1094:2
1171:13	1168:23	<b>111</b> 1006:6	1105:2,6,15
<b>\$50,000</b>	1171:6	<b>1120</b> 1260:6	<b>150</b> 1032:7,9
1089:16,19	1175:23	<b>1128</b> 1127:14	<b>16</b> 1068:8,17
<b>\$8.1</b> 1163:14	1176:2,22	1260:7	1105:15
	1196:8	<b>1130</b> 1127:15	1191:20,24,2
	1198:13,24,2	<b>1140</b> 1260:7	5
	5 1232:2,5	<b>1143</b> 1260:8	<b>1613</b> 1007:20
	<b>1,100</b> 1052:18	<b>1147</b> 1260:8	<b>17</b> 1115:22
	<b>1,200</b> 1178:9	<b>1153</b> 1260:9	1116:3,18
	<b>1,300</b> 1052:18	<b>1161</b> 1261:11	1121:8
	<b>1,465</b> 1199:8	<b>1163</b> 1261:11	1185:22
	<b>1.09</b> 1175:6	<b>1168</b> 1261:13	1191:25
	<b>1.4</b> 1201:7	<b>1169</b> 1261:13	1235:11
	<b>1.465</b> 1141:17	<b>1180</b> 1261:17	<b>178.7</b> 1226:19
	<b>1.685</b>	<b>1181</b> 1260:11	<b>1780</b> 1004:23
	1105:9,15	<b>1183</b> 1260:11	1259:6
	1152:4	1261:3,5,7,9	<b>179</b> 1156:8
	<b>1.9</b> 1199:3	<b>119</b> 1008:2	<b>18</b> 1068:6,15
	<b>1.901</b> 1105:18		<b>19</b> 1004:9
	1126:8		<b>1980</b> 1079:22
	<b>1.948</b>		
	1105:12,15		
	1126:10		
	<b>1:45</b> 1139:6		
	<b>10</b> 1067:9		
	1196:6		
<u>0</u>			
<b>0</b> 1063:19			
1064:21			
1226:6			
<b>04</b> 1155:1			
<b>05</b> 1121:20,22			
<b>06</b> 1097:5,12			
1101:22			
1140:15			
1141:17,24			
1168:25			
<b>07</b> 1021:20			
1097:15			
1167:12			
<b>08</b> 1067:3			
1093:11,12			
1155:3,4,9			
1167:5			

<p>1080:5  <b>1st</b> 1038:16</p> <hr/> <p><b>2</b></p> <p><b>2</b> 1018:19  1031:25  1032:3,6,11,  13,17,20  1033:13,15  1034:2,7,11  1035:2,17  1051:13,17,2  3 1052:7  1053:8  1060:4,24  1061:21,23  1062:13  1063:13  1067:21  1068:9  1076:9  1082:9,12,19  1084:5  1091:8  1104:3  1108:9  1111:16  1160:9  1162:25  1163:2  1168:21,23,2  5 1171:6  1176:22  1185:19  1189:12  1190:8  1196:13  1199:3  1215:18  1217:19,23  1218:5,6  1219:14,15  1226:4,13,16  ,19,22,25  1227:5,21,22</p> <p><b>20</b> 1045:25  1054:21  1069:18  1075:14  1094:2  1097:12  1125:1,6,13  1127:14  1151:9  1223:5  1254:7</p> <p><b>200</b> 1005:11  1009:6,10</p>	<p>1151:17</p> <p><b>2000</b> 1063:24  1242:25</p> <p><b>2004</b> 1095:22  1154:12,17  1158:15  1174:2</p> <p><b>2005</b> 1051:17  1053:9  1062:21  1063:9,12  1077:24  1078:8  1079:5,11,15  1095:22  1114:17  1121:10,16,1  7 1131:11  1157:11  1160:22  1187:6,20  1201:9  1226:4,8  1236:12  1237:1  1242:24</p> <p><b>2006</b> 1121:10  1122:1  1123:8  1124:10  1136:10  1144:5  1146:22,25  1162:2,5  1184:7  1185:7  1186:2  1187:20  1188:23  1189:15  1191:22  1192:10  1196:18,21  1201:3,14  1226:14  1227:8  1236:12  1237:2,4  1243:2,7,9</p> <p><b>2007</b> 1021:19  1063:5  1092:9  1121:8  1123:22  1168:20  1201:14  1202:1</p>	<p>1226:17  1227:8,9  1242:24  1243:1</p> <p><b>2008</b> 1019:23  1023:5,7,8,2  1 1026:15  1036:17  1037:15  1038:16  1042:12  1067:11  1077:9  1092:1  1105:18  1126:24  1167:19  1184:12,23  1216:22  1226:20  1227:9,10  1232:3  1238:19,21,2  2</p> <p><b>2009</b> 1024:10  1025:13  1031:22  1032:4  1033:8  1035:11,15  1036:22  1037:2  1040:2  1064:6  1067:6  1088:2  1126:2  1166:7,9  1167:6  1210:25  1211:3  1213:23  1226:23  1227:10  1237:17</p> <p><b>2010</b> 1053:20  1060:4,15,18  1063:10,17  1067:7  1076:8,11,13  ,17  1098:16,20  1125:24  1126:9  1164:3  1166:7  1227:1</p>	<p><b>2011</b> 1004:7  <b>2015</b> 1156:9  <b>202.586.3409</b>  1006:16  <b>20585</b> 1006:15  <b>20th</b> 1090:25  1091:1  <b>21</b> 1004:7  1066:16  1181:17  1182:11  1183:3,4  <b>21.5</b> 1226:13  <b>21-HC</b> 1261:5  <b>21-NP</b> 1261:3  <b>21st</b> 1010:3  <b>22</b> 1069:8  1082:6  1181:17  1182:11  1183:4  <b>220</b> 1142:10  <b>2230</b> 1009:10  <b>22-HC</b> 1261:9  <b>22nd</b> 1168:20  <b>22-NP</b> 1183:3  1261:7  <b>23</b> 1164:17  1192:24  <b>230</b> 1007:11  <b>23rd</b> 1051:17  1126:24  <b>24</b> 1011:24  <b>24-HC</b>  1011:6,21  <b>25</b> 1011:24  1029:8  1051:18  1097:12  1125:2,6,13  1134:20  1135:17,25  1151:9  1232:25  <b>250</b>  1010:9,11,13  <b>250-HC</b>  1261:15  <b>251</b>  1019:21,24</p>
--	---	---	--

<p>1020:1,4  <b>252</b> 1019:25                  1020:4,6,7                  1090:12                  1093:14                  1179:18,20,2                  3 1180:16                  1226:25                  1261:16  <b>253</b>                  1210:12,18                  1211:6,7,10,                  11 1261:18  <b>259</b> 1036:1  <b>25-HC</b>                  1011:6,21  <b>260</b> 1180:6  <b>26th</b> 1019:22                  1023:6  <b>28</b> 1067:5                  1133:1  <b>28th</b> 1162:2</p> <hr/> <p><b>3</b>  <b>3</b> 1080:3,7                  1168:23                  1230:9                  1235:11  <b>3,000</b> 1251:12  <b>30</b> 1032:7                  1232:25  <b>300</b> 1005:7  <b>301</b> 1005:23                  1006:2  <b>308</b> 1005:19  <b>309</b> 1009:6  <b>30th</b> 1037:15  <b>31</b> 1166:9                  1167:6                  1188:22  <b>312</b> 1006:11  <b>312.371.2673</b>                  1008:3  <b>314.395.8002</b>                  1008:14  <b>314.725.8788</b>                  1005:12  <b>320</b> 1008:9  <b>32459</b> 1008:2</p>	<p><b>33</b> 1163:7  <b>3321</b> 1007:15  <b>3420</b> 1005:15  <b>343.3</b> 1226:22  <b>35</b> 1016:7                  1027:8                  1030:14                  1031:12                  1175:9,10  <b>360</b> 1063:20                  1064:21                  1138:13  <b>37</b> 1149:17                  1198:23  <b>376</b> 1067:4  <b>379</b> 1156:7</p> <hr/> <p><b>4</b>  <b>4</b> 1065:16                  1066:13                  1187:5  <b>4,000</b> 1251:11  <b>40</b> 1048:12                  1202:1  <b>400</b> 1006:19  <b>40-hour</b>                  1228:2,23  <b>411</b> 1028:7  <b>412</b> 1007:20  <b>413</b> 1028:7  <b>417.864.8800</b>                  1005:4  <b>418679</b> 1007:2  <b>428</b> 1005:7                  1198:25  <b>44</b> 1192:13,22  <b>45</b> 1102:10,11                  1177:21  <b>4520</b> 1007:7  <b>456</b> 1006:11  <b>45-day</b> 1102:5  <b>465</b> 1141:12                  1142:3                  1196:8                  1198:14,24  <b>475</b> 1007:19  <b>484</b> 1067:4  <b>4th</b> 1023:7</p>	<p>1092:1</p> <hr/> <p><b>5</b>  <b>5</b> 1064:6                  1137:11                  1230:14  <b>5:00</b> 1228:23  <b>50</b> 1081:2                  1160:15                  1177:21                  1232:4  <b>536</b> 1080:24  <b>55</b> 1177:21  <b>573.443.3141</b>                  1006:7  <b>573.634.2266</b>                  1005:24                  1006:3  <b>573.634.2500</b>                  1005:20  <b>573.635.0427</b>                  1006:12  <b>573.635.2700</b>                  1005:8  <b>573.636.6263</b>                  1007:12  <b>573.636.6758</b>                  1006:20  <b>573.659.8672</b>                  1007:24  <b>573.751.0052</b>                  1008:6  <b>573.751.6514</b>                  1009:7</p> <hr/> <p><b>6</b>  <b>6</b> 1067:10                  1075:13,14                  1196:8                  1197:25                  1201:9,12  <b>60</b> 1081:2                  1095:2  <b>601</b> 1005:23                  1006:2  <b>63105</b> 1005:12  <b>63119</b> 1008:14  <b>63130</b> 1008:6  <b>64.6</b> 1226:16  <b>64111</b> 1005:16</p>	<p>1007:7  <b>64141-9679</b>                  1007:3  <b>65101</b>                  1005:8,20                  1006:20                  1007:11  <b>65102</b>                  1009:7,11  <b>65102-0456</b>                  1006:12  <b>65102-0537</b>                  1005:23                  1006:2  <b>65110-4595</b>                  1007:23  <b>65201</b> 1006:6  <b>65802</b> 1005:3  <b>66101</b> 1007:19  <b>66213</b> 1008:10  <b>66606</b> 1007:15</p> <hr/> <p><b>7</b>  <b>7</b> 1067:10                  1201:3,12  <b>70</b> 1025:24                  1091:9                  1097:8                  1110:12                  1125:22                  1126:7                  1161:20                  1232:4,21                  1233:2  <b>70,000</b> 1095:2  <b>70HC</b>                  1163:18,19  <b>70-HC</b>                  1161:21,25                  1163:16,17,2                  0 1261:11  <b>71</b> 1161:17,19                  1164:11  <b>72</b> 1168:12,13                  1169:23,24,2                  5 1261:13  <b>75</b> 1142:8  <b>753</b> 1007:19  <b>77</b> 1191:17,25  <b>785.271.9991</b></p>
---	---	--	---

<p>1007:16</p> <p><b>7th</b> 1023:5,8,21</p> <hr/> <p><b>8</b></p> <p><b>8</b> 1063:5 1082:5 1230:9</p> <p><b>8:00</b> 1228:23</p> <p><b>8:30</b> 1258:21</p> <p><b>8:45</b> 1010:2</p> <p><b>800-megawatt</b> 1160:13</p> <p><b>81</b> 1080:19</p> <p><b>816.360.5976</b> 1005:16</p> <p><b>816.460.2400</b> 1007:8</p> <p><b>816.556.2314</b> 1007:3</p> <p><b>850-megawatt</b> 1052:17 1160:16</p> <p><b>871</b> 1008:13</p> <p><b>899</b> 1008:5</p> <p><b>8th</b> 1053:9</p> <hr/> <p><b>9</b></p> <p><b>9</b> 1063:6 1067:9 1230:9</p> <p><b>90</b> 1110:12 1125:24 1126:4,7</p> <p><b>913.321.8884</b> 1007:20</p> <p><b>913.338.7700</b> 1008:10</p> <p><b>939</b> 1005:3</p> <p><b>9th</b> 1006:6</p> <hr/> <p><b>A</b></p> <p><b>a.m</b> 1010:2</p> <p><b>AARP</b> 1008:15</p> <p><b>ability</b> 1094:24 1113:12 1160:2 1259:11</p>	<p><b>able</b> 1052:9,11 1074:2 1100:4 1108:8 1110:5 1154:21 1156:6,9 1213:17</p> <p><b>absent</b> 1041:5 1158:19</p> <p><b>absolutely</b> 1022:10 1052:1 1068:21 1109:16 1112:3 1165:13 1171:8,17 1178:21 1199:13</p> <p><b>absolutes</b> 1172:16</p> <p><b>accept</b> 1029:20 1031:13 1119:23 1199:1 1206:9,13,21 1207:11 1235:23</p> <p><b>accepted</b> 1030:18 1107:18 1207:12</p> <p><b>accepting</b> 1119:18</p> <p><b>access</b> 1161:3</p> <p><b>acciden</b> 1153:7</p> <p><b>accident</b> 1042:12 1043:4,9 1126:24 1153:4</p> <p><b>accommodation</b> s 1252:13</p> <p><b>accompanied</b> 1028:6</p> <p><b>accomplish</b> 1112:1</p> <p><b>accomplished</b> 1205:24 1222:3</p>	<p><b>according</b> 1012:24</p> <p><b>accordingly</b> 1249:14</p> <p><b>account</b> 1205:14 1227:13</p> <p><b>accountable</b> 1236:2</p> <p><b>accountant</b> 1016:22</p> <p><b>accountants</b> 1104:2 1175:21</p> <p><b>accounting</b> 1014:19 1016:15,16 1032:5 1092:10,15 1104:9 1106:13 1107:14 1209:16,22</p> <p><b>accrua</b> 1043:11 1153:5</p> <p><b>accrued</b> 1043:8</p> <p><b>accurate</b> 1145:10 1151:24 1181:19 1191:1 1202:11 1228:10</p> <p><b>accurately</b> 1011:17 1182:2 1211:1</p> <p><b>achieve</b> 1110:22</p> <p><b>acquired</b> 1213:14 1214:4 1215:4,5,8 1216:22 1231:14</p> <p><b>acquiring</b> 1214:15</p> <p><b>acquisition</b> 1043:21 1214:16,25 1217:10</p>	<p>1218:8</p> <p><b>across</b> 1184:19 1250:25</p> <p><b>action</b> 1259:13,17</p> <p><b>actions</b> 1064:15</p> <p><b>active</b> 1162:17 1190:9</p> <p><b>activities</b> 1019:6 1161:12 1162:23 1167:14 1183:19 1246:4,15 1252:25</p> <p><b>activity</b> 1253:3</p> <p><b>actual</b> 1035:10 1036:20 1037:3 1067:2 1146:12 1148:12 1155:10 1162:14,21 1163:4 1235:18</p> <p><b>actually</b> 1028:6 1036:7 1037:22 1038:14 1043:10 1048:6 1052:5 1080:7 1114:5 1118:4 1121:14,16 1123:20 1126:1 1131:21 1132:3,5 1154:6,24 1155:17 1157:13 1159:2,3 1167:2,20 1174:7 1176:14,25 1180:1</p>
---	---	--	--

1184:17 1187:7 1198:20 1218:20 1233:8 <b>add</b> 1030:22 1031:10 1107:11 1141:15 <b>added</b> 1156:3,17 1157:2,5 1160:16 1201:1 <b>addition</b> 1044:7,10 1165:1 <b>additional</b> 1076:7,15,17 1142:12 1191:7 1212:22 1214:4 1232:6 <b>address</b> 1010:24 1051:1 1174:20 1177:14 <b>addressed</b> 1090:20 1166:3 <b>adequacy</b> 1109:15,23 <b>adequate</b> 1152:6 1204:9 <b>adjourn</b> 1139:5 <b>adjourned</b> 1139:14 <b>adjust</b> 1149:23 1178:20,21 <b>adjusted</b> 1062:14 1178:17 1187:3 <b>adjustment</b> 1044:23 1149:8 1174:21 1175:6,9,16 1176:3	<b>adjustments</b> 1018:10 1068:23 1069:6 1174:17 1176:2 <b>administer</b> 1010:5 1180:21 <b>administratio n</b> 1083:16 1114:14 <b>administrativ e</b> 1080:16 <b>admission</b> 1011:21 1163:16 1169:21 <b>admitted</b> 1010:12 1011:24 1163:18 1169:24 1180:14 1183:3 1211:10 <b>admitting</b> 1065:2 <b>adopt</b> 1241:7 <b>adopted</b> 1107:14 1234:14 <b>advance</b> 1146:25 1147:7 1220:3 <b>advanced</b> 1217:16 <b>advantage</b> 1253:7 <b>advice</b> 1075:17 1241:2 1250:23 <b>advised</b> 1220:18 <b>advisors</b> 1075:18 <b>affairs</b> 1018:8 1112:11 <b>affiliated</b> 1066:6	<b>afraid</b> 1054:8 <b>afternoon</b> 1139:13 1140:4,5 1183:11,12,13 <b>against</b> 1029:19 1062:7 1122:2 <b>agencies</b> 1008:3 1158:16,21 <b>agenda</b> 1154:13 <b>aging</b> 1231:25 <b>AGP/SIEUA/ MEUA</b> 1005:9 <b>agreed</b> 1220:17,19 <b>agreement</b> 1049:20,23 1077:11 1082:22 1085:4 1095:24 1110:4 1131:11,14,23 1135:9,11 1154:22 1155:2,5,6,7,8,11,13,16,17 1157:20,23 1159:22 1160:1,2,3,4,11,22 1162:16 1165:24 1169:7 1178:22 1197:21 1221:9 1253:9,22 <b>agreements</b> 1154:22 1159:16 1248:24 <b>ahead</b> 1066:17 1107:9,10 1136:5 1175:15 <b>Air</b> 1008:1 <b>airfare</b> 1252:4,8,18,	20 <b>alert</b> 1054:1 <b>alerted</b> 1197:23 <b>allegation</b> 1174:25 <b>allegations</b> 1166:10 <b>allocate</b> 1035:10 <b>allocated</b> 1218:5 1219:14 <b>allocation</b> 1217:22 1218:1,2 <b>allocations</b> 1018:9 <b>allow</b> 1032:19 1078:10 1174:8 1242:13 <b>allowed</b> 1024:23 1049:12 1061:16 <b>alone</b> 1158:17 1216:17 <b>already</b> 1021:12 1035:22 1036:10 1060:9 1082:7 1115:23 1137:6 1138:19 1141:25 1177:12 1201:6 1202:5 1210:19 <b>Alstom</b> 1039:7,9 1063:16 1069:13 1100:2 1113:9 1118:6,7 1153:17 1175:16,23 1176:5 1248:2 1249:22
---	--	---	---

<p>1250:12,16,19  1252:2,3,5,13,16,18  1253:7,10,14,22  <b>Alstom's</b>  1252:12  <b>altogether</b>  1180:6  <b>am</b> 1016:21  1018:17  1022:13  1027:4  1029:8  1063:21  1065:20  1077:21  1117:9  1146:18  1173:2  1181:10  1192:18  1204:22  1213:4  1222:15  1228:21  1235:25  1249:21  1259:12,14  <b>Amanda</b>  1065:22  <b>AMASH</b> 1007:18  <b>ambiguous</b>  1246:9  <b>amended</b>  1155:6,8  <b>Ameren</b> 1006:7  <b>among</b> 1137:16  1138:4  1199:24  <b>amortization</b>  1156:10,19  <b>amount</b>  1038:12  1043:7,8  1044:13  1094:6  1099:14  1124:23  1138:1  1147:16  1152:5  1203:24,25  1206:17</p>	<p>1232:15  <b>amounts</b>  1203:12  <b>analysis</b>  1066:9  1106:8  1173:22  1174:2  1200:10  <b>analyst</b>  1038:16  <b>analytical</b>  1200:11  <b>and/or</b>  1221:14  <b>ANNETTE</b>  1009:4  <b>announce</b>  1158:17  <b>announced</b>  1201:23  <b>annual</b>  1039:15  1230:19  <b>answer</b> 1014:3  1024:23  1025:13  1037:10  1041:1,6  1050:1,3,6  1077:22,24  1079:4  1091:17  1102:9  1108:18  1110:18  1151:2  1196:2,3  1213:17  1214:15  1218:17,22  1220:9,13,23  1221:3,5  1227:20  1234:11  1246:10  1253:17,18  <b>answered</b>  1029:19  1104:2  1221:8  1222:10  <b>answering</b>  1093:24</p>	<p>1094:10,11  <b>answers</b>  1011:12  1142:25  1196:1  <b>anticipate</b>  1133:22  <b>anticipated</b>  1114:6,17  1115:14  1125:8  1152:12  1167:21  <b>anybody</b>  1049:5  1059:15  1122:6  1180:8  <b>anybody's</b>  1122:7  <b>anymore</b>  1087:12,20  <b>anyone</b> 1049:2  1092:15  1093:1  1097:16  1099:19,20  1100:14  1103:6  1108:15  1114:6  1122:20  1134:1  1189:7,8  1239:14  <b>anything</b>  1010:6,14,18  1014:21  1022:15  1024:3  1059:4  1065:6  1067:11  1075:8  1083:20,24  1089:1  1092:23  1097:1  1106:8  1117:16  1125:12  1139:4,7,16  1152:2  1179:15  1180:20  1201:12</p>	<p>1215:13  1242:14  1258:15,16  <b>Anytime</b>  1242:7  <b>anyway</b> 1075:3  1140:1  1182:6  <b>anywhere</b>  1020:16  1157:4  1174:12  1229:16  <b>APC</b>  1140:20,21  <b>apologize</b>  1012:4,5  1123:10  <b>apparently</b>  1053:25  1197:19  <b>appealed</b>  1157:25  1158:1,2  <b>appeals</b>  1158:2  <b>appear</b>  1051:22  1133:25  1182:19  <b>appears</b>  1028:12  1037:20,25  1054:7  1081:2  1211:14  1259:9  <b>appendices</b>  1156:16,18  <b>Application</b>  1004:11,15  <b>applied</b>  1218:8  <b>apply</b> 1135:13  <b>appointed</b>  1094:20  <b>appreciate</b>  1179:9  <b>apprised</b>  1170:17  <b>approach</b>  1053:18</p>
--	--	---	--



1123:3 1144:16 1159:4,5,7 1172:13 1192:3 1210:14 <b>appropriate</b> 1023:16 1077:11 1166:20 1218:9,17 1219:18 <b>approval</b> 1004:12,16 1030:11 1049:24 1118:14 1159:1 1247:23 1248:4,7,11, 20 1249:23 1251:2,7,9,1 7 <b>approve</b> 1039:14,20 1159:25 1170:16 1247:22 <b>approved</b> 1086:4 1097:16 1106:2 1111:21 1118:9,19 1119:1 1157:23 1158:24 1248:1,6 1250:12,16 <b>approves</b> 1160:1,2 <b>approving</b> 1248:21 1249:22 1250:18 <b>approximately</b> 1170:22 <b>April</b> 1023:5,8,21 1024:9 1025:13 1038:16 1094:16 1125:24 1154:12 1157:12	1162:2 1166:7 <b>AQCS</b> 1100:3 1109:3 1136:22 1153:13 1163:2 <b>Aquila</b> 1213:14 1214:17,19 1216:6,22 1217:10 <b>Archibald</b> 1013:4 1090:3 1115:19 1116:22 1199:19 <b>Archibald's</b> 1200:18 <b>area</b> 1017:23 1176:16 1204:12 1252:24 <b>areas</b> 1017:25 1205:1 <b>arena</b> 1201:4 <b>aren't</b> 1013:21 1099:5 <b>arguably</b> 1220:19 <b>argument</b> 1134:6 <b>argumentative</b> 1086:20 <b>arise</b> 1144:23 <b>arrangements</b> 1045:15 <b>array</b> 1235:1 <b>art</b> 1122:10 <b>ARTHUR</b> 1006:14 <b>articulate</b> 1083:15 <b>aside</b> 1093:15 1216:15 <b>assembled</b> 1236:11 <b>assert</b> 1166:21	<b>asserted</b> 1165:20 <b>asserting</b> 1054:12 <b>assess</b> 1137:23 1138:4 <b>assessing</b> 1173:8 <b>assessment</b> 1086:14,17,1 8,21 1119:13,14,2 4 1137:18 <b>assessments</b> 1085:18 1086:2,22 <b>assessor</b> 1086:11 <b>asset</b> 1117:23 <b>assets</b> 1229:24 <b>assigned</b> 1203:23 <b>assist</b> 1093:24 <b>assistance</b> 1113:6,7 <b>assistant</b> 1228:6 <b>assisting</b> 1094:11 <b>associated</b> 1035:6 <b>Associates</b> 1065:22 <b>Association</b> 1005:21 <b>assume</b> 1012:11 1013:5,24 1066:17 1075:7 1112:8 1124:7 1190:9 <b>Assumes</b> 1076:22 <b>Assuming</b> 1013:10 <b>assurance</b>	1158:19 <b>attached</b> 1011:17 1028:10 1101:25 1120:20 1162:20 1169:1 1181:24 <b>attempt</b> 1022:5 1060:15 <b>attempted</b> 1089:4,7 1122:11 <b>attempting</b> 1079:13 <b>attend</b> 1030:17,24 1092:24 1161:10 1168:2 <b>attendance</b> 1053:7 1168:6 1169:14 <b>attended</b> 1030:15 1031:5,11 1169:5 <b>attendees</b> 1169:17 <b>attending</b> 1024:7 1122:20 <b>attention</b> 1211:13 1215:17 <b>attorney</b> 1005:2,6,10, 14,15,18,22 1006:1,5,9,1 0,14,18 1007:1,5,6,1 0,14,18,22 1008:1,5,8,1 2 1026:23 1042:19 1083:15 1084:2 1088:3,7 1235:9 1259:15 <b>attorney- client</b>
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<p>1022:12,14 1029:5 1041:16,17,2 0 1042:8,10 1094:4,6,12, 17 1165:21</p> <p><b>attorneys</b> 1027:15,16,1 7,20,21,23 1042:17,23 1051:7 1054:5,11 1084:20,21</p> <p><b>atypical</b> 1118:10</p> <p><b>audit</b> 1016:11 1017:2,4 1022:16,19,2 1,24 1027:3,7 1028:18 1034:7 1039:7,10,12 1086:7,13,14 ,16 1094:24 1103:20 1104:7 1106:10,12 1137:15 1138:1,8 1166:10,11,2 5 1167:2,5,8,9 1172:11,12,1 4,19 1176:21 1178:14</p> <p><b>auditing</b> 1016:6 1092:10 1106:3 1107:19 1138:11 1209:19</p> <p><b>auditor</b> 1014:20 1016:13 1017:7 1039:2 1086:10 1107:4</p> <p><b>auditors</b> 1085:15,18 1106:20 1107:1,13 1137:21 1175:21</p> <p><b>audits</b></p>	<p>1016:8,9 1017:6 1166:5 1176:22</p> <p><b>August</b> 1061:12 1121:16,17,2 0,22 1155:4,8 1167:5</p> <p><b>authorities</b> 1251:7</p> <p><b>authority</b> 1049:10,16,1 9,22,25 1050:5,9,11 1051:3,10 1187:12,18 1240:16 1250:2,24 1251:5,17</p> <p><b>authorization</b> 1247:19</p> <p><b>availability</b> 1067:14,17</p> <p><b>available</b> 1023:16 1037:17 1061:24 1067:9,17 1081:16 1100:22 1165:4</p> <p><b>Ave</b> 1007:19</p> <p><b>Avenue</b> 1005:3 1006:11,15</p> <p><b>average</b> 1048:10,12</p> <p><b>avoid</b> 1205:17</p> <p><b>award</b> 1117:13 1159:3 1178:4 1261:15</p> <p><b>aware</b> 1021:23,24 1022:13,25 1023:1,3 1027:6 1029:8 1031:23 1039:4 1041:12,17 1042:8 1079:15 1084:16,18</p>	<p>1085:5,10 1086:3 1095:7 1103:1,11,13 1107:21 1116:12 1121:11,14,1 5 1134:15,18 1137:21 1143:4 1150:12,15 1160:14 1167:4,14 1201:17 1217:16 1235:10 1251:10</p> <p><b>awareness</b> 1242:16</p> <p><b>away</b> 1012:7 1093:7 1198:23</p> <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <p><b>B&amp;W</b> 1162:22</p> <p><b>B.B</b> 1211:22</p> <p><b>Babcock</b> 1162:22</p> <p><b>background</b> 1014:20 1016:16,24 1138:9 1154:2 1245:18 1247:1</p> <p><b>backgrounds</b> 1138:22</p> <p><b>backup</b> 1137:14</p> <p><b>backward</b> 1201:13</p> <p><b>backwards</b> 1065:17</p> <p><b>badly</b> 1253:6</p> <p><b>balance</b> 1100:8,15,17 ,20 1108:22 1109:4,8 1136:25</p> <p><b>ball</b> 1030:24</p> <p><b>ballpark</b> 1093:21 1233:20</p>	<p><b>Barbara</b> 1212:24 1236:21</p> <p><b>Bardgett</b> 1005:19</p> <p><b>barely</b> 1090:11</p> <p><b>bargained</b> 1027:12</p> <p><b>base</b> 1061:23 1062:10</p> <p><b>baseball</b> 1030:15,18 1031:3</p> <p><b>based</b> 1022:12,13 1032:21 1036:23 1037:25 1041:21 1051:19 1052:16 1060:9 1106:22 1112:1 1115:7 1122:22 1124:10 1154:7 1157:2 1158:11 1160:12 1171:5 1174:25 1217:23 1218:5 1219:14</p> <p><b>basically</b> 1028:13 1091:18,19,2 4 1092:15 1096:2,7 1100:7,19 1107:5 1109:11 1114:15 1125:12 1163:11 1172:13 1247:13</p> <p><b>basis</b> 1034:12 1036:19 1065:24 1066:21,25 1075:17 1081:4</p>
--	---	--	--

1125:19 1161:6 1172:21 1175:17,19 1177:16 1191:21 1192:9 1206:16 1220:4 1240:10 1241:12 1253:11,24 <b>Bassham</b> 1092:3 1211:15 1212:20 1213:2,3,8 1236:19 1237:6 <b>Beach</b> 1008:2 1252:3,5,9,1 4,22 <b>became</b> 1063:4 1100:21 1157:1 1160:14,17 1201:25 1217:9 1237:12,21 <b>Bechtel</b> 1101:7 <b>become</b> 1062:25 1091:17 1239:14,22 <b>becoming</b> 1133:3 <b>begin</b> 1076:6 1139:17 1153:24 1155:15 1162:24 1167:2 <b>beginning</b> 1085:10 1092:8 1101:21 1108:23 1111:9 1154:5 1240:3 1244:13 <b>behalf</b> 1049:17 <b>behind</b>	1028:10 1063:13,14 <b>belief</b> 1011:15 <b>believe</b> 1010:2 1012:6 1019:3,14,25 1020:4 1022:8 1023:18,22 1024:25 1026:10,14,1 9 1028:16 1029:17 1034:6,25 1036:21 1037:7 1039:1,18 1041:15 1043:6 1045:2 1063:18 1067:5 1079:11,23 1082:23 1087:6 1088:2,12 1092:20 1094:5 1095:1 1098:6 1101:21 1104:8,10 1105:19 1108:18 1110:21 1111:2,23 1114:24 1115:18 1123:1 1131:24 1133:9 1136:15 1137:5 1139:14 1142:2 1143:25 1144:7,25 1146:11 1148:1 1151:21,24 1152:1,19 1153:8 1154:17 1155:3,8 1156:24 1157:7,18,21 1160:12	1164:3 1165:20 1166:6 1167:13 1168:12 1169:19 1170:2 1171:13 1172:6 1173:21 1174:13,16 1175:20 1178:16 1182:9,24 1186:4 1188:1 1195:24 1202:8 1204:1 1205:25 1206:10,24 1210:18 1213:15 1218:7 1219:1 1220:12 1221:8,20,24 1222:9 1227:4 1236:4,18,22 1239:19,20,2 5 1240:2,18 1241:13 1245:21 1248:23 1250:8,17 <b>believed</b> 1095:19 <b>believes</b> 1053:19 1173:8,10,14 <b>believing</b> 1253:12,24 <b>Bell</b> 1076:3 1099:1,5 <b>Bemiston</b> 1005:11 <b>bench</b> 1059:20 1090:6 1139:14 <b>benefits</b> 1156:14 <b>best</b> 1011:14 1013:4 1053:20 1067:22	1099:25 1112:24 1114:4 1117:5 1119:16 1125:16 1144:17 1146:8 1151:22 1205:15 1222:15 1238:20 1259:11 <b>better</b> 1041:5 1049:14 1050:22 1060:22 1115:3,19 1121:18 1134:19 1151:2 1186:2 <b>beyond</b> 1051:2,3 1151:12 1152:11 1228:24 1229:2 1253:17 <b>bid</b> 1100:2,14 1162:14,18 1163:3 <b>bidding</b> 1108:5 <b>bids</b> 1098:17 1114:12 <b>bigger</b> 1216:14 <b>bill</b> 1027:19 1087:14,16 1090:16 1092:2,3 1114:9,10,22 1117:3 1156:7 <b>billed</b> 1043:19 1084:18 <b>billing</b> 1040:1 1084:24,25 <b>billion</b> 1105:9,12,18 1141:12,17,2 5 1170:22
---	--	---	---

<p>1175:6 1196:8 1197:12 1198:13,24,25 1199:4,6,16,25 1200:16,20 1204:10,25 1217:6 1243:8</p> <p><b>bills</b> 1104:7 1114:16 1115:13 1117:24</p> <p><b>binder</b> 1178:5</p> <p><b>bit</b> 1012:3,8,14 1013:23 1078:24 1095:15 1097:9 1099:16 1105:22 1106:7 1111:13 1126:11 1185:25 1199:4</p> <p><b>bizarre</b> 1201:25</p> <p><b>Black</b> 1051:12,20 1052:3,5,7,10,16,24 1053:9,19</p> <p><b>blacked</b> 1028:14 1038:11</p> <p><b>Blake</b> 1007:18</p> <p><b>Blanc</b> 1019:10 1051:5 1173:3 1239:16,20,22</p> <p><b>Blanc's</b> 1173:1</p> <p><b>Blitz</b> 1005:19</p> <p><b>board</b> 1097:15 1139:22,25 1142:17 1213:5 1248:4,10,20</p> <p><b>Bob</b> 1146:13</p>	<p>1169:15</p> <p><b>body</b> 1240:12,13</p> <p><b>boiler</b> 1076:6 1100:3 1109:3 1136:22 1153:13 1163:2 1231:17,21 1232:7,17</p> <p><b>bone-headed</b> 1014:1</p> <p><b>book</b> 1228:3</p> <p><b>books</b> 1153:6</p> <p><b>booming</b> 1060:22</p> <p><b>Boonville</b> 1005:3</p> <p><b>boss</b> 1114:24</p> <p><b>bottom</b> 1020:18 1090:15 1141:4 1197:5</p> <p><b>Boulevard</b> 1008:13</p> <p><b>bounds</b> 1061:11</p> <p><b>Box</b> 1006:11 1007:2,23 1008:5 1009:6,10</p> <p><b>brand</b> 1110:25 1111:9,10 1217:12,14</p> <p><b>break</b> 1074:13,14,17 1139:4 1179:12,16,25 1180:17 1204:5 1258:13</p> <p><b>breakdown</b> 1203:11</p> <p><b>Brent</b> 1168:23 1206:18</p> <p><b>brief</b> 1096:1</p> <p><b>briefed</b> 1242:11</p> <p><b>briefings</b></p>	<p>1242:8,10</p> <p><b>briefly</b> 1074:1 1189:18 1218:20</p> <p><b>bright</b> 1084:1</p> <p><b>bring</b> 1118:13 1159:20 1180:3,6</p> <p><b>brings</b> 1177:25</p> <p><b>broad</b> 1200:19</p> <p><b>broadcast</b> 1075:7 1139:23</p> <p><b>broader</b> 1184:19 1253:13</p> <p><b>Broadway</b> 1005:15</p> <p><b>broke</b> 1159:17</p> <p><b>brought</b> 1052:3 1060:25 1093:6 1118:12,18 1126:9 1137:22,24 1171:9 1235:4 1242:12,15</p> <p><b>BRUDER</b> 1006:14</p> <p><b>Bryan</b> 1008:9</p> <p><b>Brydon</b> 1006:10</p> <p><b>buck</b> 1197:15</p> <p><b>budget</b> 1035:2,3,5 1066:23 1067:2 1081:11,12,13 1096:23,24 1097:1,4,12,15,22,23 1105:14 1110:16 1112:15 1116:18,24 1121:24 1122:1,20 1123:21 1124:10,17,18</p>	<p>8</p> <p>1125:1,5,17,18,20 1126:5,8 1140:6,9,15 1141:24 1144:3,9,11 1146:6,8 1148:15 1149:14,15,23 1151:8,11,12,15,22,25 1152:4,9,12,13 1163:10 1169:6,8,12 1170:21 1171:12 1174:4,24 1175:5,11 1178:22 1179:3,4 1199:21 1202:17 1203:13 1204:4 1230:19 1234:8 1235:5</p> <p><b>budgeted</b> 1035:2</p> <p><b>budgeting</b> 1116:7</p> <p><b>budgets</b> 1035:4 1179:7</p> <p><b>build</b> 1077:12 1098:25 1099:24</p> <p><b>building</b> 1230:12</p> <p><b>built</b> 1062:9,10 1099:22 1112:13 1115:1 1151:19 1152:5 1158:9,12 1201:24 1202:6 1229:20 1230:1 1231:7</p> <p><b>bullet</b> 1051:19,21</p>
--	---	---	---

<p>1053:15,17  <b>Burns</b> 1012:23                  1040:4,13                  1052:3,5                  1075:20                  1098:23                  1137:1                  1142:19                  1150:8,10                  1177:2,10,14                  1191:3,4                  1233:25                  1234:3,12,19  <b>business</b>                  1115:1                  1131:8                  1217:5,7,9  <b>buy</b> 1198:20</p> <hr/> <p style="text-align:center">C</p> <p><b>Cafer</b> 1007:14  <b>calendar</b>                  1227:12,15,1                  8,19,23                  1228:13,14,1                  5,16,19,25                  1229:6,10,11  <b>camera</b> 1249:2                  1254:5  <b>cancel</b>                  1100:18                  1109:10  <b>capacity</b>                  1060:17                  1063:7                  1158:12                  1160:9                  1187:14  <b>capital</b>                  1133:2                  1230:19  <b>Capitol</b>                  1005:7                  1006:11  <b>CAPT</b> 1008:1  <b>capture</b>                  1151:11  <b>carbon</b> 1092:2  <b>care</b> 1097:22  <b>career</b>                  1018:1,8                  1061:11                  1087:2</p>	<p>1093:21  <b>Carl</b> 1005:10                  1038:25                  1087:22,23  <b>Carrie</b>                  1065:21  <b>carrying</b>                  1192:13  <b>CARTER</b>                  1006:10  <b>Cary</b> 1124:1                  1146:13  <b>case</b> 1011:3                  1016:8                  1017:6,11                  1018:13,15,2                  1,25                  1031:19,23                  1032:8                  1034:10,11,1                  5,16 1035:21                  1036:1                  1043:8,22                  1044:25                  1045:3,11,12                  ,16                  1048:15,16,1                  7,22 1061:3                  1063:25                  1064:5                  1065:4,6,7                  1067:2                  1075:3                  1078:6                  1079:21                  1080:3,8,19,                  20                  1081:3,23,25                  1082:1                  1084:10,11,1                  4,16,19,22,2                  5 1085:2                  1089:3                  1093:25                  1094:6,16,18                  1095:25                  1111:5                  1113:11                  1119:16                  1123:4                  1131:5,11                  1138:2                  1144:15                  1149:8,11                  1150:13                  1156:10                  1158:12</p>	<p>1162:3                  1167:3,18                  1181:9                  1207:3,12,13                  1218:21,23                  1219:2,18                  1220:19                  1221:10                  1234:17  <b>cases</b>                  1017:3,9,19,                  21 1062:8                  1079:18                  1081:20                  1084:8                  1093:20                  1094:3,10,15                  1095:9                  1156:21                  1207:18                  1215:20                  1248:8  <b>categories</b>                  1199:22                  1204:11,16,2                  2  <b>category</b>                  1200:9                  1201:2                  1202:9  <b>cause</b> 1119:20  <b>caused</b> 1011:2                  1245:13  <b>Cave</b> 1008:9  <b>CBE</b> 1104:25                  1105:1,3,5,8                  1115:17,20                  1116:4,15,21                  1140:24                  1170:8                  1178:17,20                  1191:20                  1192:2,8                  1195:23                  1196:8,12,18                  ,21  <b>CCR</b> 1004:23                  1259:6  <b>CE</b> 1187:8  <b>CEO</b> 1200:19                  1217:7,11  <b>CEP</b>                  1145:8,9,24                  1146:4,13                  1152:17,19</p>	<p>1154:10                  1171:22                  1174:3                  1187:8,11,14                  ,16,17                  1240:7  <b>certain</b>                  1004:12,16                  1044:13                  1094:6                  1155:21                  1172:13                  1222:12,13                  1248:24  <b>certainly</b>                  1081:16                  1096:9                  1173:15                  1174:24                  1178:13                  1221:19                  1222:19                  1258:18  <b>CERTIFICATE</b>                  1259:1  <b>certification</b>                  1209:5,13  <b>certification</b>                  s 1209:9  <b>certified</b>                  1016:22                  1259:6  <b>certify</b>                  1259:8  <b>cetera</b>                  1190:16  <b>CFO</b> 1186:5  <b>chain</b> 1019:21                  1090:12                  1189:8                  1261:17  <b>chair</b> 1187:10                  1229:9  <b>chaired</b>                  1187:16  <b>chairman</b>                  1184:4                  1186:5                  1212:11                  1236:7  <b>challenge</b>                  1059:21                  1064:13,23</p>
--	--	---	---

<p>1251:1  <b>challenging</b>                  1065:2,3                  1241:1                  1247:11  <b>chance</b>                  1053:20                  1059:23                  1196:4  <b>change</b>                  1012:21                  1013:1,12                  1014:3                  1089:13,15,1                  8 1105:22                  1106:2,8                  1107:18                  1126:5                  1149:7                  1178:4                  1181:22                  1197:24                  1202:22                  1214:11                  1242:20  <b>changed</b>                  1063:9                  1091:16                  1133:15,17,2                  2 1188:10                  1213:12,22                  1214:8,11                  1216:18,21                  1242:19  <b>changes</b>                  1004:12,16,1                  7 1011:7                  1144:11                  1187:4                  1200:12,15                  1216:23,24                  1236:15                  1246:6,18  <b>characterize</b>                  1019:14                  1125:4                  1131:7                  1156:14                  1246:2  <b>characterized</b>                  1246:1,16  <b>characterizin                  g</b> 1231:16  <b>charge</b>                  1061:16                  1064:20</p>	<p>1086:4                  1183:25                  1226:13,16,1                  9,22,25                  1246:24  <b>charged</b>                  1043:12                  1082:11,19                  1085:24                  1153:10                  1226:3                  1227:21,22  <b>charges</b>                  1004:12                  1167:7                  1176:13,23  <b>charging</b>                  1063:23                  1064:2                  1065:3,5                  1144:14  <b>CHARLES</b>                  1007:10  <b>chart</b> 1200:3                  1210:24                  1212:1,5,7,8                  1213:23                  1261:18  <b>cheaper</b>                  1060:11  <b>Cheatum</b>                  1037:15                  1088:11,12                  1183:20,25                  1186:18  <b>check</b> 1176:24                  1177:19                  1200:8  <b>Chesser</b>                  1212:12                  1213:6                  1214:8                  1216:23                  1217:1  <b>Chether</b>                  1051:16  <b>chief</b>                  1009:1,2                  1184:5                  1210:5,7                  1211:15,17,2                  0 1212:12,18                  1217:1  <b>chimney</b></p>	<p>1153:14  <b>choice</b>                  1054:13                  1098:15  <b>chose</b> 1064:13                  1161:9                  1221:10  <b>Chris</b> 1010:25                  1011:2                  1048:2                  1060:1                  1064:7                  1068:24                  1075:11                  1090:16                  1097:7                  1131:1                  1260:3  <b>Churchman</b>                  1087:22,23                  1089:3,5                  1243:19  <b>circumstances</b>                  1013:7                  1188:10  <b>citing</b>                  1081:11  <b>City</b>                  1004:8,11                  1005:8,16,20                  ,23,24                  1006:2,3,12,                  20,21                  1007:2,3,4,7                  ,8,11,12,16,                  19,23,24                  1008:6                  1009:7,11                  1011:1                  1016:7                  1027:25                  1030:17                  1102:8                  1103:11                  1120:21                  1124:21                  1126:23                  1131:19                  1132:10                  1133:7,11                  1134:21,22                  1135:16                  1137:9                  1168:3                  1176:16                  1205:20                  1206:2,8,9</p>	<p>1210:3,6                  1211:2                  1213:12,22                  1214:20                  1215:18                  1216:4,17,20                  1217:17                  1219:2,21                  1221:14,16                  1229:23                  1230:3,12                  1233:22                  1234:13                  1235:21                  1245:2,4,13                  1248:5                  1253:11,23                  1258:11                  1260:2  <b>claim</b>                  1094:3,12  <b>claims</b>                  1094:21  <b>clarified</b>                  1115:3  <b>clarify</b>                  1104:24                  1106:7                  1214:14  <b>class</b> 1166:18  <b>clause</b>                  1159:25  <b>clauses</b>                  1176:7  <b>Clayton</b>                  1005:12  <b>clear</b> 1024:5                  1052:2                  1086:5                  1122:11                  1134:11                  1136:20                  1150:18                  1196:10                  1203:15                  1251:7,8                  1253:19  <b>clearly</b>                  1036:6                  1059:8                  1135:4                  1241:1  <b>close</b> 1137:11                  1204:3                  1240:6</p>
--	---	---	--

<p><b>closed</b> 1240:4  <b>closely</b>  1111:22  <b>closer</b>  1110:11  1125:22  <b>closing</b>  1197:25  <b>Club</b> 1157:21  <b>coal</b> 1099:23  1160:9  1174:1,3  1217:17,22  1218:4  1219:14  1220:3  1230:24  1231:10  <b>coal-fired</b>  1103:12  1230:19  <b>Coffman</b>  1008:12,13  <b>collaboration</b>  1154:15  1155:15  1159:17  <b>collaboration</b>  <b>s</b> 1154:21  1159:14  <b>collaborative</b>  1159:5,7  <b>collapse</b>  1242:9  <b>collective</b>  1206:24  1232:25  <b>collectively</b>  1065:24  <b>college</b>  1207:25  1208:3,4,6,7  ,9,10,12,13,  15,16,18,19,  21,22  <b>Columbia</b>  1006:6  <b>column</b>  1140:15,24  1141:7  <b>columns</b>  1140:14</p>	<p><b>combination</b>  1065:13  <b>combined</b>  1231:6  <b>combining</b>  1222:25  <b>combustion</b>  1231:6  <b>comes</b> 1200:9  1231:9  <b>comfortable</b>  1033:11  1080:10,12  1117:22  <b>coming</b>  1207:17  <b>Comley</b>  1005:22  1006:1  <b>command</b>  1189:8  <b>comment</b>  1084:21  <b>commented</b>  1234:9  <b>comments</b>  1085:15  1173:4  <b>commercial</b>  1127:9  <b>Commission</b>  1004:1  1009:5,8  1017:20  1023:11  1035:21  1036:9  1050:17  1074:6,10  1080:19,25  1081:15,19  1090:8  1094:17  1103:16  1109:24  1154:17,19  1157:19,23  1158:23  1159:6,9  1160:1  1166:2,9,14,  15,17 1169:4  1170:3  1173:14</p>	<p>1215:20  <b>Commissioner</b>  1074:3,5,7  1078:4  1090:6  1104:15,17,1  8,20 1108:1  1120:2,4,5,7  ,14,17  1121:1,2,5,7  1123:7,12,14  1124:3  1131:2  1132:21,25  1138:25  1139:2,9  1143:25  1146:12  1149:6,13  1150:7  1151:21  1260:5,6,7  <b>Commissioners</b>  1012:1  1074:2  1139:25  1154:12  1155:11  1168:6  1170:4  1180:9  1218:24  <b>Commissioner'</b>  <b>s</b> 1143:1  1144:18  <b>COMMISSIONERS</b>  1004:21  <b>commissions</b>  1154:8  <b>Commission's</b>  1081:23  1155:1  1166:16  <b>commitment</b>  1060:16  1136:15  <b>committed</b>  1060:14  1243:7  <b>committee</b>  1111:20  1112:18  1116:17  1142:21  1185:10,17  1186:24</p>	<p>1187:2  1227:16  1236:6,9,14,  15,20,21,22  1237:1,7,10,  13,19,22  1238:4,9,13,  25  1239:3,12,15  ,18,23  1240:9,11,16  ,19  1241:6,10,15  ,18  1242:12,13,1  6 1243:13  1244:2  1246:17  1247:18  1249:23  1250:1,10,14  ,20,22  1251:8,17,21  <b>committee's</b>  1240:24  1242:17  <b>COMMISSIONER</b>  1074:4  <b>commodity</b>  1152:11  <b>common</b>  1022:22  1032:14  1034:14  1035:1,3,6,9  ,10 1094:3  1095:9,11  1099:2  1217:12,13,1  4 1220:1  <b>Commonwealth</b>  1114:23  1115:2,8,10  1150:20  <b>companies</b>  1108:2  1160:8  1214:7,10,12  ,22 1215:19  1222:21  <b>company</b>  1004:12,16  1005:17  1006:13,21  1007:2,4,8,1  2,16 1016:8  1018:23</p>
---	---	--	---

1021:23	<b>company's</b>	1125:25	1077:13
1030:14,23	1094:21	1126:9	1099:22
1031:12	1165:14	<b>complex</b>	<b>conduct</b>
1036:10	1171:18	1209:7	1021:22
1059:23	1180:4	<b>complexity</b>	1022:16,20
1062:3	1185:21	1202:20	1026:20
1087:1,24	1197:18,20	<b>component</b>	1027:3
1088:2	1228:3	1012:23,24	1035:23
1094:3,18	<b>compared</b>	1013:2,8,10,	1172:10
1095:10	1067:4	13,25	<b>conducted</b>
1096:6	<b>comparing</b>	1201:19	1174:2
1098:13	1191:21	1209:6	<b>conference</b>
1099:12	1192:9	<b>components</b>	1092:19
1100:2	<b>compensated</b>	1100:1	<b>confidential</b>
1111:20	1045:20	1231:18,21,2	1045:5
1113:6	<b>compensation</b>	2,23,25	1054:13,16
1156:13,14	1045:20,21	<b>compound</b>	1059:10
1165:25	<b>competition</b>	1246:9	1127:8
1167:25	1100:23	<b>comprehensive</b>	1191:24
1171:9	<b>competitive</b>	1131:4,7	1248:11
1172:17	1113:23	1136:2	1261:6,10
1173:7,24	1117:4,13	1154:7,10,25	<b>confirm</b>
1176:8	1125:14	1158:18,24	1108:8
1177:13	<b>complain</b>	1187:22	<b>confused</b>
1179:1	1095:5	1188:23	1120:18
1184:18	<b>complete</b>	<b>conceive</b>	<b>confusing</b>
1185:8,11,24	1053:21	1083:4	1099:16
1205:21	1061:21	<b>concentration</b>	<b>confusion</b>
1206:2	1062:13	1014:18	1098:1
1210:4,6,8	1166:11	<b>concept</b>	1250:21
1211:2	1232:16	1160:19	<b>connect</b>
1213:5,6,12,	<b>completed</b>	<b>conceptual</b>	1100:8
22	1016:11	1053:21	1174:11
1214:4,5,7,1	1026:8	1174:1	<b>connection</b>
1,15,20	1060:10	<b>concern</b>	1074:21
1215:6,19	1061:23	1118:8	1075:5
1216:5,13,16	1062:18	1133:25	<b>Conrad</b>
,17,21	1093:10	<b>concerned</b>	1005:6,7
1217:2,11,18	1096:18	1033:12,14	<b>consequences</b>
,21	1097:5	1197:16	1172:23
1218:4,11,12	1105:17	<b>concerns</b>	<b>consider</b>
,14	1125:2	1111:4	1030:10,25
1219:2,5,13,	1132:8	1150:13	1061:7
21,22	1167:8	1152:16	1157:15
1221:10,14,1	1205:12	<b>concluded</b>	1209:15,18,2
5,16,17	1252:6	1167:4	1,24
1229:23	<b>completing</b>	<b>conclusion</b>	<b>considerable</b>
1230:12	1060:4	1204:8	1099:14
1233:22	1097:3	<b>conclusions</b>	1114:23
1234:14	<b>completion</b>	1172:8,15	<b>consideration</b>
1235:21	1048:16	1206:12	1061:6
1237:14,23	1060:4	<b>conditions</b>	<b>considered</b>
1238:11,16,1	1076:8	1076:20	1185:14
7 1243:23	1087:24		
1245:2,5,13	1105:11,19		
1248:5			
1251:13			
1252:7			
1253:11,24			



<p>1186:11,14 1191:5 <b>considering</b> 1080:25 <b>consistently</b> 1029:22 <b>consists</b> 1185:20 <b>consolidate</b> 1214:5 <b>consolidated</b> 1216:7 <b>constant</b> 1235:6 <b>constituted</b> 1186:2 <b>constitutes</b> 1185:12,24 <b>construct</b> 1099:18 <b>constructing</b> 1103:12 <b>construction</b> 1012:21 1013:19 1015:2,11,15 ,17,20,22 1016:1 1017:4 1022:5,19,21 1026:12,20 1063:8,20 1066:2,4,7,1 0 1081:11 1083:16,18 1084:2,15 1085:5,11 1087:4,6,24, 25 1088:4,19,23 1089:6 1090:18 1099:3,7 1106:9 1112:2,5,6,8 ,12 1113:14 1118:8,11 1133:4 1134:16 1136:2,21 1137:1,3,9 1138:9 1160:23 1170:11 1174:7,9</p>	<p>1175:18 1188:25 1189:12,23 1201:4 1213:13 1216:19 1226:4,14,17 ,20,23 1227:1,6,21, 22 1230:5,13,16 1231:5 1233:24 1234:13,19,2 2 1235:24 1236:2 1241:24,25 1243:16,18 1244:18 1245:11 1247:24 <b>consult</b> 1251:9 <b>consultant</b> 1044:2,4 1103:25 1235:19 1238:11 <b>consultants</b> 1025:23,25 1085:15 1137:22 1138:4 <b>consumer</b> 1159:9 <b>consumers</b> 1008:15 1154:8 <b>contacted</b> 1034:23 1101:2,8 1107:24 1109:10 1143:9 <b>contacts</b> 1114:3,23 1150:19 <b>contain</b> 1174:3 1175:3 <b>contained</b> 1011:11 1027:5 1037:23 1045:25 1054:21</p>	<p>1069:18 1078:5 1079:17 1127:14 1152:20 1174:5 1223:5 1254:7 <b>contemplated</b> 1077:8 1115:17 1174:6 <b>contemporaneo us</b> 1160:24 <b>contents</b> 1148:21 <b>context</b> 1050:3 1222:18 <b>contingencies</b> 1141:19 1142:12 1148:15 1203:4,5,12, 20 <b>contingency</b> 1091:7 1125:18 1141:10,18 1142:7,8 1151:10,17,1 9,23 1152:3,6 1178:5 1196:7 1197:8,9 1198:13 1199:10,14 1203:24,25 <b>continue</b> 1004:13 1043:11 1059:25 1098:22,24 1142:15 1179:2 1219:9 1222:23 <b>continued</b> 1022:4 1048:20 1114:15 1166:21 <b>continues</b> 1063:6</p>	<p><b>continuing</b> 1021:20 1159:23 <b>continuously</b> 1029:22 <b>contract</b> 1039:7,9,17, 19 1048:4,6,8 1051:13 1052:9,12,14 ,25 1059:9 1083:16 1099:4 1100:4 1101:3 1108:15 1109:5 1113:8 1114:13,14 1120:18,21 1121:3,11,15 1137:1 1141:25 1142:4 1177:3,11 1202:3 1252:7 <b>contracted</b> 1060:11 <b>contracting</b> 1100:25 <b>contractor</b> 1044:3 1050:15 1098:17 1143:5 1148:7,12 1151:4 1162:18 1235:19 <b>contractors</b> 1100:17 1113:8,13 1114:4 1118:6 1137:16,18 1138:5 1143:2,21 1243:10,11 <b>contracts</b> 1035:7 1052:8 1083:15 1084:3 1118:10 1136:21</p>
--	---	--	---

<p>1153:17 1162:15</p> <p><b>control</b> 1014:19 1022:17 1024:11 1027:4 1038:16 1066:23 1067:2 1082:23 1096:13 1097:4, 12, 23 1105:14 1109:15, 20, 2 2 1110:1, 21 1111:6 1121:24 1122:1 1123:5, 19, 21 1124:10, 17 1125:17 1133:3 1134:23 1135:17 1136:3 1140:6, 9, 15 1141:24 1144:3, 9, 11 1146:21 1148:15 1149:14, 23 1151:8, 11, 12 , 22 1152:12, 23 1163:10 1166:12, 19, 2 0 1168:24 1169:1, 6, 12 1171:12, 18, 1 9, 25 1174:24 1175:11 1178:2 1179:3 1187:8 1203:13 1232:3, 6 1234:8 1235:5 1242:2, 5 1247:18</p> <p><b>controlled</b> 1149:14</p> <p><b>controls</b> 1112:20 1114:14 1190:15</p> <p><b>controversial</b></p>	<p>1121:6</p> <p><b>convenient</b> 1179:12</p> <p><b>conversation</b> 1024:16 1096:1 1108:7 1121:24 1122:5 1126:12 1157:3 1177:6</p> <p><b>conversations</b> 1086:2 1109:25 1150:16 1152:14</p> <p><b>convey</b> 1043:16</p> <p><b>convinced</b> 1114:19</p> <p><b>COOPER</b> 1005:15</p> <p><b>cooperation</b> 1159:9</p> <p><b>Cooperative</b> 1230:4</p> <p><b>cooperatives</b> 1160:8</p> <p><b>co-opted</b> 1024:21 1025:15</p> <p><b>copies</b> 1164:11 1180:1, 6, 8, 9</p> <p><b>copy</b> 1028:5 1033:19 1053:11 1080:2 1090:17 1092:2 1132:19 1210:17</p> <p><b>corporate</b> 1184:1, 14 1186:16, 17 1211:23 1212:25</p> <p><b>Corporation</b> 1103:16</p> <p><b>corporations</b> 1251:4</p> <p><b>correct</b></p>	<p>1011:14 1013:1 1020:19, 20 1028:23 1032:1 1035:17 1037:21 1038:21, 24 1042:4 1069:11, 12 1075:23 1078:19 1079:13, 19 1082:2, 22 1085:6 1087:15 1089:17 1090:21, 22 1103:21 1115:12, 15, 1 6 1122:3, 4 1124:24 1136:24 1139:22 1140:22, 23 1141:11, 17, 2 0, 22 1142:2, 5, 8, 9 , 24 1143:18, 19 1144:12 1145:19 1146:10 1147:16 1148:14 1149:19 1150:20 1156:18 1172:7 1175:25 1176:3 1182:24 1186:25 1188:18 1189:21 1191:10 1198:14, 20, 2 1 1199:4, 7, 13 1203:6, 9 1228:10 1243:24 1244:24 1247:21 1248:2 1249:21, 24</p> <p><b>correction</b> 1013:16 1186:7</p>	<p><b>corrections</b> 1011:7</p> <p><b>correctly</b> 1207:19 1234:11 1247:17</p> <p><b>correlate</b> 1227:4, 5, 11</p> <p><b>cost</b> 1013:16 1014:16, 19, 2 0 1016:14, 16, 1 8 1017:10, 13, 1 4, 18 1018:3, 9 1019:12 1022:17, 18 1024:10 1027:4, 9 1035:10 1052:14, 18 1061:6 1062:1 1063:23 1065:7 1066:15, 24 1076:13 1082:23 1083:2 1091:21 1096:13, 16 1101:24, 25 1102:13 1106:20 1109:15, 18, 2 0, 22 1110:1, 21 1111:6 1122:2 1123:5, 19 1126:6 1133:3 1134:12, 17, 2 3 1135:17 1136:3 1140:18 1146:21 1149:21 1150:2 1152:7, 23 1161:2, 12 1163:9 1165:4 1166:12, 18, 1 9, 20 1168:21, 24, 2 5 1170:13</p>
---	--	--	--

<p>1171:18,19,2 5 1172:20 1173:9 1175:2 1178:1 1190:15 1191:21 1192:9 1201:11 1208:4 1209:22,25 1230:23 1232:8 1242:2,5 1243:7</p> <p><b>cost-control</b> 1234:21</p> <p><b>cost-estimating</b> 1234:21</p> <p><b>costs</b> 1043:9,17 1060:8,12 1068:9 1076:7,15 1091:6,13 1112:21 1117:1 1124:14,15,1 9,21 1126:24 1127:6 1141:9,15,16 1142:13 1158:13 1163:11 1164:6 1169:6 1170:8 1171:1,12 1174:11,24 1175:1,11 1178:22 1196:7 1198:12 1204:14 1206:3,23 1232:9</p> <p><b>Council</b> 1008:15</p> <p><b>counsel</b> 1009:1,2,3,4 ,5,9,12 1010:6,14 1020:5 1027:19 1081:14 1087:14,17</p>	<p>1114:21 1120:24 1127:11 1139:5,7,16 1179:16 1180:1 1207:17 1211:19 1249:12 1258:16 1259:12,15</p> <p><b>counsels</b> 1159:10</p> <p><b>country</b> 1159:2 1229:16</p> <p><b>COUNTY</b> 1259:3</p> <p><b>couple</b> 1043:7 1104:24 1111:18 1113:20 1136:20 1157:18 1198:10 1204:16 1233:18</p> <p><b>course</b> 1253:8</p> <p><b>courses</b> 1207:25 1208:3,6,9,1 2,15,18,21 1209:8,10</p> <p><b>Court</b> 1004:24 1020:8 1161:22 1168:14 1199:11 1210:13 1215:24 1259:6,20</p> <p><b>cover</b> 1038:15 1102:11 1110:13</p> <p><b>covered</b> 1018:25 1023:19 1082:7</p> <p><b>co-workers</b> 1150:19</p> <p><b>crane</b> 1042:12 1043:3,9,22 1126:24 1153:4,7 1242:9</p> <p><b>cranked</b></p>	<p>1131:22</p> <p><b>create</b> 1082:25 1096:6,13</p> <p><b>created</b> 1078:1 1236:14,16</p> <p><b>credentials</b> 1083:21,24</p> <p><b>credit</b> 1112:16 1156:19,20 1158:15,21 1217:17,22 1218:5 1219:3,14 1220:3</p> <p><b>credited</b> 1062:7</p> <p><b>Creek</b> 1095:25 1096:2 1111:6 1135:2 1137:10,22 1145:6 1152:15 1158:10 1229:20,22</p> <p><b>critical</b> 1076:4 1091:11,20 1092:13 1162:23 1165:8</p> <p><b>critiqued</b> 1234:9</p> <p><b>critiquing</b> 1235:7</p> <p><b>cross</b> 1010:19 1011:22,25 1074:12 1182:6 1183:6</p> <p><b>crossed</b> 1196:19</p> <p><b>cross-examination</b> 1012:11,18 1014:9 1074:19 1075:9 1081:17 1165:18 1183:9 1198:8</p>	<p>1205:9 1258:3 1260:4,5,11, 12,13</p> <p><b>culminate</b> 1155:2</p> <p><b>culmination</b> 1154:4</p> <p><b>cultural</b> 1138:22</p> <p><b>culture</b> 1246:7,17 1250:8</p> <p><b>CUNNINGHAM</b> 1007:6</p> <p><b>current</b> 1018:15 1045:13 1084:11 1105:11,19 1232:12,14</p> <p><b>currently</b> 1087:7 1103:12 1135:3 1233:6 1239:20</p> <p><b>Curry</b> 1211:22 1212:24 1213:2,8 1236:21 1238:1,2,3,2 3</p> <p><b>Curtis</b> 1005:11</p> <p><b>customers</b> 1017:15 1043:12,18 1062:3,5 1171:10</p> <p><b>cycle</b> 1231:6</p> <p><b>Cygne</b> 1162:17 1169:1 1171:23 1230:21 1231:13 1232:12,14 1233:5</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D.C</b> 1006:15 <b>d/b/a</b> 1005:17 <b>daily</b> 1167:14</p>
--	---	---	---

<p><b>damages</b> 1176:4</p> <p><b>Dan</b> 1026:2 1065:22 1199:19 1234:20</p> <p><b>Darevan</b> 1190:7,19,22</p> <p><b>data</b> 1028:7,9 1029:8,22 1032:6,7,11 1033:7,13,25 1034:11,15 1041:7 1085:22 1093:17,24 1094:4,11 1104:2 1160:24 1165:4 1176:20,23 1177:1 1179:6</p> <p><b>date</b> 1021:9,17 1037:17 1060:4,15 1061:4,18 1063:17 1076:11,13 1082:12 1119:8,9,11,18,25 1121:3,8 1163:11 1167:19 1211:2 1222:2,12,13,15 1237:15 1242:23</p> <p><b>dated</b> 1037:15 1092:1 1162:2 1210:24</p> <p><b>dates</b> 1023:15 1121:18 1189:3,4,13 1198:1</p> <p><b>date-stamped</b> 1064:6</p> <p><b>Dave</b> 1041:8 1124:1 1167:20 1169:13</p> <p><b>David</b> 1005:6 1079:25</p>	<p>1190:7</p> <p><b>Davis</b> 1038:4 1043:21 1069:1 1086:5 1150:5 1168:23,25 1206:18 1207:8,10</p> <p><b>day</b> 1044:18 1063:6 1092:7 1096:5 1110:15 1112:14 1113:1 1155:20,21</p> <p><b>days</b> 1019:4 1032:7 1061:25 1077:15 1102:10,11 1132:13,14 1155:24</p> <p><b>day-to-day</b> 1096:15 1110:14 1136:9</p> <p><b>deadline</b> 1033:14 1098:21 1146:6</p> <p><b>deal</b> 1048:18 1049:10 1081:3,5 1202:25</p> <p><b>dealing</b> 1050:17</p> <p><b>dealt</b> 1049:11</p> <p><b>DEAN</b> 1005:15</p> <p><b>DEARMONT</b> 1009:4</p> <p><b>decade</b> 1232:24</p> <p><b>December</b> 1063:12 1097:5,12 1140:15 1141:16,24 1164:3 1166:9 1167:6 1168:25 1191:22 1192:10</p>	<p>1196:8 1197:25 1210:24 1211:3 1213:23 1216:18</p> <p><b>decide</b> 1096:24 1098:13 1099:13</p> <p><b>decided</b> 1149:18 1155:22 1249:12</p> <p><b>decision</b> 1027:10,13,22 1075:16,22 1076:14,15,17,21 1110:5,6 1113:25 1115:7 1118:24 1149:20 1158:11 1161:1 1174:11 1205:13 1206:21 1207:10,20 1219:11 1247:4</p> <p><b>decision-making</b> 1096:11 1174:11 1240:12,13,15,22</p> <p><b>decisions</b> 1018:19 1027:24 1049:12,15,16 1161:4 1167:25 1168:1 1170:16,17,18 1172:22,23 1206:19,20 1207:2 1219:22,24,25 1220:1 1240:8,14 1241:4,22 1243:13 1244:5 1247:11</p> <p><b>declined</b></p>	<p>1025:12 1213:25 1241:7</p> <p><b>decrease</b> 1067:16</p> <p><b>decreases</b> 1178:23,24</p> <p><b>deem</b> 1031:14 1160:4</p> <p><b>deemed</b> 1029:5 1042:9</p> <p><b>define</b> 1029:23 1049:14 1147:24 1148:7</p> <p><b>defined</b> 1052:18 1080:5 1096:21 1106:19 1135:6 1184:4</p> <p><b>defines</b> 1080:4 1135:4</p> <p><b>defining</b> 1131:4 1134:9</p> <p><b>definite</b> 1092:21</p> <p><b>definitely</b> 1043:18 1051:3 1079:23 1112:10 1132:7</p> <p><b>definition</b> 1041:5 1077:19 1078:7,8,9,11,13,17,18,21 1079:1,10,16,17 1135:3,4,13 1144:10 1145:18 1173:9,25 1188:21</p> <p><b>definitive</b> 1077:16,19 1079:10 1080:4,5,8 1081:8</p>
--	---	--	--

1095:16,19,2 1 1096:21,25 1097:7,18,21 ,25 1105:1 1109:17 1121:25 1122:2,8 1124:9,15 1134:24 1135:3 1145:7,9,10 1146:4 1147:23,24 1148:4,7 1169:8 1197:21,22 1233:23 1234:5,12,14 ,18 <b>degree</b> 1014:18 1016:25 1207:25 1208:4,7,10, 13,16,19,22 <b>delay</b> 1012:3,8 1060:11 1102:5 1119:17,20 <b>deliberate</b> 1076:15 <b>demand-side</b> 1156:11 <b>Denton</b> 1007:6 <b>Department</b> 1006:16 1008:7 <b>departure</b> 1026:9 <b>depending</b> 1067:24 1187:3 1248:8 <b>depict</b> 1011:18 1182:3 <b>deposition</b> 1106:22 <b>depositions</b> 1166:24 1167:4 <b>depth</b> 1174:14 <b>Deputy</b> 1009:1	<b>describe</b> 1099:12 1112:24 1161:25 1177:8 1202:12 1240:25 <b>described</b> 1106:1 1113:4 1172:11 1246:5 <b>describes</b> 1037:23 1162:17,24 1172:12 <b>describing</b> 1244:11 <b>description</b> 1188:21 <b>descriptive</b> 1037:16 <b>design</b> 1012:22 1017:11,16,1 7 1018:3,10 1019:2 1022:5 1053:22 1098:23 1102:23 1199:23 1200:2,8,15, 22,25 1202:9,12 1205:12 <b>designated</b> 1192:20 1237:4 <b>designation</b> 1059:22 <b>designed</b> 1102:22 <b>desirable</b> 1159:21 <b>desk</b> 1196:20 <b>despite</b> 1197:18 <b>detail</b> 1116:21 1147:16 1151:7 1162:18 1199:20	1204:18,22,2 4 <b>detailed</b> 1200:10 1242:8,10 <b>details</b> 1039:25 1162:13 1168:18 <b>determination</b> 1094:25 1176:6 <b>determine</b> 1066:9 1074:13 1113:23 1117:5 1174:3 <b>determined</b> 1077:13 1188:14 <b>Deutsch</b> 1005:19 <b>develop</b> 1100:13 <b>developed</b> 1052:17 1148:19 1154:6,11 1160:25 1198:19 <b>developing</b> 1109:21 <b>development</b> 1063:8 1103:7 1163:10 1211:17 1242:1 <b>deviations</b> 1161:3 1170:14 <b>DIANA</b> 1006:10 <b>diem</b> 1177:12 <b>difference</b> 1031:8 1067:1,5 1105:14,18 1107:15 1116:13 <b>different</b> 1017:8,25 1119:1	1122:10 1123:16 1138:22 1143:7,17 1159:6 1160:2 1205:1 1206:20 1207:4 1212:15,16,1 7 1214:2,3 1227:4 1251:18 1253:2 <b>difficult</b> 1156:23 <b>digital</b> 1232:6 <b>direct</b> 1010:21 1011:3,5 1018:17 1036:5 1065:9 1068:6,12 1069:8 1080:2,3 1166:8 1180:5 1181:3,11,16 1184:3 1185:19 1187:12,18,1 9,24 1188:3 1191:18 1220:11,23 1230:8,25 1235:11,16,1 7 1253:18 1260:3,11 1261:3,5 <b>directed</b> 1119:13 <b>directing</b> 1221:5 <b>direction</b> 1117:19 1259:12 <b>directly</b> 1025:2 1030:22 1131:13 1150:6 1187:15,23 1244:19 <b>director</b>
--	--	---	--

1015:5 1018:7 1087:5 1170:11 1183:22 1187:21 1188:25 1189:11,23 1248:10,20 <b>directors</b> 1213:5 1248:5 <b>disagree</b> 1068:19,22,2 5 1069:5 1106:15 1172:8,9 1174:22 1196:24 <b>disagreed</b> 1172:3 1174:17 1206:15 <b>disagreements</b> 1206:11,16 1207:8 <b>disallow</b> 1175:11 1176:13 <b>disallowance</b> 1106:14 1107:3,6,8,1 3 1149:11 1173:8 <b>disallowances</b> 1206:6,9,13, 22 1207:9,11 <b>disallowed</b> 1107:19 <b>disapprove</b> 1170:16 <b>discipline</b> 1209:8 <b>discounts</b> 1117:16 <b>discover</b> 1024:9 <b>discovered</b> 1035:5 1102:24 1138:20 <b>discovery</b> 1024:11 1034:2	1035:23 1093:17,25 1094:13 1095:9 1103:8,22 1104:4 1150:9 <b>discuss</b> 1021:14 1042:12 1050:25 1065:10 1106:13 1120:23 1218:25 <b>discussed</b> 1021:12 1078:5 1096:22 1102:17 1118:9 1121:23 1133:24 1134:3,4,12, 25 1135:12,15 1143:7 1145:12,15 1150:5 1156:19 <b>discussing</b> 1040:7 1089:13 1102:20 1123:11 1126:13 1151:14 1153:12 <b>discussion</b> 1032:22 1045:5 1059:3 1077:16 1091:21 1099:15 1109:16,17,1 8,19 1116:10 1117:12,23 1118:3,14 1120:17 1122:15,19 1126:14,15,2 2,25 1133:23 1139:12 1152:25 1160:19 1168:5 1240:25	1251:25 <b>discussions</b> 1021:20 1092:11 1109:22 1118:4 1121:9 1149:7 1150:8 1152:18,21 1156:25 1159:23 1222:19 <b>dispute</b> 1127:7,9 <b>disputes</b> 1095:9 1103:22 1104:4 1243:10 <b>distance</b> 1176:19 <b>distinction</b> 1035:8 1203:23 <b>distributed</b> 1163:24 <b>distribution</b> 1156:12 <b>District</b> 1006:13 1217:21 <b>docket</b> 1064:5 1079:24 1080:17 1154:18,20 <b>document</b> 1027:10 1028:4,10,17 ,21 1038:10 1051:15 1053:25 1054:14 1078:1 1081:2,9 1086:2,11 1096:3,11,25 1097:25 1110:1,5 1120:19,20 1124:12,14 1131:19 1132:5 1135:14 1146:21,24	1147:14 1152:20 1157:4,7,11 1162:7,10 1164:5 1165:7,8 1168:17,18 1174:5 1175:4,5 1196:15 1197:20 1198:11 <b>documentation</b> 1023:20 1085:17,23,2 5 1096:2 <b>documented</b> 1161:3 <b>documents</b> 1022:11,13,1 4,16,17,20 1026:22,24 1027:3,5,6 1029:3 1040:22,23 1095:2 1109:19 1166:4,12,16 1167:24 1175:3 1177:22 1178:1,11,13 <b>Dogwood</b> 1005:13 <b>dollar</b> 1027:11 1029:24 1030:5 1089:16,19 1124:23 1206:17 1232:11,13,2 1 1248:9,10,19 <b>dollars</b> 1141:25 1158:19 1199:6,16 1200:16,20 1203:8 1204:10 1217:6 1230:23 1232:4,20,25 1233:15,16,1 9 1243:8 <b>done</b> 1016:11
---	--	---	---

<p>1022:19 1036:7 1039:5 1061:6 1075:23 1084:12,23 1098:21 1106:7 1108:17 1114:18 1119:1 1125:23 1126:2 1157:16 1165:11,13 1191:11 1201:1 1219:3 1220:4,7 1231:12,13 1232:16,25 1240:5 1246:21 1258:12 <b>DOP</b> 1137:6 <b>Dority</b> 1006:18,19 <b>Dottheim</b> 1009:1 1020:13 1021:25 1024:11,20 1025:8,14 1090:17,24 1092:3 <b>double</b> 1045:21 <b>doubt</b> 1196:17 <b>DOUG</b> 1005:2 <b>Downey</b> 1019:11 1020:11 1051:16 1089:4,6 1090:16,20 1092:2 1108:8 1111:22,25 1112:16 1113:3 1114:22 1115:3,5,9,10 1116:23 1117:10,19 1118:13 1121:18 1149:1</p>	<p>1150:17,19,22,25 1151:1,6 1179:13 1180:19,22 1181:7,8,9 1182:19 1198:10 1205:11 1207:24 1210:17 1215:16 1218:22 1221:2,6 1240:8 1248:1 1252:2,16 1258:9 1260:10 1261:3,5,7,9 <b>Downey's</b> 1182:22 <b>downgraded</b> 1158:21,22 <b>Dr</b> 1068:23 1206:3,5,22 1207:4,9 <b>Drabinski</b> 1068:20 1103:19,25 1104:8,10,12 1150:8,10 1171:24 1172:3,10,12,19 1173:5,6,13,16,23 1174:10 1178:7 1196:18 <b>Drabinski's</b> 1173:22 1180:2 <b>draft</b> 1131:22,25 1132:10 1133:7,12,18,19 1148:24 1149:3 1153:2 1155:12,16,17 1156:17 <b>drafted</b> 1131:25 1132:10 1133:6,8,12,18 1145:24</p>	<p>1151:9 1152:19 1167:21 <b>drafting</b> 1131:18 1132:16 1133:24 1136:2 1146:12,14 1152:17 1153:2 1155:10 1157:10,11 <b>drawings</b> 1012:22,25 <b>drawn</b> 1013:25 1186:24 <b>drive</b> 1176:19 <b>driver</b> 1200:24 1201:4 <b>drove</b> 1176:25 <b>DRs</b> 1032:2 1033:19 <b>dual</b> 1106:1 <b>Duane</b> 1066:5 <b>due</b> 1077:13 <b>duly</b> 1259:9 <b>during</b> 1018:8 1043:13 1062:4 1063:7 1076:12 1087:2 1122:18 1138:2 1146:14 1148:19 1154:21 1167:16 1175:19 1202:21 1213:12,25 1216:18 1218:23 1242:14 <b>duties</b> 1037:23 1212:23 <hr/><b>E</b><hr/><b>earlier</b> 1017:5 1028:18</p>	<p>1034:8 1040:2 1042:6 1050:10 1083:9 1090:13 1094:23 1121:23 1171:13 1190:18 1237:3 <b>early</b> 1021:20 1061:11 1075:23 1076:3 1087:10 1088:13 1098:21 1108:14 1144:5 1145:11 1157:8 1167:12 1172:14,15 1187:20 1236:11,12 1241:18,21 1242:22 1243:2 <b>early-2004</b> 1154:6 <b>earned</b> 1242:3 1243:5 <b>Easily</b> 1244:13 <b>Easley</b> 1088:16,17 1183:20 1186:9 1187:6,17,23 1188:2 1236:20 1237:9 1238:23 1239:3,5 1243:20,22 1245:1,7 1246:23 1247:3 <b>economic</b> 1063:5,11 1149:21 <b>economics</b> 1016:25 <b>economy</b> 1067:12,24</p>
---	---	---	--

<p><b>Edison</b> 1114:24 1115:8, 10 1150:20 1159:3</p> <p><b>educated</b> 1114:20</p> <p><b>education</b> 1014:19</p> <p><b>educational</b> 1209:6</p> <p><b>effect</b> 1069:2</p> <p><b>effective</b> 1149:21</p> <p><b>effectuate</b> 1222:4, 22</p> <p><b>efficiently</b> 1061:6</p> <p><b>effort</b> 1132:8 1158:4 1159:11, 13 1167:5 1175:21</p> <p><b>eight</b> 1141:2 1186:22 1197:4 1198:17</p> <p><b>eight-five</b> 1197:13</p> <p><b>either</b> 1024:8 1096:10 1118:25 1121:14 1139:3 1146:13 1147:9 1166:1 1198:22, 25</p> <p><b>elaborate</b> 1170:6 1174:22</p> <p><b>elected</b> 1214:5</p> <p><b>electric</b> 1004:13, 17 1006:13 1159:3 1217:5, 21 1230:3</p> <p><b>electrical</b> 1100:9, 13 1190:16</p> <p><b>electronical</b></p>	<p><b>y</b> 1180:3</p> <p><b>eliminated</b> 1214:6</p> <p><b>Elliott</b> 1021:3, 6, 8, 1 0, 13, 15, 19, 2 1, 22, 24 1041:8, 11, 13 , 15, 18, 19, 23 1042:9 1089:14 1092:8 1098:6 1105:23 1106:7, 11, 23 1107:12, 18 1124:1 1149:7, 8, 10 1150:1 1167:10, 12, 1 5, 20 1168:2 1169:15, 19 1175:17</p> <p><b>Elliott's</b> 1021:1 1092:14 1106:19, 22 1169:13</p> <p><b>ELMO</b> 1132:5, 11 1155:23 1157:6</p> <p><b>else</b> 1033:1 1044:24 1122:18 1170:14 1214:20 1231:23 1239:14 1240:1</p> <p><b>e-mail</b> 1020:10, 16, 2 2 1023:4, 5, 13, 14, 21 1026:1 1090:16 1091:25 1092:1 1143:8 1179:24</p> <p><b>e-mails</b> 1019:22 1090:13 1261:17</p> <p><b>embark</b> 1091:8</p> <p><b>embarked</b></p>	<p>1137:9</p> <p><b>embarking</b> 1091:11</p> <p><b>embodied</b> 1131:10</p> <p><b>Empire</b> 1006:13 1217:21</p> <p><b>employed</b> 1088:20 1259:13, 15</p> <p><b>employee</b> 1030:23 1031:18 1050:5, 6 1080:1 1086:25 1088:14 1148:6, 13 1176:17 1177:14 1235:18 1259:15</p> <p><b>employees</b> 1037:24 1040:4, 14 1067:17 1082:9 1083:10 1089:2, 10 1104:13 1149:3 1176:13 1177:2, 11 1191:9 1235:16, 17 1245:2, 4</p> <p><b>employer</b> 1114:23</p> <p><b>employment</b> 1048:6</p> <p><b>enable</b> 1154:23</p> <p><b>enabled</b> 1131:9</p> <p><b>encompasses</b> 1200:16</p> <p><b>encouraged</b> 1173:15</p> <p><b>energy</b> 1005:13, 17 1006:16 1062:11 1131:4, 7</p>	<p>1136:2 1154:7, 11, 25 1158:18 1187:22 1188:23 1210:8 1221:13</p> <p><b>Energy's</b> 1214:16</p> <p><b>engaged</b> 1091:5 1230:12</p> <p><b>engaging</b> 1251:14</p> <p><b>engineer</b> 1014:20 1016:20 1052:6 1053:21 1099:18 1169:18 1190:15 1191:6 1234:4</p> <p><b>engineered</b> 1091:9, 10 1097:9, 13 1102:23 1110:11 1125:6, 8, 13, 22, 24 1126:5 1148:16 1151:10 1204:3</p> <p><b>engineering</b> 1016:18 1098:22 1106:1, 20 1107:4, 18 1125:2 1136:21 1137:2 1153:6 1163:12 1190:3 1209:25 1233:23 1234:1 1241:22 1243:10 1245:16</p> <p><b>engineers</b> 1104:2 1191:4</p> <p><b>England</b> 1006:10</p>
--	--	--	--



<b>enhanced</b> 1060:24	1116:1, 11, 13 , 21, 25	1137:15	1135:4, 5
<b>enormous</b> 1201:3 1202:21	1117:11, 16, 2 0, 21	1138:7, 10	1140:7, 10, 15
<b>ensure</b> 1113:18 1228:9	1118:1, 9, 13, 19, 21, 22	<b>error</b> 1075:3	1141:24
<b>enter</b> 1049:19, 22	1119:12, 23	<b>errors</b> 1013:20, 21	1145:7, 9, 10
<b>entered</b> 1110:9 1119:6 1135:9	1170:3, 9, 12, 15	<b>escalated</b> 1201:18, 25 1202:1	1146:4
<b>entering</b> 1101:2	1188:9, 15, 17 1240:4	<b>escalation</b> 1140:20, 21	1147:24
<b>entertaining</b> 1222:19	<b>EOC's</b> 1113:22 1170:7	1141:4, 16	1148:4, 8
<b>entire</b> 1038:10 1059:3 1065:20 1081:12 1099:17 1108:21, 25 1143:18 1190:1 1251:13, 14	<b>EPC</b> 1051:13, 18, 1 9, 23	1197:1, 5	1149:14, 15, 2 4
<b>entirely</b> 1232:5	1052:9, 12, 14 , 16, 22, 23, 25	1199:23	1151:9, 12, 22
<b>entirety</b> 1062:13 1189:16	1053:2	1201:2, 3, 10, 11, 13 1204:4	1168:21, 24, 2 5 1169:6, 8
<b>entities</b> 1219:25 1220:2	1098:17	<b>escalations</b> 1142:13	1174:24
<b>entity</b> 1135:20 1137:17	1099:4, 10, 16 , 17	1201:6	1175:12
<b>entry</b> 1038:15	1100:1, 4, 15, 19 1101:3	1202:5, 24	1179:3, 4
<b>environment</b> 1113:1 1138:13 1158:14 1205:14	1107:23, 25	1205:18	1197:21, 22, 2 5 1202:6
<b>environmental</b> 1231:17 1232:3	1108:15	<b>espoused</b> 1197:19	1203:13
<b>EO-2005-0329</b> 1162:3	1109:3, 5	<b>essential</b> 1164:7 1240:8	1233:23
<b>EOC</b> 1112:18 1114:2, 6, 20 1115:11	1136:24, 25	<b>essentially</b> 1101:25 1159:25 1196:1	1234:4, 5, 8, 1 0, 12, 14, 15, 1 8 1235:6
	1143:2, 5, 18	<b>established</b> 1144:9 1150:18 1244:2	<b>estimates</b> 1116:14 1140:18 1201:17
	1153:12, 13, 1 4, 15, 17	<b>estimate</b> 1052:14	<b>estimate's</b> 1097:18
	<b>EPCs</b> 1143:17	1077:16, 20	<b>et</b> 1190:16
	<b>equipment</b> 1100:3 1137:7 1231:17 1232:3, 6, 17	1079:11	<b>evaluate</b> 1077:11
	<b>ER-0089</b> 1167:18	1080:4, 6, 8	<b>evaluated</b> 1076:12 1119:14
	<b>ER-2009-0089</b> 1018:13, 21 1031:19	1081:8	<b>evaluating</b> 1235:7
	<b>ER-2010-0355</b> 1004:12	1095:16, 19, 2 1 1096:21, 25	<b>evaluation</b> 1077:13 1097:3 1149:21 1162:19
	<b>ER-2010-0356</b> 1004:16	1097:7, 8, 21, 24, 25	<b>evening</b> 1062:4 1156:1 1227:14
	<b>ER-81-42</b> 1079:22 1080:8	1105:11, 19	<b>event</b> 1109:6 1167:20 1252:19
	<b>erection</b> 1076:6	1109:17	<b>events</b> 1031:11 1122:23
	<b>Eric</b> 1009:4 1038:16 1065:21	1115:20, 24	<b>everybody</b> 1098:4
	<b>Ernst</b> 1039:2	1116:3	<b>everyone</b>
		1121:24, 25	
		1122:1, 2, 9	
		1123:21	
		1124:9, 10, 16 , 17	
		1125:16, 17	
		1126:9	
		1134:25	

1081:13 <b>everything</b> 1019:18 1028:13 1059:14 1096:8,12 1102:2,3 1110:8 1113:17 1119:15 1170:14 <b>evidence</b> 1010:13 1076:22 1081:25 1082:3 1163:21 1169:25 1180:16 1183:5 1211:11 1260:2 <b>Evidentiary</b> 1004:6 <b>evidently</b> 1173:9 <b>evolution</b> 1164:6 <b>exact</b> 1186:21 1188:7 1189:4 1242:23 1247:12 <b>exactly</b> 1017:14 1050:14,16 1110:3 1122:13,22 1134:5,10 1137:11 1165:17 1175:22 1238:7 1242:21 <b>examination</b> 1010:21 1090:7 1104:19 1120:6 1139:8 1153:22 1180:21 1181:3 1260:3,9,11 <b>examined</b>	1175:18 <b>example</b> 1031:7 1052:15 1086:6 1102:21 1119:6,22 1174:9 1176:7,12 1201:9 1204:2 1207:8 <b>examples</b> 1030:13 1102:22 <b>exceeded</b> 1091:6 1174:24 <b>except</b> 1252:4,18 <b>excess</b> 1062:4 1217:6 <b>exclude</b> 1045:13 <b>excluding</b> 1141:18,19 <b>excuse</b> 1163:24 <b>execute</b> 1154:24 <b>executed</b> 1121:12 1160:25 <b>execution</b> 1020:3 1103:7 1121:3,8 1137:2 1244:23 <b>executive</b> 1008:3 1111:19 1116:16 1142:21 1184:4,6,8,1 1,13,14,15,1 8,20,24 1185:2,10,17 1186:5,12,23 1187:2 1210:5 1211:16 1212:12 1213:4 1217:2	1235:25 1236:5,9,14 1237:6,9,13, 18,22 1238:4,8,13, 24 1239:22 1240:9,19,24 1241:6,10,15 1243:12 1245:11 1247:17 1249:23 1250:10,14,2 0,21 <b>executives</b> 1138:20 1185:24 1250:25 <b>exhaustive</b> 1156:22 1162:13 <b>exhibit</b> 1010:9,13 1011:21 1019:20 1020:7 1090:12 1123:4 1161:15,18,2 1,25 1163:7,9,20 1164:11,12,1 3 1168:10,13 1169:22,25 1179:18,22 1180:16 1181:17 1182:11 1183:4 1196:11 1210:9,12,19 1211:5,11,13 1261:1,3,5,7 ,9,11,13,15, 16,18 <b>exhibits</b> 1011:8,17 1162:20 1181:18,24 1182:3,8 <b>exist</b> 1124:5 <b>existing</b> 1230:18 <b>ex-officio</b> 1188:14 <b>expanded</b>	1160:15 1216:12 <b>expansion</b> 1053:8 <b>expect</b> 1110:17 1125:15 1152:1 1170:24 <b>expectation</b> 1154:20 <b>expectations</b> 1125:11 1170:20 <b>expected</b> 1114:8 1136:8 1141:16 1142:13 1151:15,16,1 7,18,25 1152:12 <b>expenditure</b> 1028:25 1118:2 1170:21 <b>expenditures</b> 1133:4 1162:14,21 1163:4,13 1247:19,23 <b>expense</b> 1037:5 1040:2 1082:14,18 1084:25 1085:2 1086:4 1102:24 1144:15 1167:6 1178:9 <b>expenses</b> 1036:20 1085:23,24 1144:14 1252:3,18 <b>experience</b> 1015:4,7 1016:7,10 1017:6,19 1027:8 1083:17 1084:4,8 1088:23
---	--	---	---

<p>1094:2,10,14                  1095:8                  1107:20                  1112:2                  1113:9                  1115:9                  1145:2                  1171:5</p> <p><b>experienced</b>                  1083:10,12                  1095:24,25                  1201:16                  1202:18                  1245:10</p> <p><b>expert</b>                  1016:5,10,14,                  17,18                  1025:23,25                  1075:17                  1112:19                  1113:7,21,23                  1209:15,18,2                  1,24                  1218:7,14                  1219:17                  1220:8,10                  1234:21</p> <p><b>expertise</b>                  1066:7                  1170:25</p> <p><b>experts</b>                  1113:20                  1172:11                  1206:14                  1207:1                  1218:13                  1242:12</p> <p><b>explain</b>                  1025:13                  1059:3                  1078:6,25                  1096:8,15,16                  1097:14                  1107:6                  1112:7                  1147:10                  1170:6                  1172:9                  1173:21                  1175:2</p> <p><b>explained</b>                  1134:13                  1152:23                  1168:1                  1169:4                  1183:16</p> <p><b>explaining</b></p>	<p>1078:16                  1091:19                  1095:18                  1134:16</p> <p><b>explains</b>                  1083:2</p> <p><b>explanation</b>                  1022:18                  1025:11                  1059:17                  1104:25</p> <p><b>explanations</b>                  1027:9                  1175:4</p> <p><b>expression</b>                  1203:18</p> <p><b>expressly</b>                  1049:8</p> <p><b>extend</b>                  1076:14                  1228:24</p> <p><b>extends</b>                  1075:24</p> <p><b>extension</b>                  1032:16</p> <p><b>extensive</b>                  1017:5                  1102:1                  1176:8</p> <p><b>extent</b> 1034:1                  1037:5                  1039:2                  1067:8                  1084:22                  1113:14</p> <p><b>external</b>                  1075:18</p> <p><b>extra</b> 1102:24</p> <p><b>extremely</b>                  1084:1</p> <p><b>eyes</b> 1122:7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p><b>face-to-face</b>                  1092:18                  1161:9</p> <p><b>facilities</b>                  1032:14                  1034:14                  1035:1,4</p> <p><b>facility</b>                  1202:21</p>	<p>1230:6                  1231:9</p> <p><b>fact</b> 1024:9                  1035:7                  1052:10                  1060:6                  1076:10                  1081:5                  1096:7                  1108:17                  1121:21                  1172:17                  1176:6,8                  1177:21                  1205:8                  1248:24</p> <p><b>facts</b> 1076:22                  1173:23</p> <p><b>fair</b> 1121:19                  1122:11                  1124:25                  1147:16</p> <p><b>fairly</b> 1032:9                  1147:14                  1212:20                  1226:7,9</p> <p><b>fake</b> 1191:13</p> <p><b>fall</b> 1199:22</p> <p><b>familiar</b>                  1017:10                  1022:11,23                  1027:4                  1038:8                  1053:25                  1063:19,21                  1065:21                  1066:3                  1079:24                  1082:21                  1114:25                  1140:13                  1209:1                  1229:24</p> <p><b>farthest</b>                  1119:18</p> <p><b>fast</b>                  1075:16,22                  1076:16,17                  1097:17                  1099:5,6                  1122:8                  1205:21</p> <p><b>fast-tracking</b>                  1098:11,14</p> <p><b>fatality</b></p>	<p>1242:9</p> <p><b>fault</b> 1043:18                  1253:12,25</p> <p><b>avored</b>                  1159:24</p> <p><b>Featherstone</b>                  1095:24                  1096:1,5                  1098:8,9                  1106:11,16                  1111:4                  1122:14                  1124:1                  1146:14,18                  1152:15,18                  1157:3</p> <p><b>February</b>                  1019:22                  1023:7                  1035:11,15                  1036:21                  1037:2                  1090:25                  1091:1                  1167:19                  1189:14                  1236:12</p> <p><b>February/                  March</b>                  1093:11</p> <p><b>federal</b>                  1008:3                  1217:17</p> <p><b>feedback</b>                  1138:13                  1147:11,13</p> <p><b>feel</b>                  1080:10,12                  1186:2                  1218:8</p> <p><b>fees</b> 1171:12</p> <p><b>feet</b> 1180:10</p> <p><b>felt</b> 1024:21                  1025:15                  1033:11                  1125:20                  1178:22                  1206:25</p> <p><b>ferret</b>                  1113:13</p> <p><b>field</b> 1012:24</p> <p><b>Fifteen</b>                  1093:22</p>
---	--	--	--

<p>1203:7  <b>fifth</b> 1140:19  <b>figure</b>  1035:10  1118:24  1175:22  1185:12  <b>figures</b>  1142:16  <b>file</b>  1004:12,16  1018:13,16  1019:1  1032:8  1059:22,23  1156:22  1181:11  <b>filed</b> 1011:3  1017:20  1034:22  1080:17  1081:20,22  1082:1  1158:12  1163:24  1167:17  1181:9,11,14  <b>final</b> 1067:2  1136:8  1155:8,12  <b>finance</b>  1211:16  <b>financial</b>  1106:3  1163:12  1184:5  1211:17  1212:21  1213:3  1242:5  1243:5  <b>financially</b>  1259:16  <b>financing</b>  1141:10,19  1156:20  1196:7  1198:13  1247:19  <b>finding</b>  1025:1  1035:22  1064:16  1172:19  <b>fine</b> 1012:7</p>	<p>1120:10,25  1121:4  1196:23  1244:16  1254:3  <b>finish</b>  1078:10  <b>finished</b>  1093:13,14  1139:15  <b>finite</b> 1187:1  <b>Finnegan</b>  1005:7  <b>firm</b>  1059:5,10  1114:2,20  1115:11  1233:23  1234:1,17,24  <b>firms</b>  1066:1,10  1101:1  <b>first</b> 1020:10  1026:14  1032:5  1034:9  1037:25  1038:15  1051:19  1062:15,19  1097:5  1101:22  1111:4,15  1114:7,10  1124:18  1131:18,22,2  5 1132:10  1133:12,18  1136:11  1138:22  1143:17,23  1144:2  1148:2  1149:3  1153:2  1158:25  1159:2  1162:4,5,12  1163:13  1164:24  1174:23  1182:16  1184:7,10,23  1185:6  1186:2  1187:20  1189:6</p>	<p>1198:16  1243:17,20  1244:2,8  1253:15  <b>Fischer</b>  1006:18,19  1010:10,18,2  0,22 1011:20  1024:22  1035:19  1036:9  1044:21  1045:10  1053:23  1054:14  1059:7,8  1076:22  1081:14  1120:25  1121:4  1123:3,8,9,2  3 1127:12  1132:23,24  1133:13,19  1152:19  1153:1,21,23  1161:14,17,2  0,23  1163:15,22  1164:10,17,2  0 1168:10,15  1169:21  1170:1  1171:3,4  1173:19,20  1179:8,10,14  1180:13  1181:1,2  1258:5,8  1260:3,9  <b>Fischer's</b>  1059:17  <b>five</b> 1083:1  1096:18  1101:6  1108:2  1120:8  1143:2,21  1152:25  1176:18  1204:25  1222:8,16,22  <b>five-year</b>  1131:8  1154:7  1216:19  1244:4</p>	<p><b>fixing</b>  1102:25  <b>FL</b> 1008:2  <b>Fleenor</b>  1189:25  1190:19,22  <b>fleet</b> 1231:24  <b>flexible</b>  1110:13  <b>Floor</b> 1101:7  <b>focus</b>  1032:11,12  1081:7  1104:12  1114:15  1118:11  <b>focused</b>  1033:14  1104:10  1119:10  1153:18  1251:15  <b>focusing</b>  1216:16  <b>folks</b> 1074:25  1110:1  1258:11  <b>follow-through</b>  1172:22  <b>follow-up</b>  1033:15  1090:24  1143:16  1198:10  <b>Force</b> 1008:1  <b>FORD</b> 1008:11  <b>forecast</b>  1067:4  1125:23  1201:13  <b>foregoing</b>  1259:7,9  <b>forgetting</b>  1239:18  <b>form</b> 1029:9  <b>formal</b>  1014:13,16,2  2  1015:8,10,13  ,19,22,25  1108:3,19</p>
--	--	---	---

<p><b>formalized</b> 1236:12 1237:2</p> <p><b>formally</b> 1237:4</p> <p><b>format</b> 1083:4,5 1109:19 1119:1 1164:1 1241:20 1251:22</p> <p><b>former</b> 1114:23 1150:19</p> <p><b>Forrest</b> 1117:10</p> <p><b>forth</b> 1188:17 1207:17</p> <p><b>forthcoming</b> 1094:18</p> <p><b>fortunate</b> 1100:21</p> <p><b>forum</b> 1059:1 1195:18 1226:1 1249:10</p> <p><b>forward</b> 1048:15 1061:3 1154:14,24 1158:20 1206:11 1242:15</p> <p><b>Foster</b> 1168:24</p> <p><b>foundation</b> 1076:25</p> <p><b>foundations</b> 1076:5 1098:23,25</p> <p><b>founded</b> 1236:8,10</p> <p><b>frame</b> 1035:11 1077:12 1091:9,12 1093:10 1157:12 1184:7 1201:23 1232:4 1233:3,17 1242:19</p>	<p><b>frameworks</b> 1200:12</p> <p><b>freeze</b> 1156:20</p> <p><b>frequency</b> 1242:20</p> <p><b>frequently</b> 1241:19</p> <p><b>Friday</b> 1010:2</p> <p><b>front</b> 1083:13 1132:20 1188:22 1204:21 1215:20</p> <p><b>full-wrap</b> 1099:17</p> <p><b>fully</b> 1037:8 1111:25 1214:14</p> <p><b>function</b> 1106:3 1183:23 1214:9 1216:9,12 1251:19</p> <p><b>functional</b> 1183:19 1184:16 1187:13</p> <p><b>functionally</b> 1215:9</p> <p><b>functions</b> 1190:24 1251:18</p> <p><b>funny</b> 1134:2</p> <p><b>future</b> 1102:3</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gained</b> 1088:22,25</p> <p><b>game</b> 1030:25 1031:2,4,6</p> <p><b>games</b> 1030:16 1031:5</p> <p><b>Gardner</b> 1231:8</p> <p><b>Garrett</b> 1005:11</p> <p><b>Gas</b> 1005:17</p> <p><b>GASCONADE</b> 1259:3</p>	<p><b>gate</b> 1176:24</p> <p><b>gather</b> 1229:6 1242:18</p> <p><b>gathered</b> 1051:1</p> <p><b>GE</b> 1163:1</p> <p><b>general</b> 1015:16 1087:14,16 1105:25 1114:21 1154:9 1170:9 1202:1 1204:11,22 1207:17 1211:19 1247:14</p> <p><b>generally</b> 1168:2 1170:8 1207:15 1227:7</p> <p><b>generating</b> 1230:5</p> <p><b>generation</b> 1103:12 1229:23 1239:3 1244:17 1246:5</p> <p><b>generator</b> 1162:25</p> <p><b>generators</b> 1231:6,19,22</p> <p><b>getting</b> 1045:5 1049:9 1061:6 1100:6 1132:24 1133:10 1166:7 1186:1 1221:1 1242:22</p> <p><b>gift</b> 1030:6 1031:6</p> <p><b>gifts</b> 1029:7,9,11, 13,16,20 1031:13 1104:12</p> <p><b>Giles</b></p>	<p>1010:4,7,15, 23,25 1011:2 1012:20 1014:11 1053:7,24 1063:19 1064:7 1065:11 1074:13,20 1075:9 1090:9,17 1104:16 1120:15 1123:16 1132:22 1139:15 1140:4 1147:23 1153:24 1161:24 1163:23 1168:16 1170:2 1173:16,21 1175:8 1179:8,11 1195:23 1236:22 1238:8,24 1239:19,23</p> <p><b>G-i-l-e-s</b> 1010:25</p> <p><b>GILES</b> 1048:2 1060:1 1075:11 1131:1 1260:3</p> <p><b>Giles's</b> 1036:4 1045:3,12 1139:8</p> <p><b>given</b> 1029:7 1059:18 1061:5 1085:18,25 1090:13 1094:9 1099:22 1101:18 1112:4 1115:24 1117:19 1119:19 1152:10 1204:8,21</p> <p><b>giving</b> 1033:11</p>
--	---	---	--

<p>1078:24 1235:7 <b>glad</b> 1060:7 1077:21 1095:22 <b>glancing</b> 1037:19 <b>GLEND A</b> 1007:14 <b>GMO</b> 1026:19 1216:9 1218:20,25 1219:18 <b>goal</b> 1076:8 1096:10 <b>golf</b> 1253:2,4,6,8 <b>golfer</b> 1253:5 <b>gone</b> 1030:16 1054:8 1125:15 1126:7 1171:1,14 <b>Gotcha</b> 1126:11 1131:10 1138:25 <b>gotten</b> 1104:13 <b>Gould</b> 1038:17,19 1065:22 1111:23 <b>governance</b> 1183:18,20 1184:2 1240:20 <b>grabbing</b> 1258:6 <b>Grabinski's</b> 1196:13 <b>grade</b> 1158:22 <b>grand</b> 1197:12 <b>granted</b> 1158:3 <b>gratuities</b> 1029:9,21 1104:13 1167:8 <b>great</b> 1048:18 1081:3,5 1104:23</p>	<p>1199:20 1210:8 1214:16 1221:13 <b>greater</b> 1004:15 1089:16 1216:5,13,16 1218:3 1219:4,12,22 1221:14,16 <b>Grimwade</b> 1086:24,25 1087:5,10 1154:12 1169:1 1187:21 1188:25 1189:2 1190:22 1243:17 1244:8,19 1245:1,7 <b>ground</b> 1035:25 1041:21 <b>grounds</b> 1033:16 <b>group</b> 1032:22 1033:2 1048:7 1101:8 1112:13 1132:8 1138:1,8,11, 12 1185:13,23,2 4 1186:24 1187:17 1204:21 1207:2,17 1239:2 1240:21 1241:3 <b>groupings</b> 1140:17 <b>groups</b> 1066:10 <b>growing</b> 1204:15 <b>growth</b> 1199:23 1200:23,24 1202:23 1205:1</p>	<p><b>guess</b> 1019:21 1054:13 1089:21 1132:5 1161:18 1164:18 1178:4 1204:17 1220:25 1248:14 <b>guest</b> 1252:8,10 <b>Gunn</b> 1004:20 1012:1 1074:3,4,5,7, 10 1104:18,20 1120:2,4,17 1143:25 1149:6,13 1151:21,25 1260:6 <b>gutting</b> 1232:16 <b>guy</b> 1184:14 <b>guys</b> 1137:4 <hr/><b>H</b><hr/><b>half</b> 1199:6,16,25 1200:16,20 1204:10 <b>halfway</b> 1233:9 <b>hand</b> 1028:5 1064:4 1171:16 1180:23 <b>handed</b> 1033:19 1054:15 1140:9 <b>handing</b> 1037:14 1097:23 <b>happen</b> 1102:3 1108:22 1112:17 1113:19 1145:1 1202:20 1223:1 <b>happened</b> 1024:16</p>	<p>1102:2,12,18 1145:2,6 1172:16 <b>happens</b> 1202:19 <b>happy</b> 1045:4 1081:13 <b>hard</b> 1014:2 1180:1,8,9 <b>Hardesty</b> 1218:16 1219:17 1220:5 <b>Hardin</b> 1026:5 1027:21,23,2 4 1036:16,18,2 0 1037:14,24 1040:1 1042:22 1065:19 1075:21 1084:20 1104:6,11 1110:2 1111:13,21,2 4 1112:1,3 1113:7,10,21 1114:1,6,9,1 0,16,20 1115:9,11 1116:3,20 1117:17,20,2 2 1121:16 1126:16 1142:17 1144:14 1147:24 1148:6,7,13, 25 1150:14,17,2 5 1170:20,25 1171:11,17 1234:18 1235:3 <b>Hardin's</b> 1113:18 1171:9 <b>harmed</b> 1059:16 <b>Hatfield</b> 1007:10 1054:6 1181:1,2,4 1182:5,7,8,1 0,20,24</p>
--	---	---	---

<p>1192:3  1196:9,14  1211:9  1215:12  1218:19  1219:6  1220:17  1221:4  1222:9,23  1246:8  1248:13  1249:7,16  1254:1  1260:11</p> <p><b>haven't</b>  1081:4  1196:21,22  1229:3  1240:4</p> <p><b>having</b>  1042:11  1099:22  1117:12,13  1121:9  1126:15  1150:7,16  1152:14  1202:18  1246:17</p> <p><b>Hawthorn</b>  1137:11  1230:14  1231:12  1232:18  1233:14,21</p> <p><b>HC</b> 1010:11  1011:24  1053:24  1054:1,3,5,6  1059:22  1120:20  1139:21  1161:18  1180:4  1182:12  1183:3,4  1188:24  1192:20  1193:2  1222:24  1249:8,13  1254:2,3,4</p> <p><b>head</b>  1187:9,11,14  ,16  1189:6,13  1190:2</p>	<p>1200:17  1204:6,20,24  1212:24  1213:3  1236:17  1239:16  1243:16  1244:18  1248:22</p> <p><b>heading</b>  1052:23</p> <p><b>Healy</b> 1005:2</p> <p><b>hear</b> 1010:12  1019:10  1039:8  1049:21  1074:6,7,24,  25 1104:21</p> <p><b>heard</b> 1242:2  1243:11</p> <p><b>hearing</b>  1004:6  1011:23  1024:9,10,12  1025:14  1054:18  1094:16  1157:19,20,2  2 1163:18  1166:6,14,22  ,23 1169:24  1179:21  1180:22  1182:15,19,2  5 1240:14  1243:9  1251:20</p> <p><b>hearings</b>  1157:14</p> <p><b>heart</b> 1134:6</p> <p><b>heated</b> 1060:8</p> <p><b>Heather</b>  1007:1  1027:18</p> <p><b>Hecker</b>  1007:10</p> <p><b>he'd</b> 1172:15</p> <p><b>Heinz</b> 1005:11</p> <p><b>held</b> 1043:8  1045:25  1054:21  1069:18  1074:17  1127:14</p>	<p>1139:12  1157:22  1159:14  1166:6,14  1168:3  1180:17  1223:5  1254:7</p> <p><b>helped</b>  1200:12</p> <p><b>helpful</b>  1105:1,21  1183:16  1186:23</p> <p><b>helping</b>  1097:6</p> <p><b>Henderson</b>  1019:5,11  1020:11,13,1  8 1022:1,3  1023:8  1024:6,8  1025:17  1090:16,23  1091:15,20  1092:2,5,19  1098:5  1122:23  1123:25  1169:16</p> <p><b>Henderson's</b>  1023:5,9,21  1091:25</p> <p><b>hereby</b> 1259:8</p> <p><b>here's</b>  1102:12,14  1113:10  1122:8</p> <p><b>HERNANDEZ</b>  1009:3</p> <p><b>he's</b> 1023:15  1080:9  1087:8,20  1088:9,20,21  1094:22  1135:24  1148:12  1151:2,6  1173:17  1180:19  1182:22,24  1183:6  1215:18  1220:12  1222:11  1238:10,11</p>	<p>1239:16  1253:16</p> <p><b>hey</b> 1032:13  1097:17</p> <p><b>Hi</b> 1104:21</p> <p><b>hierarchy</b>  1213:1</p> <p><b>high</b> 1005:19  1142:8  1162:10  1197:9  1205:2</p> <p><b>higher</b> 1199:6</p> <p><b>highlighted</b>  1053:13,14</p> <p><b>highly</b> 1045:5  1054:12,16  1127:8  1191:23  1246:25  1248:11  1261:6,10</p> <p><b>hindsight</b>  1171:14</p> <p><b>hire</b> 1112:3  1113:25  1115:7  1233:22  1245:13  1247:9</p> <p><b>hired</b> 1066:6  1100:22  1103:20,25  1114:5  1115:23  1121:10,16,2  0 1138:18  1171:11,16  1206:2  1234:3  1245:9,14,20</p> <p><b>hiring</b>  1111:21  1117:20  1246:25  1247:4,10,15</p> <p><b>history</b>  1048:19</p> <p><b>hit</b> 1176:7</p> <p><b>hold</b> 1045:9  1166:2  1186:20  1216:8</p>
---	---	---	--

<p><b>holding</b> 1210:8 1214:10 1217:2,11</p> <p><b>holistic</b> 1172:13</p> <p><b>home</b> 1177:13 1229:8,9,17, 19</p> <p><b>homes</b> 1176:15</p> <p><b>honesty</b> 1075:2</p> <p><b>Honor</b> 1180:13 1249:16</p> <p><b>hope</b> 1253:7</p> <p><b>hoped</b> 1112:14</p> <p><b>hopes</b> 1191:14</p> <p><b>hoping</b> 1092:7 1112:1</p> <p><b>hotel</b> 1252:20,23</p> <p><b>hour</b> 1044:5,6,11 1258:1</p> <p><b>hours</b> 1037:18 1048:10,12 1226:3,6,11, 13,16,19,22, 25 1227:3,13,25 1229:8,18</p> <p><b>HR</b> 1184:16</p> <p><b>human</b> 1138:14 1211:23 1212:24 1247:6</p> <p><b>Humphrey</b> 1007:1 1027:19</p> <p><b>hundred</b> 1077:12 1083:1 1197:13 1203:8 1226:11 1232:10,13 1245:15</p> <p><b>Hydebrink</b> 1239:1,11</p> <p><b>Hyneman</b> 1098:7 1123:1</p>	<p>1167:4</p> <p><b>hypothetical</b> 1012:20 1013:23</p> <p><b>Hypotheticall y</b> 1012:22</p> <hr/> <p><b>I</b></p> <hr/> <p><b>Iatan</b> 1018:19 1019:7,13 1022:9 1029:7,14 1031:25 1032:3,6,17, 20 1034:2,7 1035:17 1039:5 1048:19,21 1051:13,17,2 3 1052:6 1053:8 1060:4,24 1061:21,23 1062:13 1063:13,24 1066:15,21 1067:21 1068:9 1069:11 1076:9 1082:8,9,12, 19 1084:5,24 1085:11 1087:3 1088:5,23 1090:17 1096:9 1103:17 1108:9 1111:16 1144:7,24 1150:3 1158:10 1160:9 1162:24 1163:9 1166:5 1168:21,23,2 5 1171:6 1176:18,22,2 4 1177:12,20 1188:22 1189:9,12 1190:8 1197:24 1199:3 1205:21 1206:3,22</p>	<p>1210:2 1213:13 1214:1 1215:18 1216:19 1217:19,23 1218:5,6 1219:14,15 1226:4,13,16 ,19,22,25 1227:5,21,22 1232:2,5 1233:24 1234:13,19 1235:23 1236:2 1240:6 1244:14,24 1245:5 1247:19,22,2 3</p> <p><b>IBEW</b> 1007:20</p> <p><b>I'd</b> 1011:20 1019:20 1060:7 1095:22 1153:24 1161:14 1163:15 1164:10,12 1168:10 1169:21 1179:18 1184:6 1193:2 1242:25</p> <p><b>idea</b> 1132:2 1134:19 1174:23 1177:22 1221:24 1226:10,12,1 5,18,21,24 1227:2 1230:7</p> <p><b>ideas</b> 1240:21</p> <p><b>identificatio n</b> 1020:7 1022:18 1161:22 1168:13 1170:13 1210:12</p> <p><b>identified</b> 1069:10 1096:16 1102:13</p>	<p>1134:13 1143:4 1160:11 1172:15 1190:8</p> <p><b>identify</b> 1119:16 1172:21,22 1176:9 1236:13</p> <p><b>identifying</b> 1091:5 1134:16</p> <p><b>ignorance</b> 1244:9</p> <p><b>ignores</b> 1173:6,23</p> <p><b>I'll</b> 1036:14 1045:8,22,23 1053:4,6 1059:22 1076:25 1078:23 1139:6 1180:6 1182:6 1191:20 1215:21 1220:25 1230:9</p> <p><b>I'm</b> 1011:25 1013:9 1022:25 1023:3 1024:20 1026:16,23 1027:6 1028:3,4,5 1035:19 1036:7 1037:14 1038:8 1039:8 1041:12,17,2 5 1042:8 1044:4,21 1045:4 1051:8 1053:11 1054:8 1059:19 1060:20 1062:16 1064:4,24 1065:14,16 1066:3,5,24 1074:5,13,15</p>
---	---	---	---



1075:13	1227:13	1171:7	1253:15
1078:11,16	1228:21	1205:23	<b>inclined</b>
1079:24	1229:6,12,19	1251:3	1258:14
1080:21	,21 1230:10	<b>impose</b> 1176:4	<b>include</b>
1081:18	1235:10	<b>impression</b>	1116:4
1084:16	1236:7,17	1092:21	1149:15
1085:7	1239:18	1093:2	1186:16
1086:3,4,5,2	1244:9	1166:23,24	1203:3,19
0 1087:11	1246:1,8,9,1	1167:1,15	1231:5
1093:14	1 1248:24	1190:21	1243:4
1094:8	1250:13	<b>improved</b>	<b>included</b>
1095:7	1251:20	1138:24	1065:7
1097:23	1252:20	<b>imprudence</b>	1077:25
1100:6	1254:3	1064:16	1101:24
1104:9	1258:2,14,18	1065:2	1110:2
1106:6	<b>imagine</b>	1068:10	1116:14
1107:9,10,21	1033:21	<b>imprudent</b>	1140:25
1109:12	<b>immaterial</b>	1013:22	1141:6
1111:12	1034:3	1172:21	1162:9
1116:12	<b>immediate</b>	1174:10	1171:12
1120:12,18	1147:11,13	<b>inaccurate</b>	1185:15,17
1121:12,14,1	<b>immediately</b>	1201:14	1188:5
5 1122:24	1098:22	1246:2	1197:2,6
1123:10,23	1249:18	<b>inadequate</b>	1203:13
1127:5	<b>immersed</b>	1166:13	1232:5,6
1133:10	1176:23	<b>inadmissible</b>	<b>including</b>
1134:18,21	1242:3	1034:3	1018:9,24
1136:5,20	<b>impact</b>	<b>inappropriate</b>	1141:16
1139:23,24,2	1028:20	1036:24	1142:13
5 1145:5,6	1034:15	<b>Inaudible</b>	1151:23
1150:15	1142:8	1074:4	1171:22
1161:19	1197:9	<b>in-camera</b>	1175:4
1164:15	<b>impacted</b>	1044:24	1199:13,23
1166:7	1034:16	1045:4,9,24	1253:2
1167:4	1094:24	1053:24	<b>income</b>
1173:12	<b>impacts</b>	1054:4,8,17,	1217:17
1179:12,17,2	1032:14	20	<b>incorporate</b>
3	<b>implement</b>	1069:14,17	1214:6
1180:3,4,15	1131:9	1120:23	<b>incorrect</b>
1182:5	1154:24	1127:13	1034:13
1184:14	1183:23	1193:2	1035:5
1185:11,19	<b>Implementatio</b>	1223:3,4	1173:22
1186:1,19	n 1004:13	1248:14,16	1175:2
1189:13	<b>implemented</b>	1249:12,18	<b>increase</b>
1191:11,19	1176:10	1254:6	1039:24
1193:1	<b>implied</b>	1260:5,7,13	1066:22
1196:2,9	1050:21	<b>incentive</b>	1116:7
1199:13	<b>important</b>	1063:16	1125:1,5,9,1
1208:25	1013:11	<b>inception</b>	0,12 1161:2
1210:17	1021:25	1167:23	<b>increased</b>
1212:3,9	1060:4,20	<b>incident</b>	1068:1
1213:5	1062:17,23,2	1063:20	<b>increases</b>
1214:13,21	5 1063:4	1107:17	1039:15,21
1215:2,12	1076:1		1068:9
1218:7,13			1125:14
1219:12,16			
1220:8,10,18			
1221:4,17			
1222:21,24			

<p>1151:11,15,1 8 1170:13 1178:23,24</p> <p><b>increasing</b> 1152:11</p> <p><b>incremental</b> 1062:2</p> <p><b>incur</b> 1043:17 1076:7,14 1127:6</p> <p><b>incurred</b> 1043:9 1083:3 1102:24</p> <p><b>indeed</b> 1192:21</p> <p><b>Independence</b> 1006:15 1176:17</p> <p><b>independent</b> 1112:20 1113:15 1235:8 1242:12</p> <p><b>INDEX</b> 1261:1</p> <p><b>indicate</b> 1029:10,13 1121:9</p> <p><b>indicated</b> 1025:15,23 1028:18 1029:4 1032:8 1042:6 1050:10 1052:24 1062:1 1064:22 1092:17 1096:8 1101:16 1149:21 1154:13 1156:24 1185:16</p> <p><b>indicates</b> 1090:23 1140:25 1162:5 1186:4 1197:1</p> <p><b>indicating</b> 1043:2 1135:24</p>	<p><b>indication</b> 1165:21 1197:5</p> <p><b>indirect</b> 1116:25</p> <p><b>indirects</b> 1140:22 1141:3,4 1197:6</p> <p><b>individual</b> 1030:2,4 1065:23 1100:12 1101:5 1117:9,24 1148:2,5 1159:16 1160:8 1185:3 1188:17 1190:24 1207:14</p> <p><b>individually</b> 1188:16</p> <p><b>individuals</b> 1032:22,24 1042:21 1051:1 1088:22 1148:22 1176:25 1178:10 1185:5,21 1207:14 1244:1,3,5,7 ,11 1245:24</p> <p><b>industry</b> 1079:14,15 1084:2 1097:8,21 1110:9,22 1111:9 1112:19 1115:6 1122:10 1134:16,20 1145:18,21,2 5 1148:3 1201:16 1234:22</p> <p><b>inexperienced</b> 1112:4</p> <p><b>infamous</b> 1133:3</p> <p><b>inform</b> 1050:21</p>	<p>1074:20 1092:4 1150:2,4 1161:7</p> <p><b>informal</b> 1108:4 1237:1 1250:8</p> <p><b>informally</b> 1236:11</p> <p><b>information</b> 1011:5 1026:19 1027:14,22 1028:2 1031:24 1032:3,13,17 ,20 1033:10,12,1 5,17 1034:1,2,18, 24 1035:13,16 1036:3,7 1037:16,17,2 2 1038:22 1040:10,18,1 9 1041:3,11,14 ,15,18,21 1042:1,5,6,8 1045:6 1059:10,17 1081:6 1093:19 1101:17 1103:23 1104:6 1125:20 1127:8 1150:13 1162:9 1164:7 1165:9,19,21 1172:14 1173:7 1177:5 1228:18 1240:10 1241:11,14</p> <p><b>informed</b> 1050:13,19</p> <p><b>infrastructure</b> e 1162:1 1261:11</p> <p><b>infrequent</b> 1031:10</p>	<p><b>inherent</b> 1160:22</p> <p><b>initial</b> 1019:22 1032:21 1133:7 1174:1 1189:5 1244:20</p> <p><b>initially</b> 1035:1 1087:5 1108:25 1113:25 1115:14 1159:14 1177:5 1190:2</p> <p><b>initiate</b> 1026:6</p> <p><b>initiatives</b> 1253:14</p> <p><b>innovative</b> 1159:4</p> <p><b>input</b> 1142:20 1154:7 1234:22 1240:21 1241:2 1250:23 1251:10,22</p> <p><b>inputs</b> 1247:10,12</p> <p><b>inquire</b> 1074:12 1258:8</p> <p><b>inquired</b> 1151:25</p> <p><b>inquiries</b> 1143:17</p> <p><b>inquiring</b> 1029:6 1258:2</p> <p><b>inquiry</b> 1106:2 1182:16</p> <p><b>in-service</b> 1082:12</p> <p><b>inside</b> 1214:12 1232:5</p> <p><b>install</b> 1232:2</p>
--	--	--	---

<b>installed</b> 1012:24 1200:23	1 1109:1,4,8,9 1113:16 1155:11 1217:23 1218:6 1219:4,15	1158:16 <b>invited</b> 1091:3	1193:2 <b>involving</b> 1023:10
<b>instance</b> 1050:25 1098:23 1100:12 1108:12 1156:5 1157:18 1172:20 1173:8,25 1188:24 1217:4 1241:5	<b>interested</b> 1100:15 1108:5,15 1154:16 1157:17 1160:9,15 1222:19 1259:16	<b>invoice</b> 1037:11,14 1041:19 1126:20	<b>irrelevant</b> 1034:3 1044:25 1081:3,5
<b>instead</b> 1092:18	<b>interesting</b> 1099:4 1189:14	<b>invoices</b> 1028:7 1036:16,18 1037:2,3,4,8,9,17 1038:6,9 1040:1 1041:24 1042:2 1126:14,16,19	<b>Island</b> 1252:17
<b>Institute</b> 1159:4	<b>interject</b> 1218:20	<b>involve</b> 1112:9	<b>isn't</b> 1028:19 1033:22 1036:12 1145:8 1202:11,24
<b>instruct</b> 1118:22 1249:13	<b>intermission</b> 1074:22	<b>involved</b> 1015:5 1021:11 1034:10 1059:5 1079:21 1085:3,9 1091:17 1092:7 1093:21 1094:15 1098:4 1103:15 1111:17,18,21 1112:11 1114:11,22 1126:20 1131:13 1132:4 1136:1,5 1145:4 1162:6 1164:21,23 1167:10 1202:15 1207:2,17 1215:19 1218:13 1233:15 1240:13 1247:6,7 1251:1	<b>issue</b> 1013:12 1030:14 1035:22 1036:10 1065:15 1067:14 1102:14 1118:7 1156:7 1157:4 1218:20 1219:1 1220:18,19,20 1221:9 1242:7
<b>instructed</b> 1138:23	<b>internal</b> 1138:1,8,11 1217:18 1235:12,14	<b>internally</b> 1109:21	<b>issued</b> 1013:1,6 1167:6
<b>instruction</b> 1048:25	<b>interpretation</b> 1207:3	<b>interrupt</b> 1074:1 1196:10	<b>issues</b> 1018:9,10,12,16 1044:25 1108:22 1118:1,21 1119:3 1150:9 1161:12 1176:9 1177:23 1209:13 1220:8 1221:9 1241:21 1242:11,14 1253:15
<b>instructions</b> 1109:25 1110:2,12 1136:7	<b>interview</b> 1111:23	<b>interviewed</b> 1247:7,9	<b>item</b> 1022:15 1030:12 1078:5 1102:17 1116:24 1118:12,17 1141:21 1156:7
<b>insurance</b> 1127:7	<b>intro</b> 1028:14	<b>introduce</b> 1164:12	
<b>integration</b> 1014:23 1208:7	<b>introduced</b> 1123:4	<b>introduction</b> 1162:11 1168:22	
<b>intelligent</b> 1084:1	<b>investment</b> 1076:19 1077:7,14 1131:8 1158:22 1162:2 1261:11	<b>investors</b>	
<b>intended</b> 1011:18 1122:2 1124:13		<b>involvement</b> 1084:5 1136:7 1170:7	
<b>intention</b> 1135:12		<b>involves</b>	
<b>interactions</b> 1048:24			
<b>interconnection</b> 1162:16			
<b>interest</b> 1024:6 1052:10 1099:19 1107:25 1108:10,13,2			

<p>1198:16  <b>items</b> 1064:13                  1098:24                  1114:14                  1118:3,5,13,                  21 1119:17                  1140:20                  1155:6                  1197:1                  1203:14                  1205:16                  1232:16    <b>iterations</b>                  1204:7  <b>it's</b> 1013:22                  1017:14                  1022:22                  1025:23                  1027:20                  1029:19,24                  1030:4,14                  1031:10                  1036:13                  1038:15                  1048:17                  1051:15,17                  1053:24                  1054:1,6                  1061:12,25                  1062:9,20                  1064:6,25                  1066:16                  1067:22                  1068:25                  1075:2,5,7                  1080:19                  1081:11,15,2                  0,22 1082:15                  1083:3                  1090:11                  1093:21                  1094:5                  1095:11                  1096:17,18                  1097:1,15,24                  1099:2,7,17                  1100:7                  1102:10                  1113:17                  1116:2                  1117:7,9                  1118:10                  1120:20,21                  1122:9                  1124:4                  1125:12                  1127:9                  1132:5</p>	<p>1135:20                  1138:3                  1139:22                  1141:3                  1144:20                  1145:16                  1147:14                  1153:16                  1165:17,23                  1169:10                  1171:21                  1180:10                  1185:21                  1188:24                  1192:24                  1200:18                  1203:17                  1205:13,15                  1209:5                  1210:24                  1212:8                  1214:2,23                  1216:14                  1218:8                  1222:9                  1227:15                  1228:16,20                  1231:3                  1232:21                  1236:18                  1238:1,2                  1240:20                  1244:9                  1246:8                  1247:11                  1250:23                  1251:3                  1258:12    <b>I've</b> 1014:20                  1015:5                  1016:12                  1018:8                  1030:9,13                  1031:10                  1048:20                  1074:22                  1082:6                  1094:15,23                  1099:2                  1106:22                  1140:9                  1147:12                  1152:22                  1175:10                  1185:16                  1191:23                  1196:19                  1203:3                  1204:15,21</p>	<p>1205:1                  1215:3                  1227:3                  1231:8    <hr/>                 J  <hr/> <b>JACOBS</b>                  1005:14    <b>JAIME</b> 1009:2    <b>JAMES</b>                  1006:9,18    <b>January</b>                  1004:7                  1010:3                  1032:4                  1033:8                  1097:15                  1121:8                  1123:21                  1168:20    <b>Jarrett</b>                  1004:19                  1090:6,8                  1104:15,17                  1150:7                  1260:5,6,7    <b>Jarrett's</b>                  1108:1    <b>Jay</b> 1065:22    <b>Jefferson</b>                  1004:8                  1005:8,20,23                  1006:2,12,20                  1007:11,23                  1008:6                  1009:7,11                  1102:8                  1168:3    <b>Jeffrey</b>                  1189:25    <b>Jenks</b> 1239:17    <b>Jennifer</b>                  1004:23                  1009:3                  1259:5    <b>Jerry</b> 1088:3    <b>JLG</b>                  1063:20,21                  1253:10,13,1                  5,23    <b>job</b> 1038:22                  1093:23                  1100:18                  1109:10</p>	<p>1202:17,20    <b>John</b>                  1008:8,12,13                  1086:24                  1087:10                  1154:12                  1169:1                  1185:3                  1188:24    <b>join</b> 1081:14    <b>joined</b> 1167:4                  1189:14    <b>joining</b>                  1154:16    <b>joint</b>                  1107:2,3                  1160:5                  1230:2    <b>jointly</b>                  1159:14                  1220:7    <b>Jones</b>                  1101:4,10                  1103:3                  1108:14                  1109:7                  1110:2                  1143:1,4,7,2                  1                  1190:6,19,22    <b>Jones's</b>                  1183:14    <b>Joseph</b>                  1007:24    <b>JR</b> 1005:18    <b>judge</b> 1004:19                  1010:1,11,14                  ,17,20                  1011:20,23                  1012:13,15,1                  7 1014:7                  1019:24                  1020:3                  1024:22                  1025:3                  1035:19                  1036:2,11,14                  1044:21                  1045:1,7,10,                  17,22 1048:1                  1053:23                  1054:2,4,10,                  14,18                  1059:1,2,7,8                  ,13,19,25</p>
--	--	--	--

<p>1069:15  1074:1,5,9,1  1,15,18  1077:1  1078:22,23  1079:6,7  1080:15,17,2  1 1081:18,24  1082:2  1090:5  1104:17  1120:4,12,24  1123:3,6  1127:11  1132:24  1139:2,9,13,  19,21  1143:12  1147:19  1153:20,21  1161:14,16,1  9 1163:15,17  1164:10,15,1  9 1168:12  1169:23  1171:3  1179:10,15,2  0,23  1180:11,14,1  8,25  1182:5,7,9,1  1,14,15,17  1183:2,6,8  1192:3,5  1193:3  1195:18  1196:9  1198:5  1205:5,7  1210:9,11,15  1211:7,10  1213:15,17  1215:12,14,2  1 1218:19  1219:7,8  1220:11,14,1  7,24,25  1221:6  1222:10,11,2  3 1223:2  1226:1  1246:11  1248:16  1249:1,5,9,1  1,15,17  1253:16,19  1254:1,4  1258:1,5,14,  20</p>	<p><b>judged</b>  1109:15  <b>July</b>  1061:11,12  1123:7  1136:10  1146:22,25  <b>junction</b>  1091:20  1092:13  <b>June</b> 1031:22  1037:15  1053:20  1060:3,15,18  1061:9  1062:18  1063:17  1064:6  1076:8,11,13  ,17 1098:20  1155:1  <b>justification</b>  1027:10</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p><b>Kansas</b>  1004:11  1005:16,24  1006:21  1007:2,3,4,7  ,8,12,16,19  1011:1  1016:7  1027:24  1048:22  1063:22,23  1064:2,5,21  1103:16  1120:21  1124:21  1126:23  1131:19  1132:10  1133:7,11  1134:21  1135:3,6,8,1  6 1137:9  1144:16  1150:13  1154:19,23  1155:3,7  1159:1,11,13  ,18,21,24  1160:1,17  1171:20,21  1176:15  1205:20</p>	<p>1206:2,8,9  1210:3,6  1211:2  1213:12,21  1214:20  1215:18  1216:4,17,20  1217:17  1219:2,21  1221:13,15  1229:23  1230:3,11  1233:22  1234:13  1235:20  1245:2,4,13  1248:5  1253:11,23  1258:11  1260:2  <b>KARL</b> 1007:5  <b>KCC</b> 1103:24  1150:9  1171:24  <b>KCP</b> 1023:10  <b>KCP&amp;L</b> 1004:15  1011:21,24  1013:8,12  1015:5  1017:9  1019:5  1022:8  1023:10,16  1025:16  1026:9,19,21  1027:8,9,15,  20  1031:18,21,2  4 1032:10  1033:25  1034:6,9,23  1035:22,24  1039:14,17,2  0 1040:10,18  1041:3,7,10  1042:19  1043:2,8,10,  22 1044:2,16  1048:4,8,11,  23  1049:13,17,2  5  1050:5,6,12  1051:7,10  1053:8,20  1059:3  1060:17  1061:7,13</p>	<p>1062:17,25  1063:16,22  1064:13,14,2  3 1067:1,19  1068:10  1069:10  1076:7,10,19  1077:12,25  1079:19  1080:1  1082:25  1084:18  1086:3  1087:1,7,12  1088:14,20  1089:1,9  1093:18,23  1095:2  1099:25  1100:11  1101:16  1104:5,6,13  1109:21  1112:8  1113:6  1115:2  1127:6  1131:9,25  1132:3  1137:6  1138:7,19  1144:16  1145:3  1149:3,18,23  1150:9  1153:6  1154:5,6,14,  23  1158:5,14,19  1159:3,8  1160:23  1163:11,18  1165:20  1166:3,9,13,  15 1169:5  1174:2  1175:1,9  1176:5,13  1191:8  1196:18  1197:16  1198:19  1210:18  1211:6,10  1216:15  1217:3,15  1218:3  1219:4,12,21  1221:14,16</p>
--	---	--	---

<p>1235:18,20 1239:7 1249:12</p> <p><b>KCP&amp;L's</b> 1022:4,17 1026:25 1027:17 1029:20 1043:18 1049:24 1061:18 1068:23,25 1075:23 1127:2 1134:20 1138:1,7,11, 12 1158:7 1165:14 1216:13 1234:7</p> <p><b>Ken</b> 1065:21</p> <p><b>Kenney</b> 1004:20 1012:1 1074:3,6 1078:4 1120:5,7,14 1121:2,5,7 1123:7,12,14 1124:3 1131:2 1132:21,25 1138:25 1139:2,9</p> <p><b>Kenny</b> 1146:12</p> <p><b>KEPCO</b> 1160:18</p> <p><b>KEVIN</b> 1004:20 1009:2</p> <p><b>key</b> 1049:12,15 1175:4 1204:16 1241:22 1247:9</p> <p><b>Kiewit</b> 1100:18,21,2 2 1101:8 1109:9 1137:2,5 1248:2 1249:22 1250:11,15,1 9</p> <p><b>kilowatts</b> 1052:19</p>	<p><b>KINDSCHUH</b> 1008:8</p> <p><b>kitchen</b> 1202:16</p> <p><b>KLIETHERMES</b> 1009:3</p> <p><b>knew</b> 1021:13 1060:9 1086:1,18 1091:6,12 1113:8 1125:5,6,7 1161:1 1201:11</p> <p><b>knowledge</b> 1011:15 1039:2 1048:18 1066:8 1067:8,23 1068:11 1094:20 1112:20 1115:6 1116:17 1144:17 1147:4 1158:23 1159:1 1165:24 1171:25 1175:19</p> <p><b>knowledgeable</b> 1083:14</p> <p><b>known</b> 1097:18 1114:17 1134:8 1253:3</p> <p><b>known-unknowns</b> 1201:9</p> <p><b>KS</b> 1007:15,19 1008:10</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>La</b> 1162:16 1169:1 1171:23 1230:21 1231:13 1232:12,14 1233:5</p> <p><b>labeled</b> 1200:8</p> <p><b>labor</b></p>	<p>1039:15,20,2 4 1067:6,8,9,1 3,16,20,23 1068:5 1140:20 1200:23</p> <p><b>Lack</b> 1050:22 1060:21 1099:22 1147:11,12 1165:22</p> <p><b>Lake</b> 1030:17</p> <p><b>Lane</b> 1008:2</p> <p><b>Language</b> 1064:18 1082:24 1132:7 1152:22,24 1155:24 1157:2</p> <p><b>Large</b> 1033:2 1083:18 1101:5 1112:8 1137:12 1153:18 1165:7 1178:5 1205:15 1209:7 1230:22 1245:10,15,2 3 1250:22</p> <p><b>Largely</b> 1115:6</p> <p><b>Larger</b> 1114:16 1230:18,24 1231:10</p> <p><b>Largest</b> 1200:2 1202:8</p> <p><b>LARRY</b> 1006:18</p> <p><b>Last</b> 1010:3 1021:18 1031:18 1077:23 1090:25 1094:16 1111:5 1140:15 1152:25 1158:9 1164:24</p>	<p>1167:18 1192:12 1231:8 1232:24 1237:24,25 1238:5,6</p> <p><b>late</b> 1076:11 1113:17 1144:20 1156:1 1187:20 1243:2</p> <p><b>late-2003</b> 1154:6</p> <p><b>later</b> 1012:25 1025:1 1097:21 1102:11 1109:6 1119:5 1126:8 1146:1 1156:17 1182:23 1234:21</p> <p><b>latest</b> 1165:2</p> <p><b>launching</b> 1189:5</p> <p><b>law</b> 1004:19 1005:2,6,10, 14,15,18,22 1006:1,5,9,1 0,14,18 1007:1,5,6,1 0,14,18,22 1008:1,5,8,1 2 1066:1,2,4,1 0 1113:8 1172:25 1234:17,24</p> <p><b>Lawgon</b> 1086:6,10,13 ,16,22</p> <p><b>lawyer</b> 1094:8 1192:16,17</p> <p><b>lay</b> 1076:25</p> <p><b>layman's</b> 1202:11,12</p> <p><b>LD</b> 1176:7</p> <p><b>LDS</b> 1176:4,9</p> <p><b>lead</b> 1190:15 1205:16 1246:24</p>
---	--	---	---

<p>1247:5  <b>leader</b>  1113:16  1144:19  <b>leadership</b>  1112:13  1118:15,18  1119:7,13  1138:13  1148:23  1170:10  1207:7  1216:7,8  1251:15  1252:6  <b>leads</b> 1190:16  <b>learn</b> 1019:17  1122:9  1202:22  <b>learned</b>  1097:5  1146:1  1241:25  <b>lease</b> 1149:22  <b>least</b> 1078:4  1133:23  1134:3  1145:6  1157:4  1167:13  1202:25  <b>leave</b> 1031:21  1075:3  <b>led</b> 1059:4  1093:2  1136:13  1175:5  <b>Lee's</b> 1006:3  <b>leeway</b>  1045:23  1078:24  <b>left-hand</b>  1140:17  <b>legal</b>  1009:2,3,4,5  1038:1,4,7,1  9 1094:9  1104:7  1120:21  1121:11  1163:12  1165:20,25  1211:20  1212:22</p>	<p>1219:25  1220:2  1221:18  1239:25  <b>legitimate</b>  1094:13  <b>Leibach</b>  1004:23  1259:5  <b>Lena</b> 1169:16  <b>length</b> 1140:6  <b>lengthy</b>  1147:14  <b>less</b> 1063:4  1105:20  1178:3,14  <b>let's</b>  1013:5,24  1023:4  1033:14  1065:9  1066:13  1068:6  1069:8  1074:15  1082:5  1089:12  1109:3,10  1133:1  1182:10  1244:14  <b>letter</b> 1028:6  1261:15  <b>level</b> 1050:10  1162:10  1165:3  1168:23  1190:23  1205:2  1211:14,15,2  5 1212:9,10  1213:7,11,21  1214:11  1248:8,9,10,  19,24  <b>levels</b>  1212:14  <b>Lewis</b> 1006:5  1009:9  <b>liable</b>  1043:22  <b>life</b> 1084:1  1124:19  <b>Light</b> 1004:11</p>	<p>1006:21  1007:2,4,8,1  2,16 1016:8  1027:25  1120:22  1124:21  1126:23  1131:20  1132:10  1133:8,12  1134:21,22  1137:9  1205:21  1206:2,8,9  1210:4,6  1211:2  1213:12,22  1214:20  1215:19  1216:4,17,21  1217:17  1219:2,21  1221:14,16  1229:23  1230:3,12  1233:22  1234:14  1235:21  1245:2,5,13  1248:5  1253:11,24  <b>Light's</b>  1135:17  1260:2  <b>likelihood</b>  1120:1  <b>likely</b>  1119:16  1125:12  1157:5  1188:8  1189:19  1190:25  <b>likewise</b>  1141:2  1252:16  <b>limit</b> 1029:25  1066:7  1156:21  <b>line</b> 1025:14  1035:20  1036:7  1044:22  1065:10,16  1066:16  1068:8,16,17  1075:14</p>	<p>1082:6  1116:24  1141:3,9  1185:22  1187:12,18  1191:20,24  1192:12,14,2  2,24 1196:6  1198:12,24  1203:14  1212:4  1235:11  1240:15,17,2  1,23  1241:3,7  1243:14,15,1  9  1244:7,10,12  ,18,22  1250:24  1251:2,5,6,9  ,18  <b>line-by-line</b>  1132:12  1155:23  <b>lines</b> 1191:25  1201:6  1212:6  1230:9  1251:8  <b>linking</b>  1013:9  <b>liquidated</b>  1176:4  <b>list</b> 1060:6  1083:1  1108:13  1138:12  1160:17  1169:14  <b>listed</b>  1060:19  1062:24  1169:13  1182:25  1188:24  <b>listen</b> 1241:2  1251:2  <b>listened</b>  1101:12  <b>listening</b>  1240:14  <b>lists</b> 1083:2  1188:24  1189:11</p>
---	--	--	---

<p><b>litigated</b> 1045:8</p> <p><b>little</b> 1012:8,14 1040:21,25 1095:15 1099:16 1100:7 1105:22 1106:7 1111:13 1120:18 1126:11 1154:1 1186:1 1199:4</p> <p><b>lives</b> 1176:17</p> <p><b>LLC</b> 1004:24 1005:13 1007:14 1008:13</p> <p><b>LLP</b> 1006:5 1007:6,10 1008:9</p> <p><b>load</b> 1061:8,22,23 1062:10</p> <p><b>Locals</b> 1007:20</p> <p><b>location</b> 1176:15</p> <p><b>locking</b> 1205:18</p> <p><b>log</b> 1176:24 1178:5</p> <p><b>long</b> 1013:21 1021:8 1081:2 1108:17 1138:14 1154:5 1155:12 1192:17 1205:16 1220:20 1233:11 1247:1</p> <p><b>longer</b> 1087:20 1088:9,20 1237:12,13,21</p> <p><b>long-term</b> 1086:25</p>	<p><b>long-time</b> 1080:1</p> <p><b>Lora</b> 1037:15 1088:11 1186:17</p> <p><b>lot</b> 1054:8 1077:16 1080:13,22 1091:21 1093:21 1094:15 1101:7 1102:19 1138:21,22 1153:25 1159:5 1165:8 1176:20 1202:22 1204:2 1215:9,10,25 1216:1 1258:4</p> <p><b>lots</b> 1112:25 1205:1</p> <p><b>Louis</b> 1008:14 1012:2 1074:2,21,23,25</p> <p><b>low</b> 1062:1 1142:7 1197:9 1226:7,9</p> <p><b>lower</b> 1062:2 1186:15</p> <p><b>LUMLEY</b> 1005:10</p> <p><b>lunch</b> 1139:4,5,14</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p><b>Madison</b> 1006:19 1009:6,10</p> <p><b>magnitude</b> 1158:18 1232:19</p> <p><b>Maiman</b> 1114:24,25 1115:6 1150:17,19,21,24 1151:4</p> <p><b>main</b> 1007:7 1010:25</p>	<p>1119:4</p> <p><b>mainly</b> 1153:18</p> <p><b>maintain</b> 1112:23</p> <p><b>maintained</b> 1064:14</p> <p><b>maintenance</b> 1232:1</p> <p><b>major</b> 1100:1 1118:7 1158:17 1190:16 1232:15 1242:7</p> <p><b>majority</b> 1028:10 1038:10 1061:21</p> <p><b>manage</b> 1096:14,23 1110:14 1179:6</p> <p><b>managed</b> 1015:6 1179:5 1230:5</p> <p><b>management</b> 1014:14,17,25 1015:11,14,20,23 1016:1,3 1051:9 1068:10 1096:14 1112:5,10,21 1156:11 1170:16 1171:7 1184:4 1185:4,12,13,15,20 1186:3,12,15 1187:4 1190:22,23 1207:3 1208:1,4,10,13,16,19,22,24 1209:2 1216:10 1246:6,18</p> <p><b>management's</b> 1064:15</p> <p><b>manager</b></p>	<p>1015:4 1018:7 1190:6,8,15,17 1244:20 1247:22</p> <p><b>managers</b> 1190:24 1245:15</p> <p><b>managing</b> 1179:5 1209:7</p> <p><b>MANGELSDORF</b> 1008:5</p> <p><b>manner</b> 1029:19 1049:11</p> <p><b>Mantle</b> 1169:16</p> <p><b>manual</b> 1081:11,12,13</p> <p><b>March</b> 1023:7 1036:21 1037:2 1092:1 1157:12 1188:22</p> <p><b>Maria</b> 1239:17</p> <p><b>MARK</b> 1005:22 1006:1</p> <p><b>marked</b> 1011:6 1019:21 1020:7 1054:6,16 1059:10 1161:15,21,25 1168:11,13 1181:16 1210:10,12,18 1261:1</p> <p><b>market</b> 1060:8,21,23 1061:1,2 1062:6 1067:6,9 1076:20 1077:13 1099:22 1108:16 1125:13 1152:11 1201:24</p> <p><b>markings</b> 1180:5</p>
--	--	--	--



<b>Marshall</b> 1185:3	1122:17 1123:6 1126:24 1127:6 1134:18 1142:16 1154:17 1155:1,3 1157:21 1162:12 1167:19 1169:9 1173:16 1175:5 1179:11 1182:17 1184:9 1185:16 1192:3,5 1210:9,11,14 ,15 1254:1	1177:10	1076:1,10,13 ,17 1098:20 1106:21
<b>master</b> 1094:20 1095:1,5		<b>MCNEILL</b> 1008:1	<b>meeting</b> 1023:10,16,1 8 1025:18 1032:23 1033:1,4,6 1040:3 1042:11,15,1 7,23 1043:14 1049:6 1050:4,25 1051:4,7 1052:1,2,11 1054:1 1060:3 1092:18 1093:12 1097:20 1098:16 1102:11 1122:20,25 1123:5,8,10, 11,15,16,21 1124:2,5 1136:10,12,1 3,16 1146:19,25 1147:3,7,10 1150:10 1161:9 1168:7,20 1169:3,5,10, 11,12 1241:19
<b>material</b> 1026:17 1193:2 1201:20 1228:1		<b>mean</b> 1013:20 1017:13,16 1045:8 1049:14 1078:23 1081:19,20 1086:14 1091:2 1096:14 1101:6 1106:15 1107:5 1116:19 1118:2 1145:16,17,2 5 1160:20 1173:16 1187:2 1212:3,4,9 1220:23 1227:6 1231:23 1235:15,17,2 0 1245:16 1246:12	
<b>materialized</b> 1172:17		<b>meaning</b> 1122:10 1244:10	
<b>materials</b> 1140:21		<b>means</b> 1077:17 1080:14 1122:9 1160:21	
<b>math</b> 1198:22 1199:2		<b>meant</b> 1024:21 1096:22,23 1109:17,18 1134:25 1145:14 1146:5 1148:8 1151:18 1215:7 1231:1,2,3	<b>meetings</b> 1024:7 1049:5 1050:23,24 1051:5 1092:12 1093:4,5 1102:18 1122:21 1148:20 1159:17 1161:10 1168:3 1170:12 1227:11,16 1228:19,20,2 4 1229:15,16 1242:17,18 1252:1
<b>matrix</b> 1183:17	<b>maybe</b> 1020:5 1061:11 1064:7 1065:14 1086:5 1123:9 1131:24 1137:11 1142:3 1178:5 1220:18 1236:18	<b>measured</b> 1122:3	<b>megawatt</b> 1077:9
<b>matter</b> 1004:11,15 1097:11,22 1124:16 1259:8,9,14	<b>MBA</b> 1014:18	<b>mechanical</b> 1100:9,13 1190:16	<b>megawatts</b>
<b>matters</b> 1016:5 1018:21 1209:15,18,2 2,25	<b>Mc</b> 1012:23 1040:4,14 1098:23 1150:8,10	<b>meet</b> 1033:13 1060:15,16 1061:5,21 1062:13,18 1063:1,16 1075:23	
<b>maturation</b> 1200:3,8,15, 22 1202:9,12,21	<b>McCarty</b> 1007:11		
<b>matured</b> 1200:25	<b>McCLOWERY</b> 1009:5		
<b>maturity</b> 1199:23	<b>McCoy</b> 1079:25 1080:1,5		
<b>may</b> 1012:2,3,7 1027:23 1030:2 1034:21 1042:12 1044:22 1063:24 1067:3 1081:1,2,5,8 1093:12 1101:16 1103:10 1105:17 1108:8 1111:24 1112:7 1113:15 1117:17	<b>McCoy's</b> 1080:2,3,16		
	<b>McDonnell</b> 1052:4,6 1075:20 1137:2 1142:19 1177:2,14 1191:4 1233:25 1234:3,12,19		
	<b>McDonnell's</b>		

<p>1077:12  <b>MEGHAN</b> 1009:5  <b>Melissa</b>  1218:16  1219:17  1220:5  <b>member</b> 1050:4  1111:19  1189:2  1213:5  1236:5  1237:4,6,9,1  3,18,21  1238:4,8  1239:11,14,2  2  <b>members</b>  1026:4  1033:3  1204:14  1207:5  1236:13  1238:24  <b>membership</b>  1188:13  1236:15  1238:12  <b>memo</b> 1028:13  <b>memorialized</b>  1086:19  <b>memorize</b>  1077:23  <b>memory</b>  1033:20  1064:8  1147:6  1238:18  <b>mention</b>  1022:4  1082:6  1230:11  <b>mentioned</b>  1016:12  1024:12  1110:20  1122:5  1185:14  1228:19  1232:8,18  1233:5  1242:17  1243:3  <b>merely</b>  1059:11</p>	<p><b>merge</b>  1221:17,25  <b>merged</b>  1214:24  <b>merger</b>  1214:19,21  1215:1  1221:15,18  1222:3,4,22,  24  <b>mergers</b>  1215:11,25  1216:1  <b>merging</b>  1215:6  <b>merit</b> 1175:7  <b>met</b> 1040:5  1119:25  1120:1  1165:1  <b>metallurgical</b>  1242:11  <b>Metcalf</b>  1008:9  <b>method</b>  1098:14  <b>methods</b>  1099:10,13  <b>metrics</b>  1156:19  <b>Meyer</b>  1026:2,3,4  1065:22  1097:6  1134:18,19  1148:1,4,11  1199:19  1234:20,25  1235:1,5,9  <b>Meyer's</b>  1135:18,21  1200:4,18  1234:25  <b>MICHAEL</b>  1006:5  1007:18  <b>microphone</b>  1258:6  <b>middle</b>  1095:18  1238:7  <b>mid-summer</b>  1076:11</p>	<p>1088:2  <b>MIEC</b> 1008:11  <b>Mike</b> 1169:18  <b>mileage</b>  1040:4,6,13  1082:11,12  1167:7  1176:13,18,2  3  1177:11,20,2  3  <b>miles</b> 1177:21  <b>milestone</b>  1053:20  1162:19  1163:4  <b>milestones</b>  1075:23  1076:2,3  <b>million</b>  1028:25  1067:4  1114:8,9,10  1115:14,15,2  2 1116:2,4,7  1117:3  1118:2  1141:13  1142:3,7,8,1  0 1149:15,17  1151:17  1163:14  1170:21  1171:14  1196:8  1197:13  1198:14,23,2  4,25  1203:3,9  1217:16  1232:4,11,13  ,21,25  1233:2  <b>millions</b>  1197:10  <b>Mills</b> 1009:9  1012:13,14,1  7,19  1014:6,7  1054:4,7,11  1059:2,13,24  1080:21  1081:24  1143:13,15  1147:18,19  1171:2</p>	<p>1198:6,7,9  1199:12  1205:3,5  1249:11  1260:4,8,12  <b>Mills's</b>  1102:22  <b>mind</b>  1025:11,21  1160:22  1175:17  1196:17  1203:11,22  1219:25  1222:2  1231:9  <b>mind-set</b>  1096:20  <b>mini</b> 1024:10  <b>minimum</b>  1029:8  <b>minute</b>  1207:24  <b>minutes</b>  1120:8  1152:25  <b>missed</b>  1122:17  <b>Missouri</b>  1004:2,8,15  1005:17,21  1006:7  1007:24  1008:7,15  1009:8  1011:1  1017:20  1023:11  1048:22  1065:4,5  1095:12  1111:1,10  1144:16  1154:23  1155:3,6,7  1158:9  1159:1,18,19  ,23  1160:4,6,17  1161:6  1172:25  1176:17  1216:5,13,16  1218:3  1219:5,13,22  1221:14,16</p>
--	--	---	---

1259:2 <b>misspoke</b> 1169:9 <b>misspoken</b> 1215:3 <b>mistake</b> 1013:24 1014:2 <b>mistaken</b> 1179:12 <b>mitigate</b> 1102:14 <b>mitigated</b> 1172:18 <b>Mitsubishi</b> 1163:1 <b>MITTEN</b> 1006:9 <b>mixed</b> 1166:8 <b>MJMEUC</b> 1005:4 <b>MO</b> 1005:3,8,12, 16,20,23 1006:2,6,12, 20 1007:3,7,11, 23 1008:6,14 1009:7,11 <b>moment</b> 1010:5 1045:9 1054:3,19 1069:15 1168:16 1193:3 1223:3 1230:9 1248:17 1254:4,5 <b>Monday</b> 1258:21 <b>money</b> 1153:6,9 1172:20 <b>Monroe</b> 1005:23 1006:2 <b>month</b> 1023:6 1044:9,14 1204:13 1241:18 1242:3 <b>monthly</b> 1103:4,5,9 1167:13	1177:16 1241:20 1242:19 1251:25 <b>months</b> 1035:14 1036:21 1037:5 1040:2 1096:17 1146:6 1155:14,16 1233:13 <b>Montrose</b> 1231:13 1232:19,23,2 4 <b>Morano</b> 1038:25 1039:1,3,4,1 2 <b>moratorium</b> 1156:20 <b>morning</b> 1010:1 1012:6 1014:11,12 1075:4 1090:9,10,11 1120:8,9,10 1161:12 1258:22 <b>morphed</b> 1134:3 <b>Morris</b> 1066:5 <b>Morrison</b> 1007:10 <b>motion</b> 1059:22 <b>mouth</b> 1215:3 <b>move</b> 1010:6 1011:20 1014:1 1036:8 1053:4 1109:12 1111:12 1154:14,24 1163:15 1169:21 <b>moved</b> 1241:20,24 <b>MRA</b> 1182:13 <b>multi-million</b>	1230:23 <b>multiple</b> 1100:17 1200:10 1204:7 1231:7 1247:10,12 <b>multi-prime</b> 1099:10 1153:12 <b>Murphy</b> 1087:9,10 1189:11,12,1 4 1190:18,22 1243:17 1244:21 1245:1,7,9 1246:3,16,21 ,25 1247:4,8,15 <b>Murphy's</b> 1244:21 1245:12 <b>muted</b> 1074:22 <b>Mutual</b> 1143:5 <b>myself</b> 1016:17 1077:25 1090:24 1148:25 1168:22 1186:5 1202:18 1216:23 1247:8 <hr/> <b>N</b> <hr/> <b>narrative</b> 1102:1 <b>narrowly</b> 1081:7 <b>NATHAN</b> 1009:1 <b>nation</b> 1159:25 <b>natural</b> 1008:7 1139:4 <b>nature</b> 1014:21 1167:7 <b>nearly</b> 1145:4 <b>necessarily</b> 1063:10	1124:23 1227:24 1240:11 <b>necessary</b> 1029:2 1076:5 1112:3 1240:9 <b>necessity</b> 1059:14 1114:11 <b>negotiated</b> 1051:18 <b>negotiating</b> 1077:25 1095:23 1109:13 1159:16 <b>negotiation</b> 1131:14 1156:23 1252:7 <b>negotiations</b> 1059:4,9 1077:4 1078:2 <b>neighborhood</b> 1232:13 <b>Neilsen</b> 1206:3,5 1207:9 <b>Neilsen's</b> 1206:22 1207:4 <b>neither</b> 1112:22 1259:12 <b>net</b> 1052:17 <b>Newman</b> 1005:22 1006:1 <b>Newport</b> 1252:17 <b>News</b> 1245:16 <b>nexus</b> 1174:11 <b>Nielsen</b> 1068:24 1069:1 <b>night</b> 1010:3 1077:23 1258:15 <b>nights</b>
---	--	--	--

<p>1155:25 1157:6 1229:8 <b>nobody</b> 1014:1 <b>nominal</b> 1029:21,23,24 1030:1,2,3,6,7,10,11,15,25 1031:8,13,14 <b>non</b> 1062:4 1117:12 <b>non-boiler</b> 1140:20,21 <b>non-CEP</b> 1232:5 <b>non-competitive</b> 1117:13 <b>none</b> 1011:23 1022:14,16 1094:23 1103:24 1163:18 1169:24 1179:21 1182:15 1184:9 1196:19 <b>non-legal</b> 1038:7 <b>Non-Proprietary</b> 1261:4,8 <b>non-responsive</b> 1220:13 <b>non-trivial</b> 1141:21 <b>nor</b> 1034:16 1259:13,16 <b>normal</b> 1025:23 1099:8 1201:12 1229:1,2,3 <b>normally</b> 1093:24 <b>North</b> 1005:3 <b>Nos</b> 1183:4 <b>NOTE</b> 1045:24 1054:20</p>	<p>1069:17 1127:13 1223:4 1254:6 <b>notes</b> 1020:5 <b>nothing</b> 1022:4 1028:18 1036:24 1044:24 1045:11,14 1059:17 1098:1 1104:14 1153:19 1165:23,24 1173:17,25 1180:22 1258:21 <b>notice</b> 1080:16 1081:1,12,19,22,25 1082:3 1163:7 1188:20 <b>notified</b> 1035:12 <b>November</b> 1051:17 1053:9 1126:9 <b>NP</b> 1011:6,21,22,24 1182:11 1183:4 <b>nuclear</b> 1229:22 <b>numeral</b> 1133:2 <hr/><p style="text-align:center">o</p><hr/><b>oath</b> 1010:5 1075:10 1180:21 <b>object</b> 1032:2 1035:20 1044:22 1045:10 1080:21 1081:4 1171:2 1173:12 1215:12 1218:21</p>	<p>1246:8 <b>objected</b> 1032:10 1034:9 1041:10 <b>objection</b> 1010:10,12 1032:21 1033:16,22,23,25 1034:12 1054:19 1081:9,15 1180:13,14 1183:1 1219:6 1221:1 1249:16 1258:16 <b>objections</b> 1011:23 1163:18 1169:24 1179:21 1182:12,13 1183:2 1211:8 1219:8 1249:15 <b>objective</b> 1165:14,15 <b>objects</b> 1033:25 <b>obligates</b> 1165:25 <b>obscures</b> 1173:6 <b>observation</b> 1067:13 <b>obtain</b> 1034:23 1149:18 1218:2 1248:4 <b>obtained</b> 1159:8 1174:7 <b>obtaining</b> 1217:25 <b>obviously</b> 1043:18 1048:18 1062:15 1078:1 1080:22 1159:7</p>	<p>1175:17 1176:16 1206:11 1220:24 1240:5 <b>occasionally</b> 1012:2 <b>occur</b> 1061:9 <b>occurred</b> 1106:23 1109:6 1123:21 1132:13 1166:24 1204:4 1242:20 <b>occurring</b> 1059:9 1175:18 1200:13 <b>offer</b> 1010:8 1025:12 1053:2 1092:22 1180:12 1182:8,10 1211:5 <b>offered</b> 1010:12 1019:15,16 1020:4 1029:11,14,16 1030:9 1082:3 1163:17 1169:23 1179:17,21,24 1182:12 1183:6 1211:7 <b>office</b> 1007:14 1009:9,12 1012:2 <b>officer</b> 1015:5 1111:20 1112:18 1184:5 1185:23 1210:6,7 1211:15,17,20 1212:12,18 1217:2 1259:7 <b>officers</b></p>
---	---	---	---

<p>1113:6 1186:17 <b>official</b> 1081:1,12 <b>officially</b> 1238:10 1240:6 <b>off-system</b> 1060:22,23 <b>off-systems</b> 1060:21 <b>off-the-record</b> 1139:12 <b>oh</b> 1020:1 1023:6 1060:20 1065:16 1120:11 1134:24 1135:23 1136:1 1138:16 <b>okay</b> 1013:5,10,23 1014:5 1016:14 1018:12 1019:10,20 1020:10,15 1021:10 1022:8 1023:4 1025:10 1026:16 1029:10 1030:1 1036:2 1042:1 1053:11,16 1054:10 1062:22 1066:13,14 1067:15 1068:7,18 1069:9 1075:15 1078:15 1079:7 1082:25 1083:8,23 1085:3,9,14 1089:18 1093:8,14 1098:10 1103:10 1104:21</p>	<p>1105:6,10,13 ,16,24 1107:22 1109:12 1115:8,13,23 1116:6 1117:15 1121:19,23 1124:8,25 1125:10 1126:3,22 1131:10,17 1132:1 1133:10,14 1135:16 1136:1,14,19 1137:4 1138:3 1140:16 1141:15 1142:6 1143:10,24 1144:4,8,13 1145:17 1146:3 1147:9 1148:10 1149:6 1151:8 1153:4 1157:9 1164:19 1165:11 1173:4 1175:13 1184:7,10,13 1185:4 1186:8,23 1187:14,19 1188:5,9,20 1189:7,11,16 ,25 1190:4,11,21 1191:3,11 1192:6,12 1196:23 1198:2 1199:16 1200:14 1201:15,21 1202:5 1203:2 1248:13,16 1249:17 1253:19 <b>O'Keefe</b> 1005:11 <b>okizaki</b> 1065:21</p>	<p>1083:23,25 <b>old</b> 1035:25 <b>Olympics</b> 1030:17 <b>omissions</b> 1013:20,21 <b>ones</b> 1094:23 1101:6,8 1119:4 1153:18 1253:2 <b>ongoing</b> 1093:4 1127:9 1159:13 1160:24 <b>online</b> 1060:24,25 1077:9 <b>onsite</b> 1088:5 1092:8,11,14 1138:19 1167:12,23 1246:18 <b>Ontario</b> 1245:21 1246:4,16,21 <b>OPC</b> 1154:15 <b>open</b> 1154:13 <b>opened</b> 1154:17,20 <b>operating</b> 1158:14 1184:5 1210:6,7 1211:15 1212:18,23 1214:10,12 1217:12 <b>operation</b> 1216:4 <b>operational</b> 1183:18 1184:19 <b>operationally</b> 1189:7 1215:10,24 <b>operations</b> 1004:16 1185:2 1212:19 1216:5,13,14 ,16</p>	<p>1217:3,13 1218:4 1219:5,13,22 1221:15,17 1222:25 <b>opinion</b> 1037:12 1069:3 1094:9 1135:21 1171:6,10 <b>opportunities</b> 1102:4 <b>opportunity</b> 1062:3 1076:10 1080:23,24 1091:23 1204:9 <b>opposed</b> 1144:15 1227:18 1235:18 <b>option</b> 1051:18 1077:10 1099:25 <b>options</b> 1051:18 1052:4,8 <b>order</b> 1012:21 1013:1,12 1053:5,19 1076:5 1081:15 1098:17,20 1106:2 1107:18 1110:22 1117:4 1135:2,6 1154:14 1155:1 1157:24 1158:1 1166:3 1221:10 1232:19 1249:17 <b>ordered</b> 1095:6 1119:12 1157:19 <b>orders</b> 1089:13,15,1 8 1105:23</p>
--	--	--	---

<p>1106:8 1149:7 1178:4,5 1201:22 <b>org</b> 1212:5 <b>organization</b> 1188:7 1189:5 1211:2 1212:1,21,22 ,23 1213:4,22 1235:3 1240:15,17,2 2,23 1241:3,7 1242:1 1243:14,15,2 0 1244:8,10,12 ,19,21,22 1245:22 1247:11,15 1250:25 1251:6 <b>organizational</b> 1210:24 1212:7,8 1261:18 <b>organizations</b> 1212:20 1216:10 1221:25 1231:14 1250:23 1251:18 <b>organized</b> 1192:15 <b>original</b> 1116:14 1135:5 1155:18 1156:17 1169:10,12 1199:21 1201:17 1202:17 1204:4 1235:5 1236:18 <b>Os</b> 1022:24 <b>others</b> 1100:3 1108:14 1164:17 1199:24 1232:18</p>	<p>1236:23 <b>otherwise</b> 1259:16 <b>Ott</b> 1009:2 1010:8 1012:11,12 1014:8,10 1019:20,24 1020:1,9 1024:25 1025:4,5 1036:2,3,12, 14,15 1045:1,2,17, 19 1048:3 1059:25 1060:2 1074:11,14,1 9 1075:10,12 1076:25 1077:2 1078:22 1079:3,6,8,9 1080:15,19 1081:7,10 1082:4 1090:4,5,13 1093:16 1095:15 1098:11 1099:9 1126:14 1147:20,22 1153:19,20 1172:2 1177:4 1179:17 1180:12 1260:4,5,8 <b>ought</b> 1044:23 1059:13 1258:10 <b>outage</b> 1233:10,11 <b>outages</b> 1232:2 <b>outcome</b> 1259:17 <b>outcomes</b> 1250:1 <b>outline</b> 1168:19 1261:13 <b>output</b> 1242:4 <b>outside</b></p>	<p>1027:19 1059:10 1061:11 1137:21 1138:4 <b>overall</b> 1018:24 1174:10 <b>overhauled</b> 1246:17 <b>overhauling</b> 1246:6 <b>Overland</b> 1008:10 1177:20 <b>overrule</b> 1036:14 1045:9,22 1081:18 1215:21 1246:11 <b>Overruled</b> 1222:11 <b>overrun</b> 1202:19 <b>overruns</b> 1022:18 1027:9 1066:15,25 1083:2 1096:16 1109:18 1122:3 1134:12,17 1152:23 1175:2 1203:22,24 <b>oversaw</b> 1217:6 <b>oversight</b> 1111:19 1112:17,20 1113:5,12 1116:17 1142:21 1185:10,17 1186:24 1187:2,17 1227:16 1236:5,9,14 1237:7,10,13 ,19,22 1238:4,9,13, 24 1239:23 1240:9,11,12</p>	<p>,16,19,24 1241:6,10,15 ,18 1242:15 1243:13 1247:18 1249:23 1250:1,10,14 ,20,21 1251:8,17,21 <b>owners</b> 1160:5 1191:4,6 1234:3 <b>owner's</b> 1052:6 1142:7 1197:8 <b>ownership</b> 1217:23 1218:6 1219:4,15 <b>owners's</b> 1141:3 <hr/><b>P</b> <b>P.C</b> 1006:19 <b>P.O</b> 1006:11 1007:2,23 1008:5 1009:6,10 <b>PA</b> 1007:18 <b>packages</b> 1096:7 1100:10,12,1 4,23 1152:16 <b>Packer</b> 1153:6 <b>page</b> 1020:18 1037:25 1038:15 1053:13 1054:16 1065:9,16 1066:13,16 1068:6,14 1069:8 1075:13,14 1080:3,7 1081:10 1082:5 1089:12 1133:1 1163:7 1185:19 1187:5 1191:3,17,25 1192:13,22,2</p>
--	--	---	---

<p>5 1230:9 1235:11 <b>page-by-page</b> 1132:6,11 <b>pages</b> 1045:25 1054:21 1069:18 1081:2 1083:1 1127:14 1180:6 1223:5 1254:7 <b>paid</b> 1044:5 1067:22 1126:19 1171:10 1252:3,8,13, 18,19,20 <b>painfully</b> 1199:22 <b>paper</b> 1155:18 1196:22 <b>paragraph</b> 1133:1,2,4,6 ,15,17,23 1134:3 1157:1 <b>paragraphs</b> 1134:4 <b>parallel</b> 1159:13 <b>pardon</b> 1166:7 1189:13 <b>Park</b> 1008:10 1177:20 <b>participate</b> 1019:6,12,17 1074:2 <b>participated</b> 1020:24 1157:18 <b>participating</b> 1012:1 <b>particular</b> 1012:23 1020:22 1028:17,21 1030:2,4,11 1031:6 1034:9 1051:1 1052:11 1053:12</p>	<p>1064:24 1065:1 1078:3 1089:3 1093:10 1094:16 1108:12 1119:9 1126:5 1133:6 1136:12 1155:10 1162:11 1170:8 1175:6 1207:7 1234:20 1253:3 <b>particularly</b> 1029:5 1064:7 1160:9 1199:19 1200:10 1205:16 <b>particulars</b> 1168:22 <b>parties</b> 1074:20 1080:24 1097:14 1102:7,10 1131:20 1132:4 1133:20 1137:23 1145:9,13 1146:21,24 1147:2 1150:12 1155:7 1156:5,15 1157:17,19,2 1 1159:6,10,20 ,24 1160:24 1161:5,8,9 1163:25 1164:2,8 1165:1 1169:4 1259:13,16 <b>partner</b> 1160:16 1197:23,25 <b>partners</b> 1060:17</p>	<p>1160:10,11 1197:24 <b>party</b> 1158:2 1160:15 <b>passed</b> 1036:25 1059:12 <b>past</b> 1019:4 1045:14,16 1061:19 1077:15 1084:13 1094:15 1106:5,6,7 1107:12 1112:6,8,24 1145:1 1233:9 <b>patently</b> 1176:16 <b>path</b> 1076:4 1100:16 1159:15 1162:23 1165:8 <b>patience</b> 1179:9 <b>patient</b> 1012:9 <b>patiently</b> 1077:22 <b>pay</b> 1013:15 1043:10 1063:16 1138:3 1153:6 1176:18 1177:11 1252:7 <b>payment</b> 1044:7 1045:3 1176:11 <b>payments</b> 1045:15 <b>PC</b> 1005:22 1006:1 1007:22 <b>peak</b> 1061:8,9,19, 22,24 1062:14,18 1063:3,7,10 <b>peaking</b></p>	<p>1062:10 <b>Pebble</b> 1252:3,5,8,1 4,22 <b>Pegasus</b> 1066:6 <b>pending</b> 1048:14 <b>pension</b> 1044:16,18,1 9 1045:11,12,1 5 1156:19 <b>people</b> 1074:23 1082:15 1102:8 1111:24 1138:21 1148:25 1156:25 1169:5 1187:1,4,13 1188:3,16 1190:17,25 1247:6,8,9,1 4 1251:11,12 <b>PEP</b> 1019:24 1020:2 <b>per</b> 1044:5 1177:12 <b>perceived</b> 1063:9 1108:16 <b>percent</b> 1025:24 1066:23 1067:5 1091:9,10 1097:9,13 1105:2,6,15, 20 1110:12 1125:2,6,13, 22,24 1126:5,7 1134:20 1135:18 1151:9 1162:22 1170:22,23 1171:1 1202:2 1203:7 <b>percentage</b> 1066:21,24,2</p>
---	--	---	---

<p>5</p> <p><b>perfect</b> 1013:19</p> <p><b>perfectly</b> 1196:3</p> <p><b>perform</b> 1039:12 1103:20</p> <p><b>performance</b> 1045:14</p> <p><b>performed</b> 1017:2,4 1037:24 1068:4 1109:7</p> <p><b>perhaps</b> 1021:19 1088:17 1093:5 1119:2 1120:12 1147:10</p> <p><b>period</b> 1036:19 1061:7,15 1076:12 1098:19 1109:2 1132:13 1146:8 1155:21,24 1156:22 1167:16 1201:25 1213:13,25 1216:20 1244:4</p> <p><b>permits</b> 1163:3</p> <p><b>PERRY</b> 1006:14</p> <p><b>person</b> 1103:20 1106:12 1202:15 1219:18</p> <p><b>personal</b> 1033:9 1165:15 1197:19</p> <p><b>personally</b> 1125:4,8 1150:4 1202:18</p> <p><b>personnel</b></p>	<p>1049:7 1113:14 1169:20</p> <p><b>person's</b> 1081:16</p> <p><b>perspective</b> 1200:19</p> <p><b>persuasive</b> 1081:21</p> <p><b>pertaining</b> 1034:1 1038:22</p> <p><b>pertains</b> 1045:7</p> <p><b>Peterson</b> 1005:7</p> <p><b>phone</b> 1020:12,24 1021:4,25 1023:19,22,24 1024:1,4,13,16 1025:2,7,8 1090:24 1091:1,2 1092:18,20 1108:4,7,13,14</p> <p><b>phonetic</b> 1190:7 1239:1</p> <p><b>phrase</b> 1134:24 1135:2,13</p> <p><b>physically</b> 1229:13</p> <p><b>pick</b> 1155:7</p> <p><b>picking</b> 1108:4,6</p> <p><b>pie</b> 1200:3</p> <p><b>piece</b> 1109:8 1155:18 1196:22 1201:19</p> <p><b>pin</b> 1222:12</p> <p><b>placed</b> 1022:24 1201:22</p> <p><b>Plains</b> 1210:8 1214:16 1221:13</p>	<p><b>plan</b> 1004:14 1020:3 1048:19 1060:15 1076:20,24 1077:3,6,8,10 1078:1,6 1079:17 1082:22 1085:4,10 1095:23 1109:13,14,15 1111:5 1131:5,7,8,9 1132:19 1136:2 1153:25 1154:2,4,7,11,25 1158:6,11,24 1159:2,20,21 1160:6 1167:22 1168:19 1169:7 1174:8 1188:23 1261:14</p> <p><b>planned</b> 1158:19 1163:4 1187:22</p> <p><b>plans</b> 1221:15,22,23</p> <p><b>plant</b> 1051:20 1052:16,18,20 1060:25 1063:8 1065:7 1083:18 1100:8,16,17,20 1103:12 1108:22 1109:4,8 1136:25 1137:10 1144:15 1152:7 1158:18 1161:13 1162:14 1167:11,14 1173:10 1174:1,3,4 1203:4 1227:17 1230:21</p>	<p>1231:18 1232:7</p> <p><b>plants</b> 1158:10 1201:20,22 1202:15 1230:25 1231:10,24,25</p> <p><b>play</b> 1250:20 1253:6</p> <p><b>played</b> 1187:4</p> <p><b>please</b> 1010:18 1053:18 1054:19 1068:16 1069:16 1107:9 1132:22 1180:23 1181:6 1193:4 1199:11 1204:19 1236:13 1248:17 1253:20</p> <p><b>plowed</b> 1035:25</p> <p><b>plowing</b> 1035:25</p> <p><b>plus</b> 1044:10 1110:22 1170:14 1185:5,21 1229:1</p> <p><b>point</b> 1022:24 1034:7 1035:9,20 1036:6 1039:18 1043:6,10 1045:24 1054:20 1067:15 1069:17 1091:6,22 1096:17 1098:5 1099:21 1108:7 1110:6 1114:10,22 1117:8 1125:3</p>
---	--	--	--



1127:13 1151:6,10 1155:15 1164:25 1175:8 1184:9 1202:12,24 1203:14 1206:20 1212:1 1223:4 1240:2,5 1254:6 <b>pointed</b> 1032:13 1148:3,5 1153:16 1203:2 <b>pointing</b> 1024:20 <b>points</b> 1053:15,17 <b>point-to-point</b> 1074:21,23 <b>policy</b> 1018:23 1029:20,25 1250:8 <b>policy-level</b> 1187:17 <b>portfolio</b> 1101:24 1229:23 <b>portion</b> 1064:4 1081:7 1136:23 1182:25 1217:22 1218:4,23,25 1219:13 1249:13 <b>posed</b> 1253:18 <b>position</b> 1037:18 1068:25 1112:10 1127:2 1166:16 1197:18,20 1214:10 1216:9 <b>positions</b> 1190:14	1197:19 1207:1 1214:9 1216:8 1244:1 <b>possibility</b> 1101:2 <b>possible</b> 1022:9 1060:16 1061:5 1082:25 1143:2 1147:2 1158:15 <b>possibly</b> 1042:24 1045:20 1204:18 <b>potential</b> 1102:14 1116:6 1127:6 1170:13 <b>potentially</b> 1127:5 1158:21 <b>power</b> 1004:11 1006:21 1007:2,4,8,1 2,16 1016:8 1027:25 1060:25 1061:1 1062:1,2,4,5 1083:18 1120:22 1124:21 1126:23 1131:20 1132:10 1133:7,11 1134:21,22 1135:17 1137:9 1153:14 1158:9 1202:15 1205:21 1206:2,8,9 1210:4,6 1211:2 1213:12,22 1214:20 1215:18 1216:4,17,20 1217:17	1219:2,21 1221:14,16 1229:23 1230:3,12,21 1233:22 1234:13 1235:21 1245:2,4,13 1246:5,21 1248:5 1253:11,24 1260:2 <b>practice</b> 1075:6 1205:15 <b>practices</b> 1084:3 <b>precedes</b> 1080:13 1163:10 <b>precisely</b> 1227:7 <b>predetermination</b> 1158:8 <b>pre-filed</b> 1017:21 <b>preliminary</b> 1059:4 1154:10 <b>preparation</b> 1084:22 1162:6 1164:22 <b>prepare</b> 1098:17 1230:25 1233:23 <b>prepared</b> 1012:22 1059:20 1102:6 1103:5 1162:5 1164:2 1234:4,6,7,8 ,12,18 1249:14 <b>prepares</b> 1228:5 <b>preparing</b> 1101:22 <b>presence</b> 1158:16 <b>present</b>	1042:14,17 1109:23 1122:14,18 1132:16 1146:14 1207:16 1219:1 <b>presentation</b> 1051:16 1053:8,12,19 1154:11,13 1168:19 1261:13 <b>presented</b> 1052:7 1093:12 1123:18,20 1124:18 1133:18 1136:11 1168:21 1206:25 <b>president</b> 1184:4 1210:5,7 1211:14 <b>Presiding</b> 1004:18 <b>presumption</b> 1059:13 1067:12 <b>pretrial</b> 1011:11 <b>pretty</b> 1114:1 1139:4 1146:6 1155:19 1156:22 <b>prevent</b> 1150:10 <b>previous</b> 1035:21 1036:1 1082:1 1107:19,20 1111:14 <b>previously</b> 1107:2 1158:24 1217:1 <b>price</b> 1026:6,11,12 1060:22 1089:5,8 1125:14
--	--	---	--

<p>1199:23 1201:2,3,10, 13 1205:17 1243:18</p> <p><b>prices</b> 1201:18,25 1202:1 1205:18</p> <p><b>Price's</b> 1026:9</p> <p><b>pricing</b> 1017:17</p> <p><b>PRIDGIN</b> 1004:18 1010:1,11,14 ,17 1011:23 1012:13,15,1 7 1014:7 1019:24 1020:3 1025:3 1036:2,14 1045:1,7,17, 22 1048:1 1054:2,10,18 1059:1,7,19, 25 1069:15 1074:1,5,9,1 1,15,18 1077:1 1078:23 1079:7 1080:17 1081:18 1082:2 1090:5 1104:17 1120:4,12,24 1123:6 1127:11 1132:24 1139:2,13,19 ,21 1143:12 1147:19 1153:20 1161:16,19 1163:17 1164:15,19 1168:12 1169:23 1171:3 1179:10,15,2 0,23 1180:11,14,1 8,25 1182:7,9,11, 15,17 1183:2,6</p>	<p>1192:5 1193:3 1195:18 1198:5 1205:5 1210:11,15 1211:7,10 1213:17 1215:14,21 1219:8 1220:14,25 1221:6 1222:11 1223:2 1226:1 1246:11 1248:16 1249:1,5,9,1 5,17 1253:19 1254:4 1258:1,5,14, 20</p> <p><b>primarily</b> 1017:23 1018:5 1027:20 1048:17,21 1217:10</p> <p><b>primary</b> 1018:2,6 1106:12 1137:7 1154:3 1176:15</p> <p><b>principle</b> 1200:24</p> <p><b>prior</b> 1081:23 1084:5,7 1091:17 1112:2 1121:12 1152:18 1153:1 1218:8</p> <p><b>privilege</b> 1022:12,14 1041:16,20 1042:8,10 1094:6,12,17 1165:20</p> <p><b>privileges</b> 1094:4</p> <p><b>pro</b> 1163:9</p> <p><b>probabilistic</b> 1119:24</p> <p><b>probability</b></p>	<p>1119:21 1142:7 1197:9</p> <p><b>probably</b> 1031:11 1034:21 1053:24 1074:14 1075:2,5 1095:2 1112:9 1114:17 1115:2 1117:7,8,9,1 0 1122:22 1127:10 1133:13 1134:11 1151:2 1155:14 1171:15 1184:12 1186:7 1200:4 1203:17 1218:17 1226:7 1227:15 1230:18,24 1231:3 1232:4,24 1233:4,9 1247:7 1249:3 1258:10</p> <p><b>problem</b> 1075:5 1097:9 1111:3 1116:13</p> <p><b>problem- plagued</b> 1246:7,17</p> <p><b>problems</b> 1012:6 1111:3 1161:12</p> <p><b>procedure</b> 1080:24 1184:1</p> <p><b>proceed</b> 1011:25 1052:8 1059:2 1098:22</p> <p><b>proceeding</b> 1166:2</p>	<p>1171:24 1175:14 1249:18</p> <p><b>proceedings</b> 1004:5 1157:15</p> <p><b>process</b> 1021:16 1035:13 1043:15 1091:3,4,7 1096:9,11 1099:12 1100:5 1103:8 1106:1,5 1108:3 1109:20 1111:10 1113:23 1119:7 1126:18 1132:2 1133:3 1145:11 1146:13 1154:5,25 1155:2 1165:16 1168:8 1170:8,20 1172:25 1173:2 1180:4 1184:1 1214:8</p> <p><b>processes</b> 1035:24 1117:4 1161:4 1250:1</p> <p><b>processor</b> 1131:22</p> <p><b>procure</b> 1099:18</p> <p><b>procured</b> 1060:10 1137:7</p> <p><b>procurement</b> 1015:23 1051:17 1052:4 1088:13 1136:21 1137:4,6 1190:6</p>
--	---	---	---

<p>1208:19  <b>produced</b>  1144:1  <b>product</b>  1117:5  1136:8  <b>production</b>  1088:18,19  <b>products</b>  1204:3  <b>professional</b>  1016:3,20  1208:24  1209:2  1259:5  <b>profiles</b>  1138:13  <b>profit</b>  1062:6,7  <b>programs</b>  1156:11  <b>progress</b>  1097:6  1200:7  1243:6,7,9,10  <b>progressed</b>  1035:8  1063:5,8  1112:6  1114:13  1200:11  1241:19  <b>progressing</b>  1088:6  1091:13  1092:24  1100:16  <b>progression</b>  1100:24  <b>project</b>  1013:19,22  1014:13,16,22,25  1015:1,2,3,6,10,13,20,23  1016:1,3  1019:7  1020:3  1022:9  1027:11  1028:25  1038:16  1039:5</p>	<p>1048:19,21  1051:17  1052:10  1053:8  1059:5  1060:5  1062:17  1063:4  1067:13  1068:2,9  1069:11  1076:4,14,16  1077:9  1082:8,15,19  1083:12  1084:1,5,13,15,24  1085:5  1086:22  1087:4,11  1088:5,6,13,24  1090:18  1092:8  1096:12,15,18  1097:8  1098:5  1099:17,20  1100:1  1102:2  1103:7,17  1104:3  1106:18,23  1107:20  1108:9,21  1109:1  1110:6,14  1111:5,15  1112:4,12,17,20  1113:15  1114:8,13,14  1118:2,6,8,11,16,18,22  1119:5,7,9  1121:22  1123:2  1124:19  1125:21  1126:4  1136:23  1137:10,22  1138:14  1141:9,25  1142:13,23  1143:18  1144:19  1146:9  1148:16,22  1151:15  1153:11,18  1158:17,18</p>	<p>1160:23,25  1162:13,14,17,19,23,24  1163:3,9  1164:6  1165:3  1167:22,25  1170:9,10,12,15,22  1171:9,22,23  1172:14,15  1173:9,25  1179:5,6  1183:21,22  1187:10,13  1188:3,21,22  1189:3,17,20  1190:1,5,15,16,23  1191:5,6,8  1196:7  1197:24  1198:12,19  1200:7,11,13,25  1204:12,25  1205:22  1206:1,3  1207:7  1208:1,4,7,10,13,16,19,22,24  1209:1  1210:2  1213:13  1214:1  1216:19  1226:4,14,17,20,23  1227:1,6,19,21,22,24  1232:10,14  1233:3,5,7,14,24  1234:13,19  1235:24  1236:1,3  1240:3,6,17  1242:14,22  1243:16  1244:20,23,24  1245:5,11,15,21,23  1246:4,16  1247:20,22,23  1251:12,16  <b>projected</b>  1102:3  1105:11</p>	<p>1162:21  <b>projects</b>  1015:6,15  1018:19  1022:6  1032:6  1052:7  1067:21  1083:16,18  1085:11  1099:3  1111:14  1112:2,6,8,24  1115:1,21  1118:20  1136:3  1138:5  1144:6,24  1145:1,5  1154:15  1156:12  1163:6  1187:8,9,11,22,25  1188:25  1189:6,9  1205:11,16  1209:7  1230:13,16,20,22  1231:13  1232:9,11,20  1233:1  1240:7  1243:8  1244:15  1245:17,19  <b>Project's</b>  1191:21  1192:9  <b>proper</b>  1094:12  1171:7  <b>proportion</b>  1219:4  <b>proposal</b>  1051:12  1052:13,22  1053:2  1107:6  1162:25  <b>proposes</b>  1175:16  1176:4,5  <b>proposing</b>  1176:12  <b>protect</b></p>
--	--	---	--

<p>1113:16  <b>prove</b> 1085:23  <b>provide</b>  1030:13  1031:24  1032:16  1033:13,17  1038:6,19  1040:18  1041:3,13  1062:1  1089:25  1112:19  1132:21  1160:24  1177:13  1251:22  1252:2,16  <b>provided</b>  1018:22  1027:9,10  1030:16  1032:15  1034:15  1036:17  1038:4  1041:7,23  1089:15  1115:21  1117:17  1142:20  1146:21,24  1147:2,5,9  1148:19  1161:5  1164:2,7,14  1165:2,3  1173:7,24  1175:3  1177:23  1178:9,10,14  ,15 1179:6  1191:7  1196:18  <b>provides</b>  1216:3  <b>providing</b>  1032:10  1037:7  1040:22  1041:11  1103:6  1118:23  1210:17  1216:12  <b>provision</b>  1158:8</p>	<p>1159:19  1160:3  <b>provisions</b>  1156:2,10,13  1159:20  1160:5  1197:1  <b>prudence</b>  1016:9  1017:6  1022:21  1026:21  1027:8  1068:23  1094:25  1103:15,16,2  0 1104:1  1158:20  1167:9  1172:11,12  <b>prudency</b>  1028:24  <b>prudent</b>  1013:7,12,21  1018:18  1076:21  1077:14  1085:16  1205:13  <b>public</b> 1004:1  1009:5,8,9,1  2 1016:22  1017:20  1023:11  1048:1  1059:1,6,11,  14,15 1075:7  1081:14  1154:9,16  1195:18  1226:1  1249:5,9,10,  18  <b>pull</b> 1122:7,8  <b>pulled</b>  1099:23  <b>pulling</b>  1097:17  <b>Pullman</b>  1153:14,15  <b>pump</b> 1102:22  <b>punctuations</b>  1132:6  <b>purchase</b>  1149:24</p>	<p>1178:4  <b>purchasing</b>  1183:23  1184:1  1204:2  1239:17  1241:22  1243:7  <b>purpose</b>  1137:25  1138:18  <b>purposes</b>  1097:24  1183:21  1187:8  <b>pursue</b>  1076:19  1077:14  <b>pushed</b>  1246:18  <b>pushing</b>  1246:5  <b>puts</b> 1199:20  <b>putting</b>  1110:21  1136:9  1139:22  1199:10  1201:10  <hr/> <b>o</b>  <b>qualification</b>  s 1108:11  1245:12  <b>qualifies</b>  1080:14  <b>qualify</b>  1016:9  1133:16  <b>quality</b>  1015:20  1075:17  1208:16  <b>quantify</b>  1016:17  <b>quantities</b>  1200:23,24  <b>quarter</b>  1021:18  1026:14  1093:10  1101:22  1102:2,6,9</p>	<p>1144:2  1162:4,5,21  1164:3  1184:7,23  1185:6  1186:2  1237:25  <b>quarterly</b>  1092:12  1093:4,5  1101:18,23  1102:1,25  1148:18,20  1161:6,7,11  1162:3  1163:13,23  1164:13,16,2  2 1165:2  1168:2  <b>queries</b>  1143:7  <b>query</b> 1143:8  <b>question</b>  1022:10  1024:23,25  1025:3  1029:12  1030:8  1033:24  1037:10  1041:1  1043:6  1049:9  1050:5,7  1062:12  1065:6  1078:3,25  1079:8  1081:22  1083:3  1085:8  1107:16,17,2  3 1108:18  1110:19  1116:10  1118:1  1131:16  1151:20  1152:10  1172:2,4  1173:19  1174:16,18  1177:9,25  1178:16  1193:1  1203:15  1204:17  1213:15,18,1</p>
---	--	--	---

<p>9 1215:22 1218:18 1219:16,18 1220:12,24 1221:1,5,21 1229:21 1242:13 1246:9,10,12 ,13 1248:15 1251:1 1253:17,18,2 0</p> <p><b>questioned</b> 1118:3</p> <p><b>questioning</b> 1025:15 1035:20 1036:8 1044:22 1116:8 1219:7 1241:1</p> <p><b>questions</b> 1010:22 1011:10 1012:4,19 1013:4,9 1014:6,10 1029:18 1040:6 1050:1 1090:4,6,8 1093:16,18 1098:10 1099:9 1102:9 1104:16,20 1108:1 1116:19 1117:12,15 1120:7 1139:1,3,15 1140:3 1143:1,15,24 1144:13,19 1146:11,20 1147:22 1153:23 1154:1 1165:18 1170:2,19 1181:4 1183:10 1195:25 1198:9,11 1205:3,8,10 1214:14 1218:21,22</p>	<p>1221:2 1260:5,6,7</p> <p><b>quibbling</b> 1251:20</p> <p><b>quick</b> 1107:22 1139:9</p> <p><b>quickly</b> 1032:9</p> <p><b>quite</b> 1078:24 1196:2</p> <p><b>quoting</b> 1080:9</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p><b>R&amp;Os</b> 1082:6</p> <p><b>railcars</b> 1149:16,19,2 0,24 1178:17 1198:17,20 1199:7,9</p> <p><b>raise</b> 1180:22</p> <p><b>raised</b> 1253:15</p> <p><b>ran</b> 1240:17</p> <p><b>range</b> 1232:22</p> <p><b>rank</b> 1135:25 1213:1</p> <p><b>ranked</b> 1135:17,20</p> <p><b>rate</b> 1016:8 1017:3,6,9,1 1,16,17,19,2 1 1018:3,10,15 1019:1 1031:19,23 1034:10,11,1 4,16 1035:21 1036:1 1039:15 1045:3,11 1048:14,16,1 7,22 1061:2,13,16 1062:8 1063:24 1064:5 1068:4 1079:18,21 1084:8,10,11 ,14,16,19,22 ,25 1085:2 1093:20,25 1094:2,10</p>	<p>1095:9 1144:15 1150:13 1156:10,20,2 1 1158:12 1167:3,18</p> <p><b>rate-making</b> 1156:7</p> <p><b>ratepayers</b> 1013:15 1063:23 1064:2,21 1065:4,5</p> <p><b>rates</b> 1043:3 1045:8 1062:3,8,14 1067:15,16,2 0,24,25 1068:1,5 1117:16</p> <p><b>rather</b> 1119:18 1135:21 1152:13 1233:19</p> <p><b>rating</b> 1156:20 1158:16,21</p> <p><b>RCV'D</b> 1261:1</p> <p><b>reach</b> 1044:14 1053:20</p> <p><b>reached</b> 1109:14 1248:24</p> <p><b>reaching</b> 1117:7</p> <p><b>reactor</b> 1229:22</p> <p><b>reading</b> 1016:24 1080:10,12 1227:25</p> <p><b>readjourn</b> 1258:21</p> <p><b>ready</b> 1075:10 1139:19 1195:19</p> <p><b>real</b> 1044:25 1119:22 1139:9</p> <p><b>realistically</b> 1119:8</p> <p><b>realize</b></p>	<p>1034:18</p> <p><b>realized</b> 1034:13 1035:16</p> <p><b>realizes</b> 1012:25</p> <p><b>really</b> 1013:5 1024:6 1044:25 1066:4 1097:11 1098:15 1102:16 1133:10 1134:6 1136:7 1138:6,7,10 1203:20 1238:18</p> <p><b>realtime</b> 1161:11 1259:7</p> <p><b>re-ask</b> 1025:3</p> <p><b>reason</b> 1031:17 1060:3,13,14 ,19,20 1178:20 1205:23,24</p> <p><b>reasonable</b> 1013:15 1064:15 1222:7</p> <p><b>reasonableness</b> s 1036:12</p> <p><b>reasons</b> 1060:6 1061:4 1062:23 1148:17 1178:21 1185:18 1205:17,20</p> <p><b>reassurance</b> 1059:18</p> <p><b>rebuilding</b> 1137:11</p> <p><b>rebuilt</b> 1230:13</p> <p><b>rebuttal</b> 1011:3,6 1018:18 1036:5 1064:6,14</p>
---	--	---	--

1066:13 1075:14 1082:5 1089:12 1180:5 1181:12,17 1191:19,25 1192:13 1261:7,9	<b>receipt</b> 1086:4 <b>receipts</b> 1036:20 1037:3,5 1040:2 <b>receive</b> 1240:9 1241:11,15 <b>received</b> 1010:13 1032:6 1033:7 1044:19 1095:2 1115:10 1126:16 1156:13 1163:20 1169:25 1176:5 1180:16 1183:5 1211:11 1217:18 1241:20 <b>receiving</b> 1030:6 1044:16,18 <b>recent</b> 1119:6 1165:4 <b>recently</b> 1099:3 1222:18 1231:13 1237:23 <b>recess</b> 1074:22 1139:6 <b>recessed</b> 1067:12 <b>recession</b> 1063:5,11 1067:20 <b>recognize</b> 1210:21 <b>recognized</b> 1125:21 <b>recollection</b> 1101:4 1116:5 1124:4 1137:12 1147:4 1221:9	1238:20 <b>recommend</b> 1027:23 1241:9 <b>recommendatio</b> <b>n</b> 1032:19 1033:9 1051:25 1107:3 1175:11,20 1178:4 1241:6 1251:21 1261:15 <b>recommendatio</b> <b>ns</b> 1028:1 1068:20 1206:22 1240:19,24 1241:10,12,1 6 1243:14 1250:11,15 <b>recommended</b> 1068:23 1106:14 1107:12,13 1150:24 1206:5 1207:9 1245:17,18 1247:1 <b>reconciliatio</b> <b>n</b> 1096:6 1152:16 <b>record</b> 1010:2,24 1053:15 1054:12 1059:11 1074:16,19 1139:11,14 1164:13 1179:18 1180:11,15,1 8 1181:5,17 1196:10 1229:18 1245:16 1258:17,22 <b>recorded</b> 1227:15 1228:3 <b>records</b> 1081:23 1227:12 1228:4	<b>recover</b> 1152:6 1158:12 <b>recovery</b> 1043:3 <b>Recross</b> 1139:17 <b>recross-</b> <b>examination</b> 1139:16 1140:2 1143:14 1147:21 1260:7,8 <b>redacted</b> 1028:11 1037:8,11 1038:1,23 1041:14,21 1042:2,5,7 <b>redacting</b> 1041:4 <b>redaction</b> 1038:12 <b>Redirect</b> 1153:20,22 1260:9 <b>redo</b> 1202:16 <b>reduce</b> 1061:2 1067:23 <b>reduced</b> 1063:6 1259:11 <b>reduction</b> 1067:19 1156:21 1219:3 <b>redundant</b> 1134:11 <b>refer</b> 1053:18 1196:10 1220:5 <b>reference</b> 1051:20 1052:16,18,2 0 1065:15 1144:19 1184:7 1231:20 <b>referenced</b> 1187:11 1233:14 1243:14
--	---	--	--

<p><b>references</b> 1045:11 1113:20</p> <p><b>referencing</b> 1233:2</p> <p><b>referral</b> 1115:10</p> <p><b>referred</b> 1067:3 1169:3,8 1201:8</p> <p><b>referring</b> 1015:1,15 1020:17 1023:12 1026:1 1037:9 1040:12,15 1050:24 1051:21 1052:2 1064:25 1121:15 1123:15 1143:8 1144:25 1162:4 1185:8 1192:20 1207:6 1216:24 1228:14 1230:17 1231:11,15,2 3 1233:11,25 1236:25</p> <p><b>reflect</b> 1017:18 1067:16,20 1149:24 1155:6 1182:2 1211:1 1212:7 1227:16,17,1 8</p> <p><b>reflected</b> 1173:14 1227:23 1228:1 1229:6</p> <p><b>reflects</b> 1215:17 1228:13</p> <p><b>reforecast</b> 1019:13,19</p>	<p>1021:11,16,2 2 1022:1 1023:17 1025:20,24 1026:6,8 1076:12 1091:7,12 1093:12 1105:2,4,7,1 7,19 1110:10,11 1125:7 1126:1 1168:8 1169:10 1175:5 1179:1 1235:6</p> <p><b>reforecasted</b> 1066:23 1179:4 1200:10</p> <p><b>reforecasts</b> 1096:3</p> <p><b>refresh</b> 1033:20 1064:8</p> <p><b>refurbishment</b> 1232:1</p> <p><b>refused</b> 1031:24</p> <p><b>regard</b> 1206:20 1209:5 1232:2</p> <p><b>regarding</b> 1019:7 1022:1,5,9 1025:20 1039:25 1040:3,6,20 1083:15 1098:11 1099:10 1103:16 1104:4 1117:20 1118:1 1126:15,22 1174:17 1178:17 1250:11,15</p> <p><b>regards</b> 1088:4</p> <p><b>Registered</b></p>	<p>1259:5</p> <p><b>regular</b> 1031:3 1241:20</p> <p><b>regulated</b> 1214:7 1217:3,10</p> <p><b>regulators</b> 1112:22</p> <p><b>regulatory</b> 1004:13,19 1018:8,24 1048:19 1050:23 1060:15 1076:20,23 1077:3,6,8,1 0 1078:1,5 1079:17 1082:22 1085:4,6,10, 12,17,21 1086:1,9,12, 18 1095:23 1109:13 1111:5 1112:11 1131:9 1153:25 1154:2,4,9 1158:6,24 1159:4,20,21 1160:6 1167:22 1168:19 1169:7 1174:8 1197:21 1207:16 1239:16,19 1261:14</p> <p><b>reject</b> 1206:21</p> <p><b>relate</b> 1022:16 1163:8</p> <p><b>related</b> 1015:11,19,2 3,25 1016:5,8 1018:10,18 1019:1 1022:17 1024:13 1028:21 1029:9 1031:24</p>	<p>1032:20 1040:13 1048:22 1077:7 1084:15 1104:3 1153:7 1165:20 1166:5 1176:3,23 1188:3 1259:12</p> <p><b>relates</b> 1048:24</p> <p><b>relation</b> 1030:1 1049:6</p> <p><b>relationship</b> 1049:3 1050:17,19 1087:3 1121:25 1137:16,18,2 3 1138:4 1150:18 1177:23</p> <p><b>relationships</b> 1050:11 1118:6</p> <p><b>relative</b> 1214:9 1259:14</p> <p><b>relatively</b> 1112:4</p> <p><b>release</b> 1053:21</p> <p><b>releasing</b> 1059:16</p> <p><b>relevance</b> 1033:22,23</p> <p><b>relevant</b> 1034:6,8,11, 19 1035:16 1044:23 1045:16 1081:21 1215:13,16</p> <p><b>relied</b> 1247:14</p> <p><b>relocate</b> 1176:18</p> <p><b>relook</b> 1125:21</p>
---	---	--	---

<p><b>rely</b> 1240:23</p> <p><b>remaining</b> 1053:21 1064:13 1100:6 1164:16 1190:14</p> <p><b>remember</b> 1018:20 1024:3 1025:7,8 1031:1 1039:19 1040:7,9,17 1041:2 1042:11,14 1043:7 1093:4 1101:19 1126:12,15 1137:19 1172:4 1177:6 1186:21 1202:18 1229:4 1238:17 1245:22 1247:1</p> <p><b>repeat</b> 1213:19 1215:22 1246:13 1250:13</p> <p><b>repeatedly</b> 1029:18,19</p> <p><b>rephrase</b> 1029:12 1079:8 1173:19 1186:1</p> <p><b>replace</b> 1240:1</p> <p><b>replaced</b> 1189:20,22 1238:24 1239:3</p> <p><b>replacement</b> 1231:18</p> <p><b>report</b> 1101:23,24,25 1102:1,6,8,9,12 1103:1 1148:21,24 1161:11</p>	<p>1162:2,3 1163:13 1164:1,3,24 1165:5 1166:10 1167:5 1173:9,25 1174:12 1187:15,25 1188:23 1261:12</p> <p><b>reported</b> 1004:23 1087:10 1136:13 1183:19,22,25 1187:22 1190:17,25 1212:11,19,24 1217:4,7 1244:19</p> <p><b>Reporter</b> 1020:8 1161:22 1168:14 1199:11 1210:13 1215:24 1259:1,6,7,20</p> <p><b>REPORTER'S</b> 1254:6</p> <p><b>REPORTER'S</b> 1045:24 1054:20 1069:17 1127:13 1223:4</p> <p><b>reporting</b> 1004:24 1093:9 1101:15 1183:17 1212:21,23 1243:5,6,20</p> <p><b>reports</b> 1082:14,18 1085:16 1086:7 1101:18,20 1103:4,5,6,9 1144:1,6,10 1148:18,19 1149:4 1161:7 1163:23 1164:13,16,2</p>	<p>2 1165:1 1167:7 1172:14 1178:10 1187:19 1188:3 1241:18 1242:5 1243:3</p> <p><b>represent</b> 1140:12</p> <p><b>representing</b> 1050:23</p> <p><b>represents</b> 1148:4</p> <p><b>reputation</b> 1247:14</p> <p><b>request</b> 1023:10 1024:11 1025:17 1028:9 1033:8 1034:1,9 1094:13 1108:10</p> <p><b>requested</b> 1019:5,11,15 1021:3 1032:2 1036:20 1039:23 1041:16,18 1042:9 1103:8 1156:6 1157:19 1176:24</p> <p><b>requesting</b> 1126:23 1177:13</p> <p><b>requests</b> 1028:7 1029:8,22 1032:6,7 1085:23 1093:17,24 1094:4,11 1104:2 1162:25 1176:20,23 1177:1</p> <p><b>require</b> 1176:17 1249:22</p>	<p><b>required</b> 1026:22 1039:14,20 1044:13 1178:6 1197:21 1248:7,20 1250:6</p> <p><b>requirement</b> 1018:12,16 1061:2 1062:7 1077:10</p> <p><b>requirements</b> 1062:11</p> <p><b>requires</b> 1172:25</p> <p><b>reserve</b> 1164:10,12</p> <p><b>resort</b> 1252:24 1253:1</p> <p><b>resource</b> 1158:11 1174:2 1247:6</p> <p><b>resources</b> 1008:7 1138:9,14 1211:23 1212:25 1235:12,14</p> <p><b>respect</b> 1081:8 1144:14 1145:7 1146:3 1187:25</p> <p><b>respond</b> 1023:9 1032:9 1220:12</p> <p><b>responded</b> 1023:5,7,8,21 1029:21 1091:25 1166:13</p> <p><b>responding</b> 1152:10</p> <p><b>response</b> 1013:3 1022:3 1024:5 1025:22 1028:9</p>
---	---	---	---



<p>1029:17  1045:18  1059:23  1092:4  1094:13  1099:6  1144:18  1151:20,21  1152:1  1166:8  1213:16</p> <p><b>responses</b>  1098:18</p> <p><b>responsibilities</b> 1210:3  1214:11  1216:11,18,20</p> <p><b>responsibility</b> 1043:9  1113:18  1148:22  1212:14  1213:11,21  1217:11  1235:23  1240:16,22  1244:14</p> <p><b>responsible</b>  1235:25  1244:7,22</p> <p><b>responsive</b>  1025:1  1078:22</p> <p><b>rest</b> 1251:13</p> <p><b>restate</b>  1041:22  1082:17  1085:7</p> <p><b>restrictions</b>  1022:23  1053:1</p> <p><b>rests</b> 1207:15</p> <p><b>result</b>  1060:12  1068:10  1078:2  1127:7  1166:8  1204:3</p> <p><b>resume</b>  1074:11,16  1075:8  1083:13  1139:7</p>	<p><b>resumes</b>  1074:19</p> <p><b>resurfacing</b>  1063:20,21</p> <p><b>retail</b> 1062:5  1217:5</p> <p><b>Retailers</b>  1005:21</p> <p><b>retain</b>  1089:1,7,9  1116:2</p> <p><b>retained</b>  1234:24</p> <p><b>retainer</b>  1044:8,14</p> <p><b>retired</b>  1048:13,20,21  1050:13  1238:5,14,15,17  1239:5,9</p> <p><b>retrofit</b>  1230:24  1231:2</p> <p><b>retrofits</b>  1230:18  1231:10,16</p> <p><b>retrospect</b>  1152:10</p> <p><b>revenue</b>  1018:12,15  1061:2  1062:7  1217:18</p> <p><b>review</b>  1022:21  1026:21  1027:8  1029:2  1036:16,18,24  1037:4,6  1039:7,9  1040:2  1041:7  1042:9  1054:5  1084:21  1085:6,12,17,22  1086:1,10,12,15,19  1092:23  1103:15  1104:1,7  1116:21  1126:21</p>	<p>1136:8  1163:5  1178:1  1206:3  1228:7,11  1234:18,23</p> <p><b>reviewed</b>  1026:24  1027:6  1029:3  1036:23  1037:2,4  1041:19  1054:11  1089:14  1118:9  1125:18  1148:24  1149:1  1164:23  1178:8</p> <p><b>reviewing</b>  1028:24  1081:9  1126:18  1167:24  1170:7</p> <p><b>revised</b>  1119:1</p> <p><b>Reynolds</b>  1088:3,5</p> <p><b>RFP</b> 1108:3,19  1114:12,18  1117:8  1171:15</p> <p><b>Rhode</b> 1252:17</p> <p><b>rider</b> 1156:6</p> <p><b>Riggins</b>  1027:19  1087:14,16  1092:3  1114:22  1115:11  1117:20  1211:19  1212:21  1213:2,8  1236:21  1237:18  1238:23  1239:25</p> <p><b>right-hand</b>  1141:6</p> <p><b>rights</b> 1166:1</p> <p><b>risk</b> 1016:1</p>	<p>1099:22  1108:16  1119:13,14,24  1125:14  1172:17  1208:22</p> <p><b>risks</b> 1069:10  1102:4  1170:13  1172:15,16,18</p> <p><b>Robert</b>  1004:20  1008:16,17</p> <p><b>Roberts</b>  1065:21  1108:8  1111:23  1121:18</p> <p><b>Roger</b> 1007:1  1027:18</p> <p><b>role</b> 1018:6  1048:21,23  1049:2,6,8,9  1050:14,20  1088:11  1184:19  1250:19</p> <p><b>roles</b> 1087:1  1187:4</p> <p><b>rolled</b>  1116:18</p> <p><b>Roman</b> 1133:1</p> <p><b>RONALD</b>  1004:18</p> <p><b>room</b> 1038:3  1043:20  1075:1,3,6  1132:3  1155:23  1195:22</p> <p><b>Rosa</b> 1008:2</p> <p><b>roughly</b>  1026:14  1074:12  1091:9  1199:6  1216:19  1227:7,8,9</p> <p><b>routine</b>  1021:21  1036:19  1170:16</p> <p><b>Royals</b></p>
--	---	--	---

<p>1031:4,5,6  <b>rule</b> 1059:20  1166:17  <b>ruled</b> 1035:22  1036:10  <b>run</b> 1170:9,11  1240:17  <b>running</b>  1167:25  <b>Rush</b> 1019:3  1136:13  <b>RUSS</b> 1006:9  <b>Ruth</b> 1005:22  1006:1</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>safe</b> 1188:11  <b>safer</b> 1074:25  1075:2,6  <b>safety</b>  1190:17  1253:15  <b>salary</b>  1045:14  <b>sale</b> 1061:1  <b>sales</b>  1060:21,22,2  3 1217:5  <b>Salt</b> 1030:17  <b>Sand</b> 1008:2  <b>Santa</b> 1008:2  <b>SARAH</b> 1008:5  1009:3  <b>sat</b> 1131:21  1155:21  <b>Saturday</b>  1227:25  <b>saved</b> 1171:9  <b>saw</b> 1051:2  1060:24  1110:10  1143:8  1201:3  1258:6  <b>Schallenberg</b>  1019:6,12  1020:23  1024:8  1098:7  1122:25</p>	<p>1146:13,19  1169:16  <b>Schallenberg's</b> 1020:15,21  <b>Schatz</b> 1028:6  <b>schedule</b>  1022:6  1063:13,14  1075:23  1091:22  1098:24  1112:14  1156:10  1162:14,19,2  3 1163:4  1165:2,3,7  1170:14  1173:10  1174:5,6,7  1182:25  1196:13  1208:10  1218:25  1220:23  1228:20  1232:1  1243:6  <b>scheduled</b>  1092:22  1161:2  <b>scheduler</b>  1190:15  <b>schedules</b>  1164:6  1168:24  1180:2,9  1243:6  <b>scheduling</b>  1258:10  <b>Schermer</b>  1065:22  1083:11,14,1  9 1084:7,12  <b>Schermer's</b>  1083:13  <b>Schiff</b> 1026:5  1027:21,23,2  4  1036:16,18,2  0 1037:14,23  1038:4,8  1039:17,23,2  5 1042:22  1065:13,19  1075:20</p>	<p>1083:9,10  1084:20  1104:6,10  1110:2  1111:13,21,2  4 1112:1,3  1113:7,10,18  ,21  1114:1,5,8,9  ,15,20  1115:7,9,11,  20,23  1116:3,20  1117:17,20,2  2 1120:22  1121:9,16  1126:14,16,2  1 1142:16,17  1144:14  1147:24  1148:2,6,7,1  3,25  1150:14,17,2  5 1151:4  1153:6  1170:19,25  1171:8,11,16  1234:17  1235:3  <b>Schiff's</b>  1028:22  1039:15  1120:18  <b>Schwarz</b>  1005:18  1012:15,16  1020:2  1139:17,18,2  0,21,24  1140:3  1143:11,12  1173:12  1179:25  1182:13  1183:7,8,10  1192:7,19,21  ,23 1193:1  1195:19,20,2  1  1196:12,14,1  6  1198:3,5,11  1260:7,11  <b>science</b>  1247:12  <b>scope</b> 1014:25  1015:11  1028:22</p>	<p>1029:1,4  1051:3  1100:15  1114:6  1199:23  1200:24  1210:3  1215:15  1230:23  1253:17  <b>screen</b> 1012:3  <b>season</b>  1062:14  <b>seat</b> 1010:18  <b>seats</b>  1031:1,3  <b>second</b>  1038:15  1076:23  1109:2  1136:19  1141:3  1143:21  1192:14  1197:5  <b>seconds</b>  1054:15  <b>secretary</b>  1211:23  1212:25  1227:12  <b>section</b>  1053:13,14,1  8 1064:12  1069:13  1077:6  1082:21  <b>secure</b> 1100:4  <b>seeing</b>  1060:10  1167:24  <b>seek</b> 1217:22  1218:4  1219:13  <b>seeking</b>  1043:3  1220:3  1245:10  <b>seeks</b> 1034:2  <b>seem</b> 1222:7  <b>seemed</b>  1114:11  <b>seems</b> 1020:11</p>
--	---	---	--

<p>1035:24  1044:23,24  1045:13  1120:11  <b>seen</b> 1037:9  1081:4  1107:5,6,9  1111:1  1135:25  1149:8,10  1167:10  1175:9,10  1196:19,21,2  2 1242:1,4,5  <b>selected</b>  1096:21  1188:16  <b>selection</b>  1111:17  1162:18  <b>sell</b> 1061:1  1062:4,6  <b>selling</b>  1118:23  <b>Senate</b> 1156:7  <b>send</b> 1108:10  <b>sending</b>  1147:6  <b>senior</b>  1004:19  1018:7  1087:5  1088:18  1112:5,10,13  ,21 1170:11  1184:17  1185:4,12,13  ,15,20,24  1186:3,6,9,1  4 1187:6,21  1188:25  1190:23  1211:22  1239:2  1244:17  1251:14  1252:6  <b>sense</b> 1022:22  <b>sensitive</b>  1059:9  <b>sent</b> 1020:11  1023:6  1102:6  <b>sentence</b></p>	<p>1075:24  1192:1,24  <b>separate</b>  1035:3  1038:6  1106:2,20  1107:7  1108:24  1109:6  1154:22  1159:17  1177:2  1217:7  1220:2,4  <b>separately</b>  1035:2  1219:23  1220:2,7  <b>September</b>  1061:10  <b>SER</b> 1162:17  1163:2  1171:23  <b>series</b>  1199:22  <b>serve</b>  1017:15,23  1062:10  <b>served</b>  1017:25  <b>service</b>  1004:1,13,17  1009:5,8  1017:10,13,1  8,20  1018:3,9  1023:11  1029:1,4  1082:16  1117:5  1217:18  <b>services</b>  1028:22  1037:4  1038:20  1048:5  1117:7  1118:10  1120:18,21  1121:12  1163:12  1171:11  1216:4  1234:25  1235:1</p>	<p><b>session</b>  1045:25  1048:1  1054:21  1069:18  1127:14  1154:13  1223:5  1249:18  1254:7  <b>sessions</b>  1092:25  1132:17  1146:15  <b>sets</b> 1143:17  <b>setting</b>  1085:10  1216:15  <b>settlement</b>  1049:20,23  1118:7  1175:17,22,2  4 1176:10,11  1248:19,21,2  3 1249:25  1250:11  1253:9,13  <b>settlements</b>  1248:1,6,9  1249:22  1250:15,19  1253:10,23  <b>seven</b> 1140:19  1196:25  <b>seventh</b>  1140:20  <b>several</b>  1032:22  1040:5  1052:25  1079:19  1085:14  1093:16,18  1132:14  1201:5  1203:8  1205:8  <b>severe</b> 1063:5  <b>share</b> 1250:3  <b>shared</b>  1148:21  1249:25  <b>shares</b>  1160:11,12</p>	<p><b>SHAYLA</b> 1008:1  <b>sheet</b> 1038:15  1123:5,24  1124:4,7  1136:17  1168:7  1169:2  1251:16  <b>sheets</b>  1122:21  1124:7  1228:5  <b>she's</b> 1078:24  1083:17  1084:10,16,1  8,23  <b>shielded</b>  1059:5  <b>shortly</b>  1033:7  1034:20  1087:24  1147:10  <b>showed</b>  1037:11  <b>showing</b>  1074:15  1161:19  <b>shown</b> 1163:11  1198:24  1211:3,16,19  ,22  <b>shows</b> 1036:6  1163:13  <b>Sibley</b>  1231:14  1232:19,21  1233:3  <b>sic</b> 1014:2  1080:15  <b>Siemens</b>  1163:1  <b>Sierra</b>  1157:21  <b>sign</b>  1228:9,12  <b>signatories</b>  1168:19  1261:14  <b>signatory</b>  1161:5  1163:25  1164:7</p>
---	--	---	--

<b>signature</b> 1251:7	1127:12 1132:23 1139:1,19	1230:13,16 <b>Smith</b> 1006:5	1180:15 1191:17 1196:9
<b>signed</b> 1110:3,4 1133:19 1157:14 1253:9,22	1180:25 1183:11 1197:16 1198:4 1211:9	<b>SNR</b> 1007:6 <b>soil</b> 1253:10,23	1221:4 1250:13 <b>sort</b> 1030:19
<b>significance</b> 1118:5 1124:9,11,20 1145:8 1242:14	<b>site</b> 1021:7,8,11, 20 1023:2 1029:7,14 1167:13,21 1170:17 1176:13,14,2 5	<b>solution</b> 1086:11 <b>Solutions</b> 1137:17 1138:12,18	1075:4 1093:7 1106:21 1108:10 1113:15 1127:7 1204:6
<b>significant</b> 1016:10 1091:12,21 1137:25 1205:25 1230:20 1231:25	1177:1,12,15 ,20 1227:17 1242:7 1246:6,21	<b>somebody</b> 1014:1 1030:6 1132:21 1200:8 1239:18 1258:7	<b>sorts</b> 1200:14 1241:21 <b>sound</b> 1020:6 1095:3
<b>significantly</b> 1146:25 1148:16 1203:5	<b>sitting</b> 1113:11 1229:9	<b>somebody's</b> 1120:20 1200:3	<b>sounds</b> 1158:4 1199:2,15 <b>Source</b> 1048:7
<b>sign-in</b> 1136:17	<b>situation</b> 1012:21 1013:6 1144:23 1158:7	<b>somehow</b> 1092:21 1166:13	<b>Southern</b> 1005:17 <b>Southwest</b> 1007:15
<b>sign-off</b> 1251:16	<b>six</b> 1101:6 1108:2 1143:2,21 1146:6 1155:14 1186:21 1197:12	<b>someone</b> 1012:25 1031:11 1112:3,10 1114:1 1170:25 1209:5 1240:1	<b>speak</b> 1012:8 1164:4 <b>speaking</b> 1012:22 1075:18
<b>signup</b> 1122:21 1123:5,24 1124:4,6,7	<b>six-month</b> 1146:8	<b>sometime</b> 1033:8 1155:1 1237:15	<b>speaks</b> 1064:18 <b>special</b> 1094:19,20 1095:1,5
<b>sign-up</b> 1169:2	<b>sixth</b> 1007:15 1140:19	<b>somewhere</b> 1115:21 1137:8 1200:3 1238:22	<b>specialize</b> 1066:2 <b>specialty</b> 1066:4,7
<b>similar</b> 1159:11 1162:16 1170:25 1177:1 1216:8	<b>size</b> 1137:10 1138:5	<b>sooner</b> 1034:21 1060:10,25	<b>specific</b> 1018:10 1035:22 1036:10 1040:16 1048:25 1049:18 1050:21 1085:19 1122:19 1183:18 1185:18 1198:1 1200:15 1233:16,19 1245:19,22
<b>similarly</b> 1134:24	<b>skill</b> 1235:2	<b>sorry</b> 1028:4 1039:8 1065:16 1074:5 1107:9,10 1123:10,23 1134:21 1136:6 1164:15 1179:23	
<b>simply</b> 1060:12 1075:2,5,6 1081:25 1175:2	<b>skills</b> 1065:14,19,2 3 1209:6		
<b>single</b> 1143:5 1156:6 1216:8,9	<b>SLACK</b> 1009:4		
<b>sir</b> 1010:17 1012:17 1075:10 1120:2 1122:4	<b>slide</b> 1051:18 1052:15 <b>slightly</b> 1166:23 <b>small</b> 1209:7 <b>smaller</b> 1153:17		

<p>1246:19 1248:22 <b>specifically</b> 1019:1 1116:19 1133:11 1175:1 1222:5 1234:24 <b>specification</b> s 1162:15,18 1163:3 <b>specificity</b> 1040:25 1091:16 1200:14 <b>specifics</b> 1116:23 1247:2 <b>speculate</b> 1088:25 <b>speculating</b> 1145:6 <b>speculation</b> 1171:2 1173:13,18 <b>speculations</b> 1173:15 <b>speed</b> 1155:22 <b>spend</b> 1220:21 1227:25 1229:8 1243:8 <b>spending</b> 1229:12 <b>spent</b> 1027:11 1102:19 1134:8 1227:24 <b>spirit</b> 1165:11,13 <b>spoke</b> 1149:14 <b>spoken</b> 1143:6 <b>sponsor</b> 1149:8,10 <b>sponsored</b> 1031:11 <b>spread</b> 1059:11 <b>spring</b> 1021:19</p>	<p><b>Springfield</b> 1005:3 1103:11 <b>squared</b> 1012:7 <b>ss</b> 1259:2 <b>St</b> 1007:24 1008:14 1012:2 1074:2,21,23 ,25 <b>stab</b> 1131:18 <b>stabilization</b> 1253:10,23 <b>staff</b> 1009:2,8 1010:8 1018:10 1019:17 1022:15,20 1023:11 1024:6,21 1025:12,15 1026:4,20,25 1027:2,11,14 ,18 1028:7,9 1029:2,3,6 1031:24 1032:4,5,7,1 2,19 1033:10 1034:7,22,23 1035:12,13,1 6 1036:17,19,2 5 1037:7 1040:3,5,6,7 ,10,18,22,24 1041:2 1042:12 1043:2,10,13 ,16 1044:23 1045:13 1048:24 1049:3,6,11 1050:1,4,11, 17,20,24,25 1051:2 1069:6 1085:22 1089:25 1091:3,17 1092:6,7,10, 15,21 1093:2,9 1095:10 1097:14,16 1101:16,18</p>	<p>1102:7 1103:1,8,20, 23,24 1104:6,9 1105:25 1106:12,19,2 0,25 1107:14,19 1109:24 1110:4,15 1111:1 1122:6,11,18 1124:6,18 1131:19 1132:3 1136:11 1154:15 1156:25 1159:9 1160:25 1161:3 1166:4,10,21 1167:8,17 1169:4,17,18 ,19 1174:20 1175:3,16,21 1176:4,12,23 1177:13 1178:9,11,16 1179:7 1190:14 1191:7 1219:3 1221:20 1222:17 <b>Staff-</b> <b>recommended</b> 1107:7 <b>staffs</b> 1154:9 <b>Staff's</b> 1028:18,24 1050:6 1094:24 1166:9 1174:17,25 <b>stage</b> 1142:17 1173:13 1180:3 1188:2 1190:9 <b>stakeholders</b> 1154:8 <b>stand</b> 1010:4 1101:10 1180:20 1258:19 <b>standard</b></p>	<p>1134:16 1138:3 1145:18,21 1146:1 1241:17 1243:3 <b>standards</b> 1110:22 <b>standpoint</b> 1098:16 <b>stands</b> 1010:19 1180:21 <b>start</b> 1053:22 1090:12 1099:7 1120:16 1124:13 1144:1 1174:9 1190:8 <b>started</b> 1019:22 1021:8,19 1063:15 1101:22 1121:17 1132:7 1202:13 1205:11 1210:2 1242:18,22 1245:5 <b>starting</b> 1066:16 1174:8 <b>startup</b> 1119:6,7,15, 17,19 <b>state</b> 1004:2 1007:19 1010:23 1051:9 1065:13 1066:15 1075:16,22 1175:1 1181:5 1187:5 1259:2 <b>stated</b> 1017:5,8 1026:18 1034:8 1043:13,22 1044:2</p>
--	---	--	--

<p>1064:1 1067:1 1079:4,18 1086:6 1094:23 1152:8 1153:13 <b>statement</b> 1040:17,23 1043:24 1064:9 1186:4 <b>states</b> 1008:1 1017:14 <b>stating</b> 1040:9 1042:3 <b>stations</b> 1231:7 <b>status</b> 1102:4 1103:5 1162:2,13,24 1163:2 1166:25 1168:22 1170:15 1241:21,22,2 5 1261:12 <b>statute</b> 1135:3,7,8 1158:8 <b>stay</b> 1139:6 1189:16 1258:11 <b>stayed</b> 1252:23 <b>steam</b> 1162:25 <b>steel</b> 1076:6 <b>Steiner</b> 1007:1 1027:18 1179:22 <b>Steinmeier</b> 1007:22 <b>step</b> 1096:19 1172:22 1179:11 1186:15 <b>Steve</b> 1009:1 1088:16 1090:17,24 1092:3 1187:6</p>	<p><b>Steven</b> 1190:6 <b>stick</b> 1244:14 <b>Stinson</b> 1007:10 <b>stip</b> 1131:5 <b>stipulation</b> 1082:22 1085:4 1095:23 1131:11,14,2 2 1154:22 1157:13,16,2 0 1169:7 <b>stop</b> 1201:5 <b>stopped</b> 1120:11,12 <b>stops</b> 1197:15 <b>story</b> 1113:10 <b>strategic</b> 1086:11 1137:17 1138:11,17 1162:1 1170:18 1211:16 1219:22 1261:11 <b>strategy</b> 1100:25 1253:14 <b>street</b> 1005:23 1006:2,6,19 1007:7,11,15 1009:6,10 1010:25 1098:18 <b>strengths</b> 1188:17 <b>strike</b> 1082:6 <b>strongly</b> 1241:2 <b>struck</b> 1159:22 <b>structural</b> 1076:6 <b>structure</b> 1214:5 1250:22 1251:4 <b>STS</b> 1138:23</p>	<p><b>STUART</b> 1005:6 <b>studies</b> 1162:15 <b>stuff</b> 1081:3 1100:8,9 1202:1,3 <b>subcontractor</b> 1148:2 <b>subdivided</b> 1185:25 <b>subject</b> 1018:21 1085:6,11,16 ,21 1086:1,9,12, 18 1090:17 1145:5 <b>submitted</b> 1032:4,5 1034:20 <b>submitting</b> 1082:15 <b>subordinates</b> 1148:23 <b>subsequent</b> 1153:16 1155:5 <b>subsequently</b> 1034:13 1160:14 1161:8 1201:24 <b>substantial</b> 1038:12 1060:23 1062:6 1170:18 1173:7 <b>substantially</b> 1178:14 <b>substantive</b> 1133:16 <b>substantively</b> 1133:15 <b>successful</b> 1217:25 1246:22 <b>successfully</b> 1252:6 <b>successor</b> 1216:5 <b>Sugar</b> 1008:2</p>	<p><b>suggest</b> 1142:3 <b>suggested</b> 1049:2 1142:25 1177:5 <b>Suite</b> 1005:7,11,23 1006:2,19 1007:7 1008:9 <b>summarize</b> 1162:10 1204:15 <b>summarized</b> 1205:2 <b>summary</b> 1122:12 1162:13,23 1163:3,10 <b>summer</b> 1061:8,9,13, 16,22 1062:14,18 1063:3,10 1098:16,20 1126:2 1187:5 <b>summertime</b> 1063:7 <b>Summit</b> 1006:3 <b>supercritical</b> 1052:17 <b>supervisor</b> 1030:9 <b>supplement</b> 1138:10 <b>supplemental</b> 1191:7 <b>supplementing</b> 1138:7 <b>supply</b> 1187:7 1217:5 1239:2 <b>support</b> 1064:16 1085:17,25 1159:9 1172:21 1232:17 <b>supported</b> 1158:20 <b>suppose</b></p>
--	--	--	---

<p>1177:19  <b>supposed</b>  1233:8  <b>sure</b> 1013:13  1019:9  1028:3  1037:1  1038:2  1041:17,25  1051:8  1064:11,25  1074:2  1075:13  1085:7  1087:11  1091:22  1100:22  1104:10  1115:19  1120:13  1127:5  1131:3  1132:9  1139:25  1145:6  1146:18  1154:4  1179:17  1182:5  1192:4  1196:2  1204:22  1212:3,9  1227:13  1229:21  1234:2  1236:17  1239:18  1246:9  1250:24  1252:20  <b>surprise</b>  1113:1  <b>surprised</b>  1112:22  <b>surprises</b>  1112:25  <b>surprising</b>  1126:7  <b>surprisingly</b>  1138:21  <b>surrebuttal</b>  1174:13  <b>SUSAN</b> 1007:6  <b>suspect</b></p>	<p>1227:11  <b>sustain</b>  1078:23  1220:14  <b>sw</b> 1006:15  <b>Swearengen</b>  1006:9,10  <b>sworn</b>  1010:15,16  1180:20,23,2  4 1259:9  <b>system</b>  1022:17  1024:11  1027:5  1061:18  1082:23  1096:13  1109:20,22  1110:1,13,21  1111:6  1123:19  1134:23  1135:17  1136:3  1152:23  1163:2  1166:12,20  1168:24  1169:1  1171:18,19,2  1,22,25  1178:2  1232:6  1242:2,3,4,6  <b>systems</b>  1135:24  1163:3  <hr/> T  <b>T-23</b> 1242:11  <b>tabbed</b>  1053:13  <b>table</b> 1024:24  1235:4  <b>taking</b>  1045:3,12  1080:25  1081:24,25  1092:21  1153:2  1199:9  <b>Talent</b>  1086:11  1137:17</p>	<p>1138:12,17  <b>talk</b> 1105:22  1106:21,25  1107:1  1121:3  1126:11  1214:15  1215:13  1222:18  1258:10  <b>talked</b>  1092:20  1093:18  1106:17  1107:23  1108:1  1140:6  1143:1,21  1157:4  1168:7  1199:7  1215:6  1221:19,20,2  2  <b>talking</b>  1017:3  1024:14  1035:21  1041:6  1083:9  1105:2,3  1120:16  1136:20  1148:18  1151:16  1152:17  1157:6  1171:19  1175:23  1185:11  1201:7  1203:3,19  1214:16,19,2  1 1221:17,24  1222:25  1228:22  1229:13  1232:9,10  1243:15,25  1244:1  <b>tariffs</b>  1017:17  <b>tax</b>  1217:17,22  1218:4,13,14  1219:3,14,16  ,17</p>	<p>1220:3,8,10  <b>Taylor</b>  1169:18  <b>team</b> 1026:5  1065:20  1082:8  1102:8  1104:1  1118:15,18,2  2  1119:7,13,19  1142:23  1148:23  1170:10  1171:8,9  1187:10  1188:21,22  1189:3,20  1190:12  1191:5  1204:14  1206:14,24  1207:3,6,7,1  6  1216:7,8,10  1243:16  1245:5  1251:15  <b>technical</b>  1100:7  <b>techniques</b>  1209:6  <b>technological</b>  1012:6  <b>technology</b>  1075:4  <b>ten</b> 1083:1  1141:9  1198:12,24  1222:6  1231:8  <b>tender</b>  1011:22  1182:6  <b>tensions</b>  1138:23  <b>tentative</b>  1154:6  <b>tenure</b> 1017:9  <b>term</b> 1017:10  1050:22  1060:22  1094:7  1096:21  1122:9</p>
---	---	---	--

<p>1145:8 1146:4 1235:12,14 <b>termed</b> 1042:7 1159:24 <b>termining</b> 1084:22 <b>terms</b> 1105:1 1131:4 1134:9 1157:17 1170:21 1177:10 1203:8 1230:23 1235:7 1246:3,15 <b>Terry</b> 1004:19 1087:9,10 1092:3 1168:24 1189:11,12 1244:20,21 <b>testified</b> 1018:8 1019:10 1040:1 1048:2 1060:1,9 1075:11 1076:3 1099:1 1131:1 1148:1 1152:22 1171:13 1206:19 1237:3 1240:18 <b>testify</b> 1063:22 1069:2 <b>testifying</b> 1182:22 1218:16 1234:21 <b>testimony</b> 1011:3,8,11 1017:21 1018:13,16,1 7,18,20,22,2 4 1019:5,8 1032:8 1034:22 1036:4,5 1043:21</p>	<p>1045:2 1060:7,20 1062:24 1064:5,7,14, 19,22 1065:10 1067:3 1068:19 1069:1 1078:19 1080:2,4,7,1 3,16,22 1081:22 1082:5 1084:21,22 1085:2 1101:13 1120:20 1122:12 1134:19 1135:18 1137:8,15 1141:23 1143:5,20 1144:4 1153:16 1167:18 1173:1,14 1174:12,13,2 1 1176:8 1180:2 1181:9,14,16 ,18,22,25 1183:14 1184:3 1188:21 1191:15 1192:8,13 1200:4,18 1206:11,25 1230:8,25 1235:11 1236:19 1259:9,10 1261:3,5,7,9 <b>testing</b> 1238:18 <b>thank</b> 1010:17 1014:7 1025:22 1038:25 1053:6 1059:24 1062:22 1065:9 1068:18 1069:15 1074:9,10,16 1077:1,15</p>	<p>1078:15 1090:5 1104:16,17,2 3 1105:21 1107:22 1111:12 1120:2,4 1138:25 1139:2,8,20 1143:12 1147:18,19 1153:20,21 1164:19 1179:8,10,11 1180:15,25 1182:7 1183:8 1191:11 1196:14 1198:4,5,7 1205:4,5,7 1249:19 1258:20,22 <b>that's</b> 1010:11 1012:25 1015:7 1020:20 1023:6 1028:16,23 1030:25 1032:1 1037:5,11 1038:21,24 1039:2 1042:4 1044:1,10 1045:8,16 1050:22 1051:3,4 1052:20 1059:20 1062:23 1064:23 1066:7 1069:12 1081:3 1082:2,23 1089:17 1090:12,22 1091:14,19 1094:14 1099:15 1100:2,10,17 ,24 1103:21 1105:21 1109:7 1110:8 1113:3,11</p>	<p>1116:5 1119:10,22 1120:3 1121:4,5 1122:13 1123:4,12 1131:10,17 1134:2 1135:6,18 1136:16 1139:23 1142:2,12 1143:11 1146:9 1147:18 1150:23 1151:1,2 1158:15 1163:5,18 1164:24 1165:15,16 1169:19 1171:20 1174:9 1175:2,25 1176:1,3,7 1178:24 1179:4,24 1182:24 1186:7,8,15, 23,25 1189:21 1191:10 1192:8 1196:3,15,23 1198:3,21,24 1202:14,19 1207:17 1214:21 1219:16 1227:19 1228:1,3 1229:22 1230:21 1231:1,24 1233:6 1239:3 1243:24 1244:16,21,2 4 1247:10,21 1251:6,10 <b>themselves</b> 1103:24 1113:8 <b>thereafter</b> 1259:11 <b>therefore</b> 1034:2</p>
---	--	---	--



<p>1054:1 1166:21 <b>there's</b> 1019:4 1029:24 1030:5,8 1031:17 1037:22 1038:16 1045:4,14 1048:14 1051:18 1059:14 1065:15 1074:24 1080:13,22 1085:24 1094:6,22 1109:4,8 1120:19 1139:25 1176:8 1182:5 1200:3 1209:8 1220:22 1232:15 1240:15 1258:21 <b>thereto</b> 1259:16 <b>They'd</b> 1230:22 <b>they'll</b> 1228:25 <b>they're</b> 1011:18 1030:6 1061:15 1097:17 1099:7 1127:4 1197:2 1209:8 1211:25 1212:4 1228:10 1246:2 <b>they've</b> 1026:18 <b>thin</b> 1155:19,20 <b>THOMAS</b> 1005:18 <b>THOMPSON</b></p>	<p>1009:2 <b>thorough</b> 1083:15 1125:17 1147:17 <b>thoughts</b> 1134:10 <b>thousand</b> 1178:3 <b>thousands</b> 1177:24 1178:10,11 <b>three-ring</b> 1178:5 <b>throughout</b> 1017:9 1019:4 1036:4 1061:25 1062:2,11 1068:1 1083:25 1103:7 1124:19 1160:23 <b>ticket</b> 1031:3 <b>tickets</b> 1030:16,18,24 <b>ties</b> 1037:3 <b>TIGER</b> 1004:24 <b>Tim</b> 1136:12 <b>timeline</b> 1098:16 <b>timely</b> 1240:10 1241:12 1242:15 <b>tired</b> 1014:1 <b>title</b> 1053:14,17 1087:6,11 1088:12,18 1184:20 1185:1 <b>titled</b> 1140:15 <b>today</b> 1011:11 1078:9,13 1079:12,14 1099:8 1110:16 1127:3,4</p>	<p>1151:6 1158:7 1171:15 1181:19 1215:13,16 <b>today's</b> 1112:25 <b>TODD</b> 1005:14 <b>Tom</b> 1114:24 <b>tomorrow</b> 1110:17 <b>top</b> 1023:13,14 1114:2,20 1115:11 1134:20 1135:17,25 1189:8 1245:15 <b>Topeka</b> 1007:15 <b>topic</b> 1018:25 1051:1,2 1065:1 1078:3,5 1094:17 1133:24 1165:19 1176:21 <b>topics</b> 1018:11 1133:24 <b>Toshiba</b> 1100:5 <b>tot</b> 1197:8 <b>total</b> 1126:6 1141:12 1152:4 1163:13 1170:21 1185:8 1197:12 1232:10 <b>totally</b> 1018:17 1173:6 1175:7 1201:14 <b>totals</b> 1142:10 1197:10 1198:13 <b>towards</b></p>	<p>1028:25 <b>Toyota</b> 1163:1 <b>track</b> 1075:16,22 1076:16,17 1097:2,12,22 1124:15 1144:10 1169:6 1175:1 1178:22 1179:2 1203:22 <b>tracked</b> 1099:5,6 1124:19 1146:9 1179:3,7 <b>trackers</b> 1156:19 <b>tracking</b> 1097:24 1124:14,21 1205:21 <b>traditional</b> 1201:11 <b>trained</b> 1209:8 <b>training</b> 1014:13,16,22 1015:8,10,13,19,22,25 1209:11 <b>trains</b> 1149:15 <b>transcript</b> 1004:5 1046:1 1054:22 1069:19 1127:15 1223:6 1249:14 1254:8 <b>transferred</b> 1176:14 1200:22 <b>transition</b> 1240:3 <b>transmission</b> 1156:12 1162:15 <b>transmitted</b></p>
--	---	---	---

<p>1149:2  <b>transparency</b>                  1026:17                  1036:4,13                  1110:23                  1112:23                  1160:20,21                  1165:12,14,2                  2,25  <b>transparent</b>                  1022:5,9                  1028:16                  1029:1                  1036:5                  1037:8  <b>travel</b>                  1177:12  <b>traveled</b>                  1177:14  <b>tried</b> 1089:9                  1201:13                  1204:15                  1221:11  <b>tries</b> 1204:6  <b>trip</b>                  1252:3,17                  TRIPP 1006:5  <b>trips</b> 1082:9                  1227:17  <b>trouble</b>                  1103:23                  1158:5  <b>true</b> 1011:14                  1181:18  <b>try</b> 1012:8                  1078:24                  1202:24                  1203:21                  1221:9                  1229:18                  1247:9,12  <b>trying</b>                  1043:16                  1060:20                  1066:5                  1074:13                  1078:8                  1086:20                  1092:6                  1113:3,4                  1122:7                  1158:5                  1182:3                  1185:11</p>	<p>1215:2,6                  1222:12,15                  1229:7  <b>tube</b> 1231:17  <b>tubes</b> 1231:21  <b>turbine</b>                  1100:5                  1162:25                  1231:6,18,21  <b>turn</b> 1075:14                  1134:2                  1192:12  <b>turned</b>                  1102:16                  1201:12  <b>turning</b>                  1211:13  <b>turnover</b>                  1138:1  <b>turns</b> 1032:12                  1249:4  <b>Tuxedo</b>                  1008:13  <b>twenty</b>                  1093:22  <b>twice</b> 1227:9  <b>two-step</b>                  1172:25                  1173:2  <b>two-thirds</b>                  1176:1  <b>type</b> 1015:2,3                  1018:12                  1031:1                  1118:10                  1138:14                  1163:5                  1170:18                  1231:15                  1232:9                  1241:14  <b>types</b> 1119:3                  1241:14  <b>typewriting</b>                  1259:11  <b>typical</b>                  1048:15                  1212:8,20  <b>typically</b>                  1061:12                  1106:12                  1108:9</p>	<p>1110:10                  1117:2                  1118:13,15                  1124:6                  1131:18                  1148:4                  1158:10                  1184:15  <hr/>                 U                  U.S 1006:16  <b>Uhlig</b> 1007:18  <b>Uh-oh</b> 1191:23  <b>ultimate</b>                  1133:19  <b>ultimately</b>                  1149:1                  1157:23                  1199:3                  1203:4                  1207:15,19,2                  1 1221:25                  1234:7,9                  1240:5,21                  1241:3                  1243:21  <b>Um</b> 1140:11  <b>unanimous</b>                  1157:16  <b>uncovered</b>                  1242:10  <b>undergraduate</b>                  1016:25  <b>underlying</b>                  1064:12  <b>understand</b>                  1054:2                  1062:15                  1085:8,20                  1091:23                  1097:10                  1127:2,4                  1132:9                  1150:4                  1173:2,17                  1178:1                  1180:19                  1188:9,13                  1200:12                  1204:9                  1207:19                  1214:14                  1215:7                  1229:21                  1234:11</p>	<p>1242:13                  1246:9                  1247:17                  1250:6  <b>understanding</b>                  1026:21                  1044:1                  1062:16                  1085:1                  1091:13                  1094:12                  1101:17                  1106:4                  1108:6                  1109:14                  1113:22                  1122:1,8                  1124:9                  1127:5                  1143:23                  1146:3,5,7                  1150:23                  1151:1,3                  1167:3,20                  1172:24                  1200:6,20                  1201:1                  1204:14                  1214:23,24                  1229:7                  1244:9                  1246:20,22                  1249:21  <b>understood</b>                  1111:25                  1113:2                  1121:25                  1125:1                  1246:3,12                  1250:25  <b>undertook</b>                  1154:5  <b>underway</b>                  1233:6  <b>unfair</b>                  1176:16  <b>unfounded</b>                  1174:25  <b>union</b> 1005:17                  1067:21,22,2                  3,25 1068:4  <b>union's</b>                  1068:5  <b>unique</b>                  1065:13,19,2</p>
---	---	---	--

<p>3 1235:2  <b>uniquely</b>  1083:10,11  <b>unit</b>  1032:11,13  1033:13,15  1034:10,11,14,15  1035:2,3,6  1060:10  1061:24  1062:10  1091:7,8,9  1104:3  1110:11  1111:16  1119:17  1149:15  1160:13,16  1162:25  1163:2  1167:3  1175:23  1176:2  <b>United</b> 1008:1  <b>units</b> 1099:23  1100:3  1230:19  <b>unknown-unknowns</b>  1203:21  <b>unless</b>  1043:10  1059:14  <b>unlike</b>  1094:14  <b>unlikely</b>  1067:22  <b>unreasonable</b>  1013:24  1035:24  1036:11,24  1166:4  <b>unreasonably</b>  1035:23  <b>unregulated</b>  1214:6  1217:5  <b>unspecified</b>  1203:20  <b>unusual</b>  1245:23  1250:22  1251:4</p>	<p><b>update</b>  1102:10  1161:11  1162:24  1168:23  1170:12,15  1181:21  <b>updates</b>  1163:1  1241:21  <b>upheld</b>  1094:21  1166:16  <b>upon</b> 1036:23  1087:24  1091:11  1124:10  1170:6  <b>upside</b>  1012:23,25  1102:23  <b>usually</b>  1095:13  <b>utilities</b>  1103:11  1112:9  1158:10,17  1217:12  <b>utility</b>  1160:8  1185:2  1201:23  1212:19  1214:9,10</p> <hr/> <p style="text-align: center;">v</p> <hr/> <p><b>valuable</b>  1061:25  1088:23  1102:17  1234:23  1235:5  <b>value</b>  1029:21,23,24  1030:1,5,10,11,15,25  1031:8  1089:16,19  1091:13  1117:6  1171:8  1176:10  1232:10  1242:3</p>	<p>1243:5  <b>variance</b>  1162:22  1192:10  <b>variances</b>  1191:21  <b>variety</b>  1018:9  1087:1  1154:8  1160:10  1232:16  1253:2  <b>various</b>  1052:8  1118:20,21  1119:17  1137:16  1148:22  1160:10  1162:22  1167:6  1197:19  1231:18,20  <b>veatch</b>  1051:12,20  1052:3,5,7,10,16,17,24  1053:9,19  <b>vein</b> 1165:24  <b>velocity</b>  1191:21  1192:9  <b>vendor</b>  1030:23,24  <b>vendors</b>  1029:7,14  1030:16,21  1114:3  1117:2  <b>venture</b>  1230:2  <b>verbal</b>  1085:15  1086:6,18  <b>verbally</b>  1085:25  1086:3  <b>verification</b>  1020:12  <b>verify</b>  1122:22  1127:11</p>	<p><b>version</b>  1191:24  <b>versus</b>  1017:11  1099:10  1105:1  1177:21  <b>vetted</b>  1125:18  1142:16  <b>vetting</b>  1097:4  1180:4  <b>vice-president</b>  1018:7  1026:12  1087:23  1088:13,17,18  1089:6  1112:11  1170:11  1184:11,13,18,21  1185:2  1186:9,18  1187:7  1211:16,23  1239:2,17  1244:17  1247:24  <b>vice-presidents</b>  1184:6,8,15,18,24  1185:5,6,7,14,16,21  1186:6,17,19  1188:6  1243:18  <b>view</b>  1059:6,15  1202:13  1206:20  1235:8  <b>viewable</b>  1023:2  <b>viewed</b>  1045:21  <b>virtually</b>  1201:19  <b>visible</b>  1158:16  <b>visits</b>  1021:7,8,21  1167:13</p>
--	---	--	--

<p><b>voiced</b> 1183:3</p> <p><b>volume</b> 1004:9 1045:25 1054:21 1069:18 1117:16 1127:14 1223:5 1254:7</p> <p><b>voluminous</b> 1089:24</p> <p><b>volunteered</b> 1176:14</p> <p><b>VP</b> 1188:14,15</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>W.G</b> 1211:19</p> <p><b>wages</b> 1067:22</p> <p><b>wagner</b> 1008:16,17</p> <p><b>wait</b> 1037:1 1052:12 1096:19 1099:7 1220:25</p> <p><b>waiting</b> 1077:22</p> <p><b>walk</b> 1199:19</p> <p><b>walks</b> 1110:15</p> <p><b>walt</b> 1068:20 1172:3</p> <p><b>warranted</b> 1188:11</p> <p><b>warren</b> 1098:6 1122:24 1124:1 1169:15,17</p> <p><b>washington</b> 1006:15 1101:7 1143:5</p> <p><b>wasn't</b> 1021:3 1052:21 1053:25 1059:5 1062:12 1079:15 1092:5,6 1096:21,22 1099:20 1114:11 1118:3 1135:15</p>	<p>1138:10,17 1145:4 1148:16 1150:9 1151:10 1165:8 1203:18 1205:20 1217:25</p> <p><b>watch</b> 1075:6 1120:11</p> <p><b>water</b> 1100:9</p> <p><b>ways</b> 1111:19</p> <p><b>weather</b> 1258:2</p> <p><b>webcast</b> 1074:23</p> <p><b>we'd</b> 1019:21 1092:14 1164:11</p> <p><b>wednesday</b> 1090:25</p> <p><b>weeds</b> 1133:10</p> <p><b>week</b> 1048:10,13 1204:13 1228:2 1233:9 1258:11,13</p> <p><b>weekends</b> 1227:14 1229:5</p> <p><b>weekly</b> 1167:14 1227:17 1241:19 1242:18</p> <p><b>welcome</b> 1059:22</p> <p><b>we'll</b> 1012:7,9 1020:6 1037:13 1045:9 1054:3 1100:12,13,1 9 1180:15 1223:2 1248:16 1254:5</p> <p><b>well-</b> <b>described</b> 1114:1</p>	<p><b>we're</b> 1012:7 1035:20,25 1045:5 1054:9 1065:5 1074:7 1093:6,13 1096:23 1097:1,11,22 ,23 1099:24 1100:22 1102:14 1105:2 1109:2,11 1110:8 1119:12,23 1122:7 1168:12 1180:18 1201:6 1215:13,16 1220:21 1221:1,24 1222:19 1226:1 1240:3 1249:9</p> <p><b>wess</b> 1020:11,13,1 8 1090:16 1169:16</p> <p><b>west</b> 1231:8</p> <p><b>westar</b> 1230:2</p> <p><b>we've</b> 1035:9,25 1054:7 1094:19 1102:13 1109:10 1121:9 1126:7 1171:18 1190:6 1203:19 1215:4 1221:20 1231:7,12,13 1232:24</p> <p><b>whatever</b> 1024:21 1065:1 1068:3 1086:10 1107:12 1218:22 1252:14</p> <p><b>whatsoever</b></p>	<p>1028:20 1034:16,17 1109:16</p> <p><b>whenever</b> 1169:9 1210:2 1214:15 1227:14 1237:12 1243:12,25 1244:2 1248:20</p> <p><b>whether</b> 1039:20 1066:9 1077:11 1081:20,21 1083:1 1096:17 1102:12 1104:8 1107:12 1126:23 1134:15 1137:21,24 1151:25 1166:3,17 1168:1 1170:10,20 1171:6 1172:3 1174:3,17 1176:24 1178:11,17 1207:10 1219:11 1221:21,22 1222:21 1252:20</p> <p><b>whoever</b> 1189:22</p> <p><b>whole</b> 1100:25 1121:23 1201:3 1204:21 1244:21</p> <p><b>whom</b> 1122:18 1135:20 1187:15 1259:7</p> <p><b>who's</b> 1025:6 1086:24 1169:18 1181:9 1190:8 1202:15 1239:1</p>
---	--	---	--

<p><b>whose</b> 1032:19 1252:10 1259:8</p> <p><b>wife</b> 1202:17 1252:3,17</p> <p><b>wilcox</b> 1162:22</p> <p><b>wildly</b> 1201:25</p> <p><b>william</b> 1007:22 1181:7,8 1260:10 1261:3,5,7,9</p> <p><b>williams</b> 1009:1 1182:16,18,2 1 1183:1 1192:19 1205:6,7,10 1210:9,14,16 1211:5,12 1213:15,20 1215:14,15,2 3 1216:2 1219:1,10 1220:11,15 1221:8,12 1222:14 1226:2 1246:14 1248:14,18 1249:3,20 1253:16,20,2 1 1254:3 1258:4,18 1260:12,13</p> <p><b>willing</b> 1052:24 1076:7</p> <p><b>wilson</b> 1065:22</p> <p><b>wind</b> 1076:19,23 1077:7,9 1162:13,14 1171:22</p> <p><b>winds</b> 1240:3</p> <p><b>winter</b> 1030:17</p> <p><b>wisdom</b> 1206:24</p> <p><b>withheld</b> 1022:11,13 1026:18,25</p>	<p>1094:21 1150:14 1166:12 1177:5</p> <p><b>withhold</b> 1026:22 1027:13,22 1028:2</p> <p><b>withholding</b> 1036:6 1040:11,19,2 0,22 1041:4 1093:19 1165:19 1166:4,16</p> <p><b>witness</b> 1010:4,16 1011:22 1017:24 1018:23 1024:23 1068:23 1079:2 1115:4 1123:4,25 1154:3 1179:13 1180:19,20,2 4 1192:6,22 1196:15 1210:14 1213:19 1215:22 1216:1 1219:17 1220:12,16,2 1,22 1222:13 1246:13</p> <p><b>witness/es</b> 1259:8,10</p> <p><b>witnesses</b> 1050:1 1060:8 1197:20 1199:18 1218:24</p> <p><b>wolf</b> 1095:25 1096:2 1111:6 1135:2 1137:10,22 1145:6 1152:15 1158:10 1229:20,22</p> <p><b>won</b> 1159:3</p>	<p><b>wondering</b> 1218:24</p> <p><b>Wood</b> 1098:6 1122:24 1124:1 1169:15,17</p> <p><b>WOODSMALL</b> 1005:6</p> <p><b>wool</b> 1122:7</p> <p><b>work</b> 1012:5,9 1013:11 1015:7 1021:20 1035:8 1038:1,4,7 1039:4 1044:13 1048:10,20 1068:4 1083:19 1084:14,15,1 6,19,23 1086:11 1087:25 1092:24 1098:24 1100:15,16,2 0 1106:13,19,2 0,21 1109:9,11 1114:4,7,13 1118:25 1121:17 1136:9 1138:19 1158:5 1187:18 1201:2 1204:12 1227:7,14 1228:2,16 1229:9,12,18 1231:2,12,15 1232:5,15,25 1240:4</p> <p><b>workday</b> 1229:1,2,3</p> <p><b>worked</b> 1014:20 1016:12 1017:7 1030:13 1035:12,13 1037:18 1048:12 1083:25</p>	<p>1084:10 1095:13 1101:17 1106:5,17 1111:13 1152:15 1155:20 1164:3,25 1229:3,5 1245:17,20</p> <p><b>working</b> 1014:2 1084:8 1085:1 1088:23 1099:2 1110:1 1111:22 1121:22 1138:21 1189:7,9 1251:11</p> <p><b>workplace</b> 1229:13,14,1 5</p> <p><b>works</b> 1169:19</p> <p><b>workshop</b> 1154:18,20 1159:14</p> <p><b>workweek</b> 1228:23</p> <p><b>worst</b> 1119:16</p> <p><b>worth</b> 1176:10 1203:4 1232:4,25</p> <p><b>write</b> 1086:7 1200:8</p> <p><b>writing</b> 1086:8,19 1091:24</p> <p><b>written</b> 1092:4 1102:18,19 1173:3,17 1251:22</p> <p><b>wrong</b> 1013:25 1020:5 1065:14 1117:1,9 1119:15 1161:20 1167:19 1173:5</p> <p><b>wrote</b> 1132:5</p>
---	--	---	---

<hr/> <p style="text-align: center;"><u>Y</u></p> <p><b>years's</b> 1027:8</p> <p><b>yes-or-no</b> 1083:3 1213:16</p> <p><b>yesterday</b> 1020:4 1038:3 1043:20 1076:4 1085:14 1099:2 1101:9 1183:13 1190:7</p> <p><b>yet</b> 1164:12 1240:4</p> <p><b>you-all</b> 1132:11 1212:11</p> <p><b>you-guys</b> 1108:4</p> <p><b>you'll</b> 1040:16,21 1049:14,18 1050:2 1074:12,25 1085:19 1096:19 1180:22</p> <p><b>Young</b> 1039:2 1137:15 1138:7,10</p> <p><b>yourself</b> 1209:15,18,2 1,24 1213:2</p> <p><b>you've</b> 1022:19 1030:18 1093:20 1113:10,20 1138:21 1180:2 1221:22 1227:5,21,24 1232:8</p> <hr/> <p style="text-align: center;"><u>Z</u></p> <p><b>ZOBRIST</b> 1007:5</p>			
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