

1 A. No, I was not.

2 Q. Okay.

3 MR. FISCHER: That's all I have. Thank  
4 you very much.

5 JUDGE PRIDGIN: Mr. Fischer, thank you.  
6 Dr. Nielsen, you may step down, sir. Thank you very  
7 much. So Mr. Archibald is our next witness; is that  
8 correct?

9 MR. HATFIELD: That's correct.

10 JUDGE PRIDGIN: If you'd come forward to  
11 be sworn, please.

12 And this is a reminder we'll need to  
13 break a little bit before noon so Commissioners can go  
14 to agenda and audience members can get to the agenda  
15 room. Is there anything before Mr. Archibald is  
16 sworn? And sir, if you'll raise your right hand to be  
17 sworn, please.

18 (The witness was sworn.)

19 JUDGE PRIDGIN: Thank you, sir. KCP&L,  
20 when you're ready.

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. HATFIELD:

23 Q. Would you state your name and business  
24 address for the record, please.

25 A. Forrest Archibald, 1200 Main Street,

Appendix  
AA

1 Kansas City, Missouri.

2 Q. And are you the same Forrest Archibald  
3 who filed rebuttal testimony in this case?

4 A. I am.

5 Q. Did you file any other testimony other  
6 than rebuttal?

7 A. No, I did not.

8 Q. And did that rebuttal testimony contain  
9 some exhibits?

10 A. It did.

11 Q. Just to be sure we're on the same page  
12 here because I messed this up with another witness,  
13 you have an exhibit that is schedule 1, identified as  
14 cost report summation; is that right?

15 A. Yes.

16 Q. You have an exhibit that is schedule 2,  
17 identified as Iatan 1 and 2 cost reforecast; is that  
18 right?

19 A. Let me get there. Yes.

20 Q. You have an exhibit that is schedule 3  
21 identified as Iatan 1, contingency commitment  
22 add-delete log; is that right?

23 A. Yes.

24 Q. Does it include the same thing for  
25 Iatan 2 somewhere?

1 A. It does not.

2 Q. Okay. And then you have Schedule 4  
3 identified as risk and opportunity analysis; is that  
4 right?

5 A. Yes.

6 Q. Schedule 5 identified as Iatan 2 cost  
7 reforecast validation?

8 A. Yes.

9 Q. Schedule 6 identified as Iatan 2  
10 reforecast schedule and cost?

11 A. Yes.

12 Q. Schedule 7, identified as Iatan 2,  
13 estimate of completion; is that right?

14 A. Yes.

15 Q. Schedule 8 document that says Alstom at  
16 the top; is that right?

17 A. Yes, change orders to Alstom.

18 Q. Okay. And Schedule 9, identified as  
19 meetings with PSC staff; is that right?

20 A. Yes.

21 Q. Now, are all of these documents documents  
22 that were maintained with KCP&L in the ordinary course  
23 of business?

24 A. Yes.

25 Q. Do you have any changes or corrections to

1 your rebuttal testimony which has been marked as  
2 Exhibit 4-HC and NP?

3 A. I do.

4 Q. Would you tell us what those changes are  
5 by identifying the page number and line, please?

6 A. Yes. Page 2, line 16, the year 1993  
7 should read 1994.

8 Q. All right. Any others?

9 A. Same page, line 19, the year 2005 should  
10 read 2006. And then I have one other on page 25.

11 Q. All right.

12 A. Line 2, the word "security" should read  
13 "safety."

14 Q. What page are we on again?

15 A. Page 25.

16 Q. Okay. So just to be clear, they're on  
17 page 25, line 2, your testimony says, "The manager of  
18 site security (Mr. Michael Hermison)," it should say  
19 "The manager of site safety?"

20 A. Correct.

21 Q. Any other corrections?

22 A. No.

23 MR. HATFIELD: Judge, I move the  
24 admission of Exhibit 4-HC.

25 JUDGE PRIDGIN: Any objections? Hearing

1 none, Exhibit 4-NP and HC is admitted.

2 (KCP&L Exhibit No. 4-HC and NP were  
3 received into evidence.)

4 MR. HATFIELD: Tender the witness for  
5 cross.

6 JUDGE PRIDGIN: Mr. Hatfield, thank you.  
7 Mr. Schwarz?

8 MR. SCHWARZ: Thank you.

9 CROSS-EXAMINATION

10 QUESTIONS BY MR. SCHWARZ:

11 Q. Mr. Archibald, do you have a copy of the  
12 control budge estimate with you?

13 A. I do. I have a copy of the K report with  
14 me.

15 Q. The CBE itself?

16 A. Yes.

17 Q. Okay. And I just -- this is a  
18 hypothetical question, so --

19 A. Okay.

20 Q. -- although I'm going to use a number off  
21 of the CBE. There's a provision on the CBE under  
22 owner's indirects for railcars, \$37 million.

23 A. Yes.

24 Q. You got it? If the -- if the bid for  
25 railcars had come in at \$50 million, would the board

1 have to approve a change in order to go ahead and  
2 exceed the amount on the CBE?

3 A. I don't think I understand. Let me try  
4 and rephrase and see if I understand your question.

5 Q. I'll rephrase.

6 A. Okay.

7 Q. I'll rephrase. If -- okay. Is this HC?

8 MR. HATFIELD: Are you just asking about  
9 railcar? I thought it was a hypothetical, so it's not  
10 HC.

11 BY MR. SCHWARZ:

12 Q. Okay. So it's a hypothetical.

13 MR. HATFIELD: If you keep saying  
14 hypothetical, I might object; but at this point, it's  
15 not HC.

16 BY MR. SCHWARZ:

17 Q. If a specific item on the CBE had been  
18 listed, say, for \$37 million.

19 A. Okay.

20 Q. And it was going to cost more than that,  
21 say \$50 million, would you have to get authorization  
22 to exceed that line item amount or could you simply  
23 adjust the contingency amount?

24 A. I think I understand what you're trying  
25 to ask me. If you're asking me if a particular line

1 item within the control budget was going to be  
2 exceeded or underran, if we would fund that deficit  
3 or --

4 Q. Well, let's just start with exceeded.

5 A. If exceeded, we would fund it for  
6 contingency.

7 Q. Okay. And then your contingency would be  
8 reduced by that amount?

9 A. That is correct.

10 Q. So that there would be a tension, as it  
11 were, if one aspect of the project was exceeding the  
12 CBE amounts, it would limit the ability to exceed it  
13 in other areas?

14 A. Correct. The contingency pool is a  
15 balancing, reserve, if you will, a tension back and  
16 forth.

17 Q. Okay. And now let's talk about what if  
18 instead of 37 million, it came in at \$24 million.

19 A. Okay.

20 Q. would -- would that increase the  
21 contingency?

22 A. Yes, it would.

23 Q. Okay.

24 MR. SCHWARZ: May I approach the witness?

25 JUDGE PRIDGIN: You may.

1 BY MR. SCHWARZ:

2 Q. I am going to hand you a schedule from  
3 Mr. Meyer's testimony and I will suggest to you that  
4 it is an Iatan 2 K report for November of 2007.

5 A. Okay.

6 Q. Is -- well, would you take a look at that  
7 and see if you can confirm that that's correct?

8 A. Yes, it's an Iatan 2 K report through the  
9 period November, 2007.

10 Q. Would you turn to the second page of  
11 that?

12 A. Okay.

13 Q. At the bottom of that page there, in one  
14 of the left-hand columns, there's a number 0170, which  
15 is then identified or described as owner's legal  
16 counsel. Are you with me?

17 A. I am.

18 Q. And what does that 0170 signify?

19 A. Owner's legal counsel was primarily the  
20 internal legal department for KCP&L.

21 Q. Is --

22 A. It also included some outside legal  
23 counsel, if hired through the legal department.

24 Q. So it's not a contract number, it's a --  
25 just a general account identifier?



1 A. I'm sorry, was the question what does  
2 0170 stand for?

3 Q. Signify, yes.

4 A. That would represent a cost code.

5 Q. Okay. It's a cost code, but it's not a  
6 contract-specific item?

7 A. No.

8 Q. Then I think the next one down is 0181.

9 A. Correct.

10 Q. And that -- what's the description of  
11 that?

12 A. KCP&L audit services, Schiff Hardin and  
13 Ernst & Young.

14 Q. Okay. And if this is HC, and I suspect  
15 it might be, I'd like to go in-camera.

16 JUDGE PRIDGIN: One moment, please.

17 (REPORTER'S NOTE: At this point, an  
18 in-camera session was held, which is contained in  
19 volume 26, pages 2138 to 2151 of the transcript.)

20

21

22

23

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25

1 JUDGE PRIDGIN: We're back in public  
2 forum, thank you.

3 FORREST ARCHIBALD testified as follows:

4 BY MR. MILLS:

5 Q. Just for the purposes of the transcript,  
6 I was asking you about the document that Mr. Schwarz  
7 handed you that's an attachment to Mr. Meyer's  
8 testimony, and the far right column is titled updated  
9 control budget estimate. Do you see that column?

10 A. I do.

11 Q. Is it your testimony that that column is  
12 incomplete, inaccurate, or both?

13 A. It would be my testimony that this  
14 document is a high-level summary. I don't know how it  
15 was grouped and how it pertains to what I refer to and  
16 responsible to the tracking as the control budget  
17 estimate other than the bottom line number, the 1.685  
18 billion ties to the number, my bottom line number.

19 Q. Okay. So if there is a number, for  
20 example, for outside management oversight in this  
21 document that is different from what you consider to  
22 be the control budget estimate, then you would  
23 consider this document to be inaccurate; is that  
24 correct?

25 A. I would consider this document not to

1 match my control budget estimate.

2 Q. Do you consider your control budget  
3 estimate to be accurate?

4 A. Absolutely.

5 Q. Okay. So in that sense, this document  
6 would be inaccurate, if it does not match?

7 A. Again, all I can tell you is it wouldn't  
8 match my document.

9 Q. Okay.

10 A. I don't know the pretense in which this  
11 was presented to someone, so I can't answer that.

12 MR. SCHWARZ: If I might, the source of  
13 the document we're referring to is Mr. Drabinski's, I  
14 think, Schedule 2 as opposed to Mr. Meyer's.

15 MR. MILLS: Okay. Judge, may I approach?

16 JUDGE PRIDGIN: You may.

17 BY MR. MILLS:

18 Q. Mr. Archibald, I've handed you what's  
19 been marked as -- I believe it's written on there as  
20 KCP&L Exhibit 251-HC, is that correct, in the bottom,  
21 right-hand corner, or 261?

22 A. Written there, 261.

23 Q. 261. Okay. That has been marked and I  
24 believe admitted into the case as Exhibit 261-HC. Do  
25 you recognize that document?

1 A. No, I do not recognize the document. It  
2 would appear it's the same document that -- it  
3 contains the same document that I was handed earlier.

4 Q. Okay. Were you present when the control  
5 budget estimate was presented to the board of  
6 directors?

7 A. I was not.

8 Q. Okay. Do you know whether the document  
9 that you consider to be the control budget estimate  
10 was actually presented to the board of directors?

11 A. I don't know.

12 Q. Okay.

13 MR. MILLS: That's all I have, Judge.

14 Thank you.

15 JUDGE PRIDGIN: Mr. Mills, thank you.

16 Ms. Ott?

17 CROSS-EXAMINATION

18 QUESTIONS BY MS. OTT:

19 Q. Good morning, Mr. Archibald.

20 A. Good morning.

21 Q. You do not hold a degree from a higher  
22 education institute, do you?

23 A. No, I do not.

24 Q. And you do not have any training in  
25 project management?

1 A. Can you define "training?"

2 Q. Do you have any formal training in  
3 project management?

4 A. And I'm sorry, when you say "formal,"  
5 I've taken training with previous utilities. I don't  
6 know if it's considered formal.

7 Q. Okay. Do you remember being deposed on  
8 January 12, 2011?

9 A. Oh, absolutely.

10 Q. Do you remember being asked that question  
11 during that deposition?

12 A. Yes, I was asked if I had formal training  
13 and my response to that deposition was no. I'm now  
14 asking you to define the meaning, what "formal  
15 training" is because throughout the proceeding of  
16 these hearings, I've heard other witnesses talk about,  
17 well, yeah, I've had all kinds of training at existing  
18 companies. I've had the same training. It's usually  
19 mandated that when you work for a company, especially  
20 a utility, that they update your training. So I  
21 just -- I just don't know if that's formal. That's my  
22 problem.

23 Q. Okay. But during your deposition on  
24 January 12, 2011, did you -- is it now your testimony  
25 today you didn't understand that question?

1 A. I -- it's my testimony that I'm asking  
2 you just to tell me what "formal" means.

3 Q. I'm asking you: During your deposition  
4 on January 12, 2011, when you were asked: "Do you  
5 have any formal training in project management?" And  
6 you said "No," is that not your testimony today?

7 A. Okay. Let me restate my answer. If  
8 you're defining "formal" as college or certificate  
9 training, I do not have that, no.

10 Q. I'm defining "formal" how you -- how did  
11 you define -- well, you answered the question during  
12 your deposition that you do not have any formal  
13 training.

14 A. Yes.

15 Q. And is that your testimony today that you  
16 do not have any formal training in project management?

17 A. And again, I'm not trying to be combative  
18 here. I just need to know what you define as  
19 "formal." If you tell me that "formal" is certificate  
20 or a degree, I have no formal training. If you tell  
21 me, well, formal could be at another utility you took  
22 training, well then yeah, I've had it.

23 Q. During your deposition, did you ask  
24 Mr. Dottheim --

25 A. I did not.

1 Q. -- what he meant? So you understood what  
2 "formal training" meant during your deposition?

3 A. During the deposition, I assumed it was a  
4 degree or a certificate. Based on these proceedings,  
5 I'm not so sure my definition was correct. If you can  
6 let me know your definition of "formal," I'd be more  
7 than happy to answer it.

8 Q. Do you have any formal training in  
9 project cost management? And I'm going off what your  
10 understanding of "formal training" is.

11 A. And again, I do apologize. Can we define  
12 "formal," please?

13 Q. Can you -- what is your interpretation of  
14 "formal" when you answered this question?

15 A. Okay. My interpretation of "formal"  
16 would be college degree or an official certificate  
17 from a recognized institution. So under those --  
18 under that definition, I now understand, please ask me  
19 the question.

20 Q. So prior to your deposition, you were not  
21 aware that you could have formal training that was not  
22 a degree or a certificate from an institution?

23 A. Correct.

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

1 A. No.

2 Q. Do you have any formal training in  
3 project procurement management?

4 A. No.

5 Q. Do you have any formal training in  
6 project risk management?

7 A. No.

8 Q. Do you have any formal training in  
9 project integration?

10 A. Yes. I've taken courses with Primavera.

11 Q. And do you have any formal training in  
12 project scope management?

13 A. No.

14 Q. And you do not consider yourself an  
15 expert in matters of accounting?

16 A. No.

17 Q. And are you a professional engineer?

18 A. No.

19 Q. And you also did not assist in the  
20 development of the project execution plan?

21 A. That is correct, I did not.

22 Q. Do you have a copy of your testimony with  
23 you?

24 A. I do.

25 Q. Rebuttal testimony? I'd like to direct



1 you to page 13.

2 A. Bear with me one second, please. Did you  
3 say page 13?

4 Q. I did.

5 A. Okay.

6 Q. In particular, lines 11 through 13, when  
7 you directly quote Staff's report.

8 A. Eleven through thirteen?

9 Q. Well, actually goes through 14.

10 A. I'm sorry, 11 through 14.

11 Q. Do you have a copy of Staff's June 30th  
12 report in which you're quoting there?

13 A. I do not.

14 Q. It's the November 3rd, 2010, cost report  
15 based on June 30th, 2010. And I'm going to show you  
16 the section of Staff's report in which you're directly  
17 quoting.

18 A. Okay.

19 Q. And I want you to compare and see if  
20 that's an accurate quote.

21 A. No, I would tell you it's not based  
22 verbatim, no.

23 Q. So Staff's report identifies cost  
24 overruns and you identify it as cost variances?

25 A. That is correct, on line 13 of my

1 testimony, I say --

2 MR. HATFIELD: what page?

3 THE WITNESS: I'm sorry, page 13,  
4 line 13. I say budget cost variances and Staff says  
5 budget cost overruns.

6 BY MS. OTT:

7 Q. would you like to update your testimony  
8 at this time to reflect Staff's accurate quote?

9 A. Since I'm quoting them, then yes, I would  
10 definitely need to update it.

11 Q. Okay. So -- I can take the Staff's  
12 report back.

13 A. Uh-huh.

14 Q. So just so the record's clear, on  
15 line 13, you're changing cost variance to cost  
16 overruns; is that correct?

17 A. Yes.

18 Q. Thank you. Now, R&Os stand for risk and  
19 opportunity, correct?

20 A. Absolutely, yes.

21 Q. Okay. And the risk stands for something  
22 that can potentially be over budget where opportunity  
23 means there would be an opportunity to save costs. Is  
24 that accurate?

25 A. That is accurate.

1 Q. So the R&Os are a form of a monitoring  
2 table to identify opportunities to reduce costs but  
3 also risk of having increased costs; would that be an  
4 accurate description?

5 A. I would describe it a little bit  
6 different.

7 Q. Okay. And how would you describe it?

8 A. I would tell you that the R&Os are risk  
9 and opportunities where items that identified both  
10 under -- potential underruns and overruns to the  
11 budget in a forward-looking manner.

12 Q. Now, R&Os were used in regards to the  
13 Iatan 1 project?

14 A. Yes.

15 Q. And they were only used for a certain  
16 period of the Iatan 2 project; is that correct?

17 A. Yes.

18 Q. Now, in regards to the May 2nd, 2008,  
19 reforecast, R&Os, they were used to explain cost  
20 variances to the budget; is that correct?

21 A. Yes.

22 Q. Now, R&Os were -- in regards to  
23 Iatan 1 -- used to create the reforecast?

24 A. I'm sorry, could you repeat that?

25 Q. Were R&Os used to create the current

1 budget over the control budget estimate?

2 A. I don't think I'm quite understanding  
3 what you're asking me.

4 Q. Were the R&Os used to create or used to  
5 help develop the current budget over the control  
6 budget estimate?

7 A. The R&Os were used to identify and  
8 explain cost variances, whether it was an overrun or  
9 underrun, against the control budget to create a new  
10 budget that we tracked to. But it also gave us the  
11 ability to track back to the control budget.

12 Q. So they were used to help create the new  
13 budget?

14 A. Yes.

15 Q. That was my question.

16 A. Okay.

17 Q. Now, are actual costs identified by the  
18 R&Os?

19 A. I think what you're trying to ask me is  
20 can I track actual costs to my R&Os.

21 Q. Yes.

22 A. Okay. Absolutely not. No. Absolutely  
23 not. They were never intended to do that.

24 Q. okay. Thank you.

25 A. Neither were the CPs. Okay. Sorry.

1 Q. Now, CPs stand for cost projections,  
2 correct?

3 A. Yes.

4 Q. And a cost projection would be kind of an  
5 aggregation of R&O types into one document? Would  
6 that be an accurate description?

7 A. No. And I think it would take some  
8 further explanation.

9 Q. Well, explain to me what a cost  
10 projection is.

11 A. Okay. When we transition from R&Os in  
12 the May '08 reforecast to what we refer to as CP items  
13 or cost projection items, what we did was we  
14 streamlined the process. It was a lesson learned.  
15 The R&Os identified individual tasks across many  
16 items. What we did with CPs was in order to  
17 streamline the process and focus management review as  
18 well as party reviews and get reforecasts done sooner,  
19 we group like items all together. So you can take  
20 your indirects and look at all your indirects at once,  
21 understand the same calculations, but you really had a  
22 focus so you could pull certain people in together to  
23 do the review to be more efficient.

24 Q. So then are you saying it was -- you went  
25 to the CPs because it was easier to approve --

1 A. Oh, no, no, no.

2 Q. -- the cost projections?

3 A. It had nothing to do with approval. It  
4 had to do with the reviewing and vetting process.  
5 What it did was it allowed us to reforecast and more  
6 accurately capture what we thought our costs were  
7 going to be in a more timely fashion. It also reduced  
8 the cost and time that it took the project to spend on  
9 those reforecasts, allowing us to save budget and save  
10 the ratepayers' money.

11 Q. And these same CPs would have been used  
12 to create the current budget as the R&Os were used?

13 A. Yes.

14 Q. And I believe when I asked the question  
15 about R&Os, you were answering for the CPs, too. They  
16 do not track actual costs?

17 A. Oh, absolutely not, no.

18 Q. So the R&Os and CPs were used to raise --  
19 raise the control budget estimate to the current  
20 budget?

21 A. I would tell you that that -- if you're  
22 trying to simplify it at a 20,000-foot view, that's  
23 the effect they had. The R&Os and CPs identified  
24 potential overruns and underruns to the control budget  
25 estimate that allowed us to create a current budget.

1 Q. Okay. So let's talk about that. It  
2 goes -- it could go either way?

3 A. Yeah.

4 Q. So for your current -- the KCP&L budget,  
5 isn't it true that the project is coming under that  
6 current budget?

7 A. Yes.

8 Q. And that's roughly about 40 million?

9 A. Yes.

10 Q. Okay.

11 A. That's our current projections, yes.

12 Q. So essentially, then, now you'd be --  
13 with the current budget, it would be considered a cost  
14 underrun? would that be a phrase to use?

15 A. What are you using to measure against?  
16 Are you using the control budget to measure against or  
17 the current budget?

18 Q. I'm talking about the current budget.

19 A. Yes.

20 Q. So you're coming under 40 million?

21 A. Yes.

22 Q. Where would you -- where would you assign  
23 that 40 million not spent?

24 A. Can you tell me what you mean by  
25 "assign?"

1 Q. Where would you track back that 40  
2 million to the R&Os and CPs to the actual budget?

3 A. Are you asking me what I would attribute  
4 to coming into \$40 million under the 1.988?

5 Q. Where can you identify what areas that 40  
6 million is coming in under budget?

7 A. Well, you'd have to go to the November,  
8 2010 reforecast document to see, since it's a  
9 look-ahead, that information would be located within  
10 that document.

11 Q. So a budget variance is either a positive  
12 or a negative effect towards the budget, correct?  
13 It's any change, whether it be --

14 A. Yes.

15 Q. -- a savings or an extra expenditure?

16 A. Whether it's an overrun or an underrun,  
17 it's still a variance.

18 Q. Now, a cost overrun, though, would be a  
19 cost that is above the budget and above the  
20 contingency reserve?

21 A. Are you asking me?

22 Q. I'm asking you if that's correct.

23 A. This is going to take some explanation in  
24 order for me to answer your question.

25 Q. So is a cost overrun, then, not a cost



1 that is above and beyond the control budget estimate  
2 including -- including the contingency fund contained  
3 within?

4 MR. HATFIELD: I'm going to object to the  
5 question being ambiguous, whether she's asking for his  
6 understanding or some general definition of the term.

7 JUDGE PRIDGIN: I'll overrule and I'll  
8 let him answer, if he can. If he doesn't understand  
9 the question, he can say so.

10 THE WITNESS: The way you're asking the  
11 question, I can't answer it with a yes or no is my  
12 problem.

13 BY MS. OTT:

14 Q. So you don't (sic) have a budget and then  
15 you have a contingency on top of the budget?

16 A. Uh-huh.

17 Q. And then anything above that contingency  
18 that is expended is a cost overrun; is that not true?

19 A. That would be one of many definitions of  
20 cost overrun.

21 Q. Do you know what the stipulation and how  
22 the stipulation and agreement defines cost overruns?

23 A. I believe the S&A agreement, according to  
24 Mr. Giles's and Blanc's testimony, does not define  
25 what a cost overrun is. I can tell you from my

1 perspective of working in the industry for over 13  
2 years what I would interpret a cost overrun to be, but  
3 I haven't heard you ask me that.

4 JUDGE PRIDGIN: I hate to interrupt, but  
5 we're getting close to noon and I assume you're going  
6 to have quite a bit more cross.

7 MS. OTT: I have a little bit more. We  
8 can break.

9 JUDGE PRIDGIN: Okay. That's fine.  
10 Let's stand in recess until 1:30. Is there anything  
11 further from counsel before we go off the record?

12 MS. OTT: I believe Mr. Dearmont has  
13 something he would like to address.

14 JUDGE PRIDGIN: Okay. Does that need to  
15 be on or off the record?

16 MR. DEARMONT: It can probably be off the  
17 record right now, Judge.

18 JUDGE PRIDGIN: Okay. Thank you. We'll  
19 stand in recess until 1:30.

20 (A break was held.)

21 JUDGE PRIDGIN: All right. Good  
22 afternoon, we are back on the record. I believe  
23 Ms. Ott was cross-examining Mr. Archibald when we  
24 broke for agenda and for lunch. And depending on how  
25 long agenda runs and how long USB meeting runs, it's

1 possible that we would have Commissioners down here  
2 that would want to examine Mr. Archibald but not be  
3 present. If that happens, I would want to alert the  
4 parties he would likely not be excused at least until  
5 I verify with the bench that they had any examination  
6 of the witness. And if indeed they do, I would allow  
7 for recross and redirect based on those questions.

8 MR. FISCHER: I have -- I know  
9 Dr. Nielsen has a plane out of St. Louis this  
10 afternoon, is it okay to release him?

11 JUDGE PRIDGIN: I see no reason why not.  
12 We had Commissioners here on the bench and nobody has  
13 requested him to stay.

14 MR. FISCHER: Thank you.

15 JUDGE PRIDGIN: Anything further before  
16 Ms. Ott resumes cross-examination? All right.  
17 Mr. Archibald, you are still under oath, sir.

18 THE WITNESS: Understood.

19 BY MS. OTT:

20 Q. Mr. Archibald, before we broke for lunch,  
21 we were discussing cost overruns in relationship to  
22 control budget estimate and the contingency. Is your  
23 definition of "cost overruns" anything above the  
24 billion six eighty five?

25 A. I believe what you're reading from is my

1 deposition, which I said when asked my definition, I  
2 said anything above the CBE, or control budget  
3 estimate. What I was trying to convey earlier is that  
4 there are many definitions. I personally have several  
5 because I'm held to a higher standard than what is in  
6 the S&A agreement itself.

7 Q. So is your definition of "cost overrun"  
8 anything above the control budget estimate?

9 A. That is one of my definitions, yes.

10 Q. Is that your definition that you're using  
11 in this matter today?

12 A. Are you asking my opinion on how many  
13 definitions there are?

14 Q. No, I'm asking if your definition of a  
15 cost overrun in this matter relating to the prudency  
16 review --

17 A. Uh-huh.

18 Q. -- is anything above the control budget  
19 estimate.

20 A. I think it will take a little  
21 explanation, if you'd allow me.

22 Q. It's a yes-or-no question.

23 A. That is one of them, yes.

24 Q. Mr. Archibald, after your deposition, who  
25 did you speak with in regards to -- in relationship to

1 that deposition?

2 A. When you say who did I speak to --

3 Q. Did you have any conversations regarding  
4 post the deposition to discuss your answers during the  
5 deposition?

6 A. I did a debrief with my attorney.

7 Q. And that was Mr. Hatfield?

8 A. Yes.

9 Q. Did you have any discussions before  
10 coming here today in which you would have compared  
11 your deposition to when you were doing any witness  
12 prep?

13 A. I'm sorry, can you re-ask that?

14 Q. When preparing for the hearing today --

15 A. Yes.

16 Q. -- did you do any witness prep?

17 A. Oh, absolutely.

18 Q. And who did you do witness prep with?

19 A. Myself.

20 Q. Did you have any coaching or anyone  
21 assisting you asking you questions to prepare for  
22 today?

23 A. No, I was just reading through my  
24 documents and my notes.

25 Q. So you didn't have?

1 A. I picked up on a lot of questions that  
2 Staff and the other attorneys have asked and the  
3 Commissioners themselves have asked different  
4 witnesses before me.

5 Q. So you did not speak with an attorney or  
6 one of your co-workers in preparation for the hearing  
7 today?

8 A. Well I mean, I spoke with my lawyer this  
9 morning asking my opinion on what I think I'm going to  
10 be asked and how things are going to go. That type of  
11 stuff.

12 Q. Well, you seem to have changed some of  
13 your answers since your deposition or trying to expand  
14 upon them here now. And I'm just confused as to when  
15 you were asked questions during your deposition, what  
16 has changed between your deposition on January 12th,  
17 2011, and today that you're now having different  
18 answers or you didn't fully understand those questions  
19 during the deposition.

20 MR. HATFIELD: Nevermind. If she wants  
21 him to explain, okay.

22 THE WITNESS: I think time has evolved,  
23 time has passed. And what I mean by that is when  
24 you're sitting in a deposition that was done by  
25 telephone and you're not seeing the people that you're

1 talking to, and you have to make assumptions on what  
2 some of the definitions are. As I've sat through  
3 these hearings and we sit here today, I've heard a lot  
4 of questions that each party has asked each of our  
5 witnesses, which helps me gather information on the  
6 types of question and information you-guys are  
7 seeking.

8 BY MS. OTT:

9 Q. Did Mr. Dottheim, during that deposition,  
10 not inform you if you didn't understand a question  
11 that you should ask for clarification?

12 A. Oh, yes, absolutely.

13 Q. Okay. And you didn't ask for  
14 clarification on some of these questions that I've  
15 been asking you today that you answered in your  
16 deposition?

17 A. I did, yes. I'm sorry, I did ask for  
18 clarification on some of the things that Mr. Dottheim  
19 asked me during my deposition, yes. Was that your  
20 question?

21 Q. Yes, but in regards to the "formal  
22 training," your deposition transcript doesn't indicate  
23 you asked what the word "formal" meant. And today,  
24 you suddenly have a different definition of "formal,"  
25 so --

1 A. And I think as I've tried to say --  
2 MR. HATFIELD: Judge, I'm going to  
3 object. That's just argumentative. There's actually  
4 no question on the table, but if she's just making  
5 statements to try to get a reaction, it's the  
6 definition of argumentative.

7 MS. OTT: I'm asking questions to try to  
8 figure out what has happened in two weeks to suddenly  
9 change the witness's sworn testimony.

10 JUDGE PRIDGIN: I'll overrule. I'll let  
11 you try to get to that.

12 THE WITNESS: What has changed is again  
13 what --

14 MR. HATFIELD: Judge, can we read back  
15 the question?

16 JUDGE PRIDGIN: That will be fine, or  
17 Ms. Ott, if you'd like to -- or Ms. Ott, if you want  
18 to ask it again, whichever you prefer.

19 BY MS. OTT:

20 Q. What has changed since your deposition on  
21 January 12th in regards to your definition of "cost  
22 overrun" until today?

23 A. Okay. When I answered the question in my  
24 deposition, and that's what I tried to explain  
25 earlier. Cost overrun has many meanings, okay? I



1 wasn't asked to list them all out, I was asking to  
2 define what a cost overrun meant to me. One -- one  
3 aspect of that is anything over the CBE.

4 My day-to-day life, my everyday in the  
5 trenches tracking costs on this project for the last  
6 five years, I've been held to a higher standard. A  
7 cost overrun or a cost underrun helped create budget  
8 variances.

9 I'm -- I'm hired to explain every cost  
10 variance to the CBE. And when I say "CBE," I'm  
11 talking to the base 1,468,5. That's what the site  
12 tracks to. Now, you're asking me in a broad sense  
13 what's a "cost overrun," well I tried to say earlier  
14 there's several definitions.

15 Q. So is your definition of "cost variance"  
16 the same as a "cost overrun?"

17 A. My definition of a "cost variance" is  
18 either an overrun or an underrun. It's a variance.

19 Q. Okay. So your definition of a "cost  
20 overrun" would only be an overrun, not an underrun?

21 A. I'm sorry, did you say that my  
22 definition --

23 Q. Would your definition of "cost overrun"  
24 only be something above and not anything under? As a  
25 variance can go both ways, an overrun can only go one?

1 A. Yes, I would agree.

2 Q. Now, the contingency budget was to cover  
3 cost variances, correct?

4 A. Yes.

5 Q. And for Iatan 2, that was 220 million?

6 A. That is correct.

7 Q. Now, I think when you were talking with  
8 Mr. Schwarz earlier, that you indicated that if there  
9 was a cost underrun on a particular item, then that --  
10 that amount of money would dump into the contingency  
11 budget, correct?

12 A. Correct.

13 Q. So the contingency budget doesn't cover  
14 cost overruns?

15 A. Well, it would depend on your definition  
16 of "cost overrun." Again, if you're on the site, yes,  
17 the contingency covers your cost overrun because the  
18 overrun is anything over the 1,468,5.

19 If you're trying to take the definition  
20 and apply it to the S&A based on what I've read on all  
21 these depositions and the audit findings, a cost  
22 overrun's been limited to anything above the 1,685. I  
23 don't care where you define a cost overrun. Our  
24 system allows you to track through every dollar that's  
25 spent from cradle to grave and understand where it was

1 spent and wherever the overrun occurred.

2 Q. Okay. For Iatan 2, what is the actual  
3 amount of cost overruns over the definitive estimate?

4 A. Using whose definition of "overrun?"  
5 Using above the 1,468,5 or using above the 1,685.

6 Q. The 1,685.

7 A. Okay. will you please re-ask your  
8 question?

9 Q. What is the actual amount of cost  
10 overruns above the definitive estimate?

11 A. Through what point in time?

12 Q. Through June 30th, 2010.

13 A. I will pull a June 30, 2010 K report.  
14 what would you like me to look at for the cost  
15 variance?

16 Q. I said what is the actual amount of --  
17 not variances, cost overruns above the definitive  
18 estimate?

19 A. what would you like me to compare the  
20 data to?

21 Q. what is the actual amount of cost  
22 overruns for June 30th, 2010, above the definitive  
23 estimate?

24 A. Okay. I'm going to try this a different  
25 way. Are you asking me on actual cost basis or are

1 you asking me on a committed basis, are you asking me  
2 on a forecasted basis?

3 Q. I believe I asked you the actual cost  
4 overruns.

5 A. Okay. Thank you. The actual cost  
6 overruns against the 1,685 during that time period  
7 would have been approximately \$130 million.

8 Q. Now, if you'd reconciled this \$130  
9 million cost overrun with the definitive estimate?

10 A. Can you -- I'm sorry, "reconcile," what  
11 do you mean?

12 Q. Do you identify each and every cost  
13 overrun with the definitive estimate?

14 A. Well, yeah. The K report does that.

15 Q. So the K report is a reconciliation of  
16 cost overruns compared to the definitive estimate?

17 A. Yeah, the K report itself, the nice thing  
18 about the K report is that not only does it maintain  
19 the original CBE or the --

20 Q. I believe I asked you the K report is a  
21 reconciliation?

22 A. Yes.

23 Q. Where in the K report does the cost  
24 overruns relate to the contingency?

25 A. Well, there would be a total contingency

1 line on the K report itself.

2 Q. Does that show all of the contingency  
3 items?

4 A. It has a cumulative contingency bucket  
5 that remains. Is that what you're asking me?

6 Q. So it's a cumulative, it doesn't identify  
7 each and every thing that created that contingency?

8 A. No, the K report itself would not. You'd  
9 have to go to the contingency log.

10 Q. So I want to kind of give you, like, a  
11 hypothetical to try to understand something.

12 A. Okay.

13 Q. Let's say you have a budget for \$10 for a  
14 particular item, and it actually costs 18. How do you  
15 decide what the 18 goes into a contingency and what  
16 becomes a cost overrun?

17 MR. HATFIELD: I'm going to object. The  
18 question is ambiguous as to -- I'm afraid we're going  
19 to get into a discussion again about what this means.  
20 I don't understand who she means.

21 MS. OTT: It's a hypothetical and he's  
22 sitting up here as the cost witness.

23 MR. HATFIELD: I'm not objecting to the  
24 form of the question, I'm objecting to its ambiguity.

25 JUDGE PRIDGIN: I'll overrule and the

1 witness seems capable of stating if he doesn't  
2 understand the question. If he doesn't understand,  
3 you can re-ask the question.

4 THE WITNESS: Can you re-ask the  
5 question, please?

6 BY MS. OTT:

7 Q. Okay. You have an item that costs \$10 --  
8 that you budgeted \$10 for.

9 A. Okay.

10 Q. And it ends up costing 18. Now, how do  
11 you decide if that is going to be a cost overrun or if  
12 it's going to go into the contingency?

13 A. well, I think what we're talking about  
14 here is budgeting 101. So let me try and answer what  
15 I think we're talking about. If I have a budget for  
16 any item, whether it's \$10 or \$100, and it's for a  
17 scope of work, I have that budget, okay? And I know  
18 what defined scope of work it's for. I would then  
19 release a source document, an authorization to work,  
20 whether it's a purchase order or change order or  
21 something to that affect, engagement letter, whatever  
22 it may be, to authorize the vendor to go to work.

23 I would then have a commitment. Okay?  
24 If the scope was completely done and identified so if  
25 I had a \$10 budget and my scope was eight bucks, then

1 \$2 of that would be returned back into contingency.

2 okay? Now, if you go the other way, and I had a \$10  
3 budget and it came in at \$18, I would have to draw \$8  
4 out of contingency to pay for that.

5 Q. So what if the contingency was used up?

6 A. I guess I don't understand the question.

7 Q. So then it would be a cost overrun?

8 A. According to how the second definition of  
9 cost overrun I've given, yes. I mean, based on what  
10 I've read here and read through all the testimonies  
11 and read in the audit filing, what we're defining  
12 "cost overrun" as is anything above the base estimate  
13 plus the 220, which is anything above the 1,685.

14 That's -- that seems to be the heart of  
15 the matter here. I mean, the problem that I'm seeing,  
16 and again, I think it's come out, is that no one ever  
17 defined what "cost overrun" means. In my day-to-day  
18 job and all my experience tracking costs, a cost  
19 overrun management is anything above your base budget.  
20 That's what we've got to explain.

21 Q. So if you don't know what the definition  
22 of "cost overrun" is, how do you know how to track it?

23 MR. HATFIELD: Judge, I'm going to  
24 object, that assumes facts not in evidence. He does  
25 know what the definition of "cost overrun" is, she