

1 cross?

2 MR. HATFIELD: A little direct.

3 JUDGE PRIDGIN: Yes, sir, when you're
4 ready.

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. HATFIELD:

7 Q. Mr. Roberts, would you state your name
8 and business address for the record, please.

9 A. Kenneth M. Roberts. What was formerly
10 known as the Sears Tower in Chicago, Illinois, now
11 known as the Willis Tower.

12 Q. And are you the same Ken Roberts who
13 filed testimony in this case?

14 A. I am.

15 Q. And did you file direct testimony?

16 A. I did.

17 Q. Did you file rebuttal testimony?

18 A. I did.

19 Q. Did you file supplemental rebuttal
20 testimony?

21 A. I did.

22 Q. And could you just explain very briefly
23 why you filed supplemental rebuttal testimony? Was
24 that after Mr. Drabinski's testimony?

25 A. Yes. It addresses points raised in

Appendix
CC

1 Mr. Drabinski's testimony.

2 MR. HATFIELD: And, Judge, just for the
3 record, the reason we have supplemental rebuttal here
4 is that Mr. Drabinski's testimony was filed a little
5 later, with the agreement of all the parties. And so
6 there was supplemental rebuttal filed as a result of
7 that filing. I just wanted to make sure we were clear
8 on that.

9 BY MR. HATFIELD:

10 Q. And then, Mr. Roberts, did you also file
11 surrebuttal testimony?

12 A. I did.

13 Q. And does some of your testimony contain
14 exhibits as well?

15 A. It does.

16 Q. We've marked your direct testimony as
17 Exhibit 50-HC and public. We've marked rebuttal as
18 Exhibit 51-HC and public. We've marked supplemental
19 rebuttal as Exhibit 52-HC and public. We've marked
20 surrebuttal as Exhibit 53-HC and public.

21 Now, Mr. Roberts, I know it's a lot of
22 paper. Do you have anything in any of that testimony
23 that needs to be corrected?

24 A. No, I do not.

25 Q. If we ask you those same questions here

1 today, would your answers be the same?

2 A. They would.

3 Q. All of the schedules that you submitted
4 remain true and accurate today?

5 A. To the best of my knowledge, yes.

6 MR. HATFIELD: Judge, we'd move the
7 introduction of Exhibits 50, 51, 52, 53, HC and NP
8 versions.

9 MS. OTT: Judge, Staff objects to
10 Schedules 3, 4 and 5 in his direct testimony. Schedule
11 3 is direct testimony of Charles J. Hookum and the --
12 or Wisconsin Power & Light. Mr. Hookum is not here to
13 stand cross-examination, as well as he only
14 specifically cites to page 14, 20, and 21; however, the
15 document is 43 pages of this man's testimony. As well
16 as Schedules 4 and 5 are verified petitions in the
17 Indiana Utility Regulatory Commission. Mr. Stanley is
18 not here, who verified those petitions to stand
19 cross-examination.

20 JUDGE PRIDGIN: Mr. Hatfield?

21 MR. HATFIELD: Yes, Judge. Yeah, I'm
22 sure you've addressed this before. It's actually a
23 very interesting issue. When a witness files an
24 affidavit in advance under the statutes, parties have
25 seven days, I think, to challenge hearsay. And if they

1 don't, it's deemed admitted without a hearsay
2 objection.

3 But that aside for a moment, I believe
4 Ms. Ott is welcome to cross-examine Mr. Roberts on
5 this. But I don't believe those exhibits are being
6 offered for the truth of the matter asserted. But
7 rather, they're offered as foundation for his opinions
8 on the cost of the project as it compares to other
9 projects.

10 These are documents normally relied upon
11 by experts in reaching conclusions such as he's reached
12 in this case, and as such, as long as this Commission
13 finds that they have independent credibility, they are
14 not -- and they're not being offered for the truth of
15 the matter asserted, they may be considered as evidence
16 to support his opinions.

17 MS. OTT: well, if they're not being
18 offered for the truth of the matter asserted, I don't
19 think 43 pages worth of testimony, when he's only
20 specifically referencing three pages within Mr.
21 Hookum's direct testimony filed on behalf of another
22 state in front of another Commission, is relevant to --
23 to this matter.

24 MR. HATFIELD: Certainly the Commission
25 may consider the credibility of the testimony, Judge,

1 but it doesn't go to whether that evidence may be
2 considered.

3 JUDGE PRIDGIN: Okay. The objections are
4 noted and overruled. Exhibits 50, 51, 52, and 53 NP
5 and HC are admitted.

6 (Exhibit Nos. 50-HC, 50-NP, 51-HC, 51-NP,
7 52-HC, 52-NP, 53-HC, and 53-NP and HC were received
8 into evidence.)

9 JUDGE PRIDGIN: Anything further before
10 he stands cross?

11 MR. HATFIELD: No, sir.

12 JUDGE PRIDGIN: Okay. Thank you.
13 Cross-examination, Mr. Schwarz?

14 CROSS-EXAMINATION

15 QUESTIONS BY MR. SCHWARZ:

16 Q. Good morning, Mr. Roberts.

17 A. Good morning.

18 Q. Schiff Hardin's a law firm?

19 A. It is.

20 Q. Does Schiff Hardin provide legal advice
21 by invoice?

22 A. Yes.

23 Q. So if -- let me ask you this: Has Schiff
24 Hardin ever provided legal advice to KCP&L and done so
25 by saying, please see our invoice of December 12th,

1 2008?

2 A. I don't understand your question.

3 Q. Have you ever told KCP&L that to receive
4 your legal advice, they had to look at an invoice?

5 A. The bill would describe the legal advice
6 or strategy that was, in part, given to KCP&L, that's
7 correct.

8 Q. Would it describe it or would it
9 reference it?

10 A. In some cases, it would describe it.

11 Q. But not in all cases?

12 A. It would certainly give the nature of the
13 advice that was given, yes.

14 Q. Okay. Have you had an opportunity to see
15 what was marked as KCP&L 270, one of the staff?

16 A. I don't have that in front of me, sir,
17 no.

18 MR. SCHWARZ: May I approach?

19 JUDGE PRIDGIN: You may.

20 THE WITNESS: I have looked at the
21 document, sir.

22 BY MR. SCHWARZ:

23 Q. All right. I think it's the second page
24 of the exhibit is, like, the cover page of -- of the
25 memo; is that correct?

1 A. Yeah, dated December 7th, 2005, budget
2 proposal for comprehensive energy plan project?

3 Q. Uh-huh. And it says that it's for
4 William Downey's eyes only; is that correct?

5 A. Yes.

6 Q. Why is that?

7 A. It was a highly confidential document
8 that was laying out both not only what we would
9 perceive as the budget over a five-year plan, but
10 laying out what we thought would be the commercial
11 legal strategy that a utility embarking in this plan
12 would have to engage in. It was -- it was also -- it
13 was directed to Bill Downey, but I worked extensively
14 off this document with Bill Riggins.

15 Q. So -- but why does it -- I guess I get
16 back to my question, why does it say eyes only as
17 opposed to highly confidential or --

18 MR. HATFIELD: Judge, I just want to
19 object. I think if we get any further than that, we
20 may be calling for attorney-client privilege. Why did
21 this attorney choose to give that particular advice,
22 it's for your eyes only, to Mr. Downey.

23 JUDGE PRIDGIN: Mr. Schwarz?

24 MR. SCHWARZ: I hardly think at this
25 stage that that is the situation. If it is, of course,

1 he's perfectly entitled to say that the CEO could look
2 at it, but not the general counsel. It's -- it's eyes
3 only. It's not classified as highly confidential, it's
4 not -- it doesn't say share it with your VP of
5 construction, it doesn't say share with your general
6 counsel. It says eyes only. It certainly goes to the
7 issues -- well --

8 JUDGE PRIDGIN: All right. I'll
9 overrule. On the eyes only issue, I'll overrule on
10 that.

11 THE WITNESS: I need some help. What was
12 the question again?

13 BY MR. SCHWARZ:

14 Q. Why is it designated eyes only?

15 A. Well, it's designated a confidential
16 memorandum for Bill Downey's eyes only. At the bottom,
17 it says highly confidential, do not disseminate.

18 Q. That says what it says, but it doesn't
19 answer why. Why eyes only as opposed to confidential
20 or internal distribution only or, you know, CEO and
21 general counsel? I mean, eyes only, that sounds like a
22 James Bond movie.

23 A. This was deemed a very sensitive document
24 laying out commercial contract strategy for a five-year
25 time period. Mr. Downey initially wanted it for his

1 eyes only. That's why it's designated that way.

2 Q. Thank you. Mr. Downey requested it that
3 way?

4 A. And Mr. Riggins did as well.

5 Q. Okay. Is Jim Wilson's company referenced
6 in that memo?

7 A. The document I have in front of me is --
8 is redacted.

9 Q. In the part that's not redacted.

10 A. Right. The budgetary analysis, the first
11 paragraph, references our fees plus those of
12 consultants J. Wilson & Associates.

13 Q. Is Mr. Wilson an attorney?

14 A. No, he's not.

15 Q. Does he practice law?

16 A. No, he does not.

17 Q. Does he provide legal advice?

18 A. He provides advice to Schiff upon which
19 we give legal advice.

20 Q. Does Mr. Wilson provide legal advice?

21 A. He does not directly provide legal
22 advice.

23 Q. Thank you. What about Mr. Meyer, does he
24 provide legal advice?

25 A. He does not directly provide legal

1 advice.

2 Q. There's a reference to Ticktacks. That's
3 who Steve Jones was working for?

4 A. That's entirely incorrect.

5 Q. Fine. What personnel who were actually
6 used on the project worked for Ticktacks?

7 A. Volkar Ruminaf is an expert on back-end
8 work, and he was used as it related to Alstom.

9 Q. And is he an attorney?

10 A. No, he's not.

11 Q. Did he provide legal advice?

12 A. He directly did not, no, sir.

13 Q. Tom Maiman, is he an attorney?

14 A. No.

15 Q. Did he provide legal advice to KCP&L?

16 A. No, he did not.

17 Q. What legal strategies would have been
18 revealed had you identified your expected costs for Tom
19 Maiman's advice?

20 A. It's been redacted. I can't -- there was
21 legal strategy for the five-year plan that gave KCP&L
22 from what would be expected -- I'm trying to answer
23 your question.

24 Q. I understand. I'll withdraw the
25 question. I'll withdraw the question.

1 Was there a line item for Tom -- the
2 costs -- the expected costs of Tom Maiman's services in
3 that document?

4 A. As I sit here right now, I can't recall.
5 I think in general, the types of services in areas that
6 it would be expected and how those would be used in
7 legal strategy were, indeed, identified.

8 Q. So in a relatively comprehensive
9 document, outlining expected costs over a project five
10 years forward, it's your recollection now that there is
11 no simple reference in there to the expected costs for
12 the individual consulting services?

13 A. As I sit here right now, I couldn't tell
14 you. I think there was groupings in general, yes.

15 Q. Thank you.

16 MR. SCHWARZ: I think that's all I have.

17 JUDGE PRIDGIN: Mr. Schwarz, thank you.

18 Mr. Mills?

19 MR. MILLS: No questions.

20 JUDGE PRIDGIN: Ms. Ott?

21 CROSS-EXAMINATION

22 QUESTIONS BY MS. OTT:

23 Q. Mr. Roberts, the purpose of your
24 testimony is given as an attorney; is that correct?

25 A. As an attorney and as a fact witness to

1 the process, yes.

2 Q. So are you -- so what part of your
3 testimony, then, is given as a fact witness and what
4 part of your testimony is provided as an attorney for
5 KCP&L?

6 A. I'm always an attorney. Anything that
7 I'm giving is as an attorney, as a partner of Schiff
8 Hardin. I would say that well over 90 -- maybe 95
9 percent of my testimony is as a fact witness as to the
10 data and issues that were given to KCP&L's senior
11 management upon which and how they made decisions.

12 Q. So is any of your testimony based upon
13 redacted information that was provided to staff? So
14 any of the documents in which you provided to KCP&L in
15 which they deemed to be attorney-client privilege that
16 they redacted, is any of your testimony related to any
17 of those documents?

18 A. I would assume that part of my testimony
19 does, in fact, relate to documents that potentially
20 have been redacted. Unless you can identify which
21 document and put a specific question in front of me,
22 it's very broad. But I would assume in general, there
23 must be some aspect of my testimony that would touch
24 upon a redacted document.

25 Q. So do you know if KCP&L is, then, waiving

1 their attorney-client privilege with regards to your
2 testimony for information coming from those redacted
3 documents?

4 MR. HATFIELD: Judge, for the record, the
5 company waives no privilege.

6 MS. OTT: I think I will state that he
7 does believe some of his testimony is relied upon
8 privileged documents, so the record needs to reflect
9 that.

10 JUDGE PRIDGIN: I don't hear an
11 objection, so he can answer the question.

12 THE WITNESS: You'd have to repeat the
13 question again.

14 BY MS. OTT:

15 Q. I was asking whether or not the company
16 was waiving their attorney-client privilege for the
17 documents in which you provided -- that you relied on
18 in your testimony which has been provided to Staff in
19 redacted format based on the attorney-client privilege.

20 A. If I understand the question correctly,
21 the company has not waived the attorney-client
22 privilege. They're the only ones that can waive it.

23 But the question you asked me, is there
24 any aspect of my testimony that could touch upon a
25 document that has been redacted. I said I don't know

1 as I sit here, I'd need to see the document, but I
2 would imagine it's possible.

3 Q. So did you ever provide any legal --
4 non-legal services to KCP&L on the Iatan construction
5 projects?

6 A. I would say the only non-legal services
7 that we provided would have been in the initial setting
8 up of the project controls using Wilson and Meyer, and
9 we used the data from that project controls to give
10 legal commercial advice to KCP&L.

11 So my answer would be, on a technical
12 basis, the only thing I could identify would be the
13 services of someone like Meyer or Wilson, but the
14 byproduct of their work was certainly incorporated into
15 the legal commercial advice we gave KCP&L.

16 Q. Are you familiar with Dr. Nielsen?

17 A. Yes. He's sitting in the courtroom --
18 the Commission room.

19 Q. And he's the president and chairman of
20 Pegasus Holding; is that correct?

21 A. I don't know that.

22 Q. Then how do you know Mr. -- or Dr.
23 Nielsen?

24 A. I know him that he's associated with
25 Pegasus. I don't know if he's the president and

1 chairman of Pegasus.

2 Q. Did you read Dr. Nielsen's testimony?

3 A. In this case and in the Kansas case, yes.

4 Q. So did you read his credentials in that
5 case in his testimony?

6 A. They're lengthy. I did in both cases.

7 Q. Were you ever interviewed by Dr. Nielsen
8 in regards to the Iatan project?

9 A. I was never interviewed by Dr. Nielsen.

10 Q. Do you know if any other members of the
11 Schiff Hardin team were interviewed by Dr. Nielsen?

12 A. As I stated in my deposition, I believe
13 that there was an associate of Dr. Nielsen that came on
14 the site that had a meeting with myself and members of
15 my team. As I said in my deposition, I don't have any
16 independent recall of that meeting, but I've been
17 informed by my Staff that we did, in fact, have a
18 meeting with an associate of Dr. Nielsen once on the
19 Iatan project.

20 Q. And who were your associates that were
21 present with you in that meeting?

22 A. I believe -- so, I don't remember the
23 meeting, I don't remember having it, but I've been told
24 by Eric Gould and Carrie Okizaki that they were present
25 at that meeting with me that I don't remember.

1 Q. Do you know, other than that meeting that
2 you don't remember, if any member of Schiff Hardin was
3 interviewed by Dr. Nielsen or anyone from Pegasus
4 Holding for purposes of his rebuttal testimony?

5 A. The only meeting that I or my team can
6 recall with Pegasus was that one meeting.

7 Q. And did your -- did Mr. Gould or Ms.
8 Okizaki tell you when that meeting took place?

9 A. If they did, I don't recall.

10 Q. Now, do you know who Mr. Steve Jones is?

11 A. I do.

12 Q. And how is he related to the Iatan
13 construction project?

14 A. I would describe Steve as brought on to
15 handle procurement issues in the Iatan project.

16 Q. Okay. And he was originally the director
17 of the comprehensive energy plan procurement for KCP&L
18 as an independent contractor; is that accurate?

19 A. I believe that's correct. I'm taking
20 your word that that was his title. He was in charge of
21 the procurement for Iatan.

22 Q. And at some point, he left his role as an
23 independent contractor with KCP&L and he became an
24 independent contractor with Schiff Hardin; is that
25 correct?

1 A. That's correct.

2 Q. Do you know why he left KCP&L as an
3 independent contractor?

4 A. I do not.

5 Q. How is it that Schiff Hardin hired Mr.
6 Jones as an independent contractor to work on the Iatan
7 project?

8 A. We were asked to do so by Lora Cheatum,
9 the head of procurement at that time for KCP&L.

10 Q. And why would Ms. Cheatum ask you to hire
11 Mr. Jones as an independent contractor when he was
12 currently an independent contractor directly with
13 KCP&L?

14 MR. HATFIELD: Object that that specific
15 question calls for speculation.

16 BY MS. OTT:

17 Q. In your opinion, why did -- or your
18 understanding of the situation, why did Ms. Cheatum ask
19 Schiff Hardin to hire Mr. Jones as an independent
20 contractor?

21 A. I'm speculating, but my understanding was
22 that they were going with a procurement model more in
23 line with an operating plant. Steve Jones is known for
24 his expertise in big construction projects. We were
25 specifically asked to embed Steve Jones into our team

1 because Lora Cheatum, KCP&L, felt that there would be
2 extensive work on the rate case and thought that it was
3 beneficial to have Steve embedded in the Schiff team.

4 Q. So because there was going to be
5 extensive work on the rate case -- I'm just trying to
6 follow what you were saying -- it was better to be
7 embedded in your team than directly with KCP&L?

8 A. My understanding -- and it's strictly my
9 understanding -- was that the vast majority of Steve
10 Jones' work onsite was done. They were going in a
11 different direction, i.e., more of an operating model
12 for their procurement team, and we were asked to embed
13 Steve Jones in our team in preparation for the rate
14 case with his extensive knowledge on the procurement
15 strategy background and facts.

16 Q. How did Ms. Cheatum contact you? Was it
17 through a letter, e-mail, phone call?

18 A. It would have been either through a phone
19 call or in-person meetings.

20 Q. So there's no documentation of her
21 requesting?

22 A. I believe there's an e-mail confirming
23 his rate and Schiff's rates for the cost of embedding
24 Steve Jones in our team.

25 Q. Now, did Schiff Hardin want to hire Mr.

1 Jones?

2 A. I don't understand that question.

3 Q. Did Schiff Hardin have a desire to hire
4 Mr. Jones or was it upon just Ms. Cheatum's request
5 that you decided that you would hire Mr. Jones as an
6 independent contractor?

7 A. We did not, prior to Ms. Cheatum asking
8 us to hire Mr. Jones and embed him in the Schiff Hardin
9 team, we did not request to hire Steve Jones to use him
10 in that capacity.

11 Q. So the only reason that you hired Mr.
12 Jones is because KCP&L requested it?

13 A. The reason we hired Steve Jones to assist
14 is at the direction of KCP&L.

15 Q. So that's a yes?

16 A. I don't -- to say is that the only
17 reason, that is the reason we hired him.

18 Q. Okay. Do you know how much Mr. Jones was
19 being compensated when he was an independent contractor
20 directly for KCP&L?

21 A. As I sit here right now, I don't.
22 Guessing, I think it was in the 125 to 150 range.

23 Q. And how much was Mr. Jones being
24 compensated when he became a Schiff independent
25 contractor?

1 A. Steve Jones, per an agreement with Lora
2 Cheatum, was paid \$200 from KCP&L with a \$75, I
3 believe, markup for the cost of embedding him at our
4 offices at Schiff Hardin.

5 Q. So it was 200 total, it wasn't 200 plus
6 the 75 that would go to Schiff Hardin?

7 A. I don't understand your question.

8 Q. So did KCP&L pay \$200 an hour?

9 A. They paid \$275 for Steve Jones.

10 Q. And then Schiff Hardin, for having him as
11 an independent contractor, retained the \$75?

12 A. There was a \$75 markup for having Steve
13 Jones embedded in Schiff's offices, providing an
14 office, secretarial support, et cetera, yes.

15 Q. So what was the basis of that markup for
16 Mr. Jones?

17 A. I went to my executive committee, I went
18 to our administrators and said that we had a request
19 from a client to have an independent contractor office
20 at Schiff Hardin and to have full support of our
21 services, secretarial, et cetera, and asked what would
22 be the markup for such services, and I was provided the
23 number of \$75 that I passed on to Lora Cheatum.

24 Q. Now, does that \$75 contain any profit?

25 A. As I sit here right now, I would not

1 know.

2 Q. Now, do you know whether KCP&L hired a
3 replacement for Mr. Jones?

4 A. I believe at some point in time David
5 McDonald took over procurement responsibilities. I'm
6 not sure if I'd describe that as a replacement, but
7 David McDonald does procurement for KCP&L.

8 Q. Do you know if Mr. McDonald is an
9 independent contractor or is he an employee?

10 A. As I sit here, I do not know.

11 Q. Now, do you know who Mr. Thomas Maiman
12 is?

13 A. I do.

14 Q. And he was once a senior executive at
15 Commonwealth Edison; does that sound correct?

16 A. That is correct.

17 Q. How did you -- or how did Schiff Hardin
18 first become acquainted with Mr. Maiman?

19 A. We performed work at ComEd.

20 Q. Now, was Mr. Maiman a part of the Schiff
21 team prior to the fall of 2005?

22 A. No.

23 Q. Did Mr. Maiman come on to the Schiff team
24 only in relationship to the Iatan construction
25 projects?

1 A. Yeah. Mr. Maiman has previously not been
2 paid as an independent contractor to Schiff Hardin
3 prior to the work he performed on the Iatan project.

4 Q. Other than working with Mr. Maiman at
5 Commonwealth Edison, had you had any relationship with
6 Mr. Maiman on other projects?

7 A. Yes.

8 Q. And what were those projects?

9 A. We performed -- we did work with Tom
10 Maiman on the -- what's referred to as the OPG, which
11 is the Ontario Power Generation project, which was
12 bringing back their moth-balled fleet. We also
13 performed work that Mr. Maiman was on the project as it
14 related to a large East Coast utility in their steam
15 generator replacement.

16 Q. And when you were working with Mr. Maiman
17 on other projects, was he working under -- as an
18 independent contractor himself, or was he under a
19 different group, do you know?

20 A. As I sit here, I don't know. He was not
21 working through Schiff on those two projects.

22 JUDGE PRIDGIN: And, Ms. Ott, could you
23 verify, is your mic on?

24 MS. OTT: No, it's not. Sorry.

25 MR. HATFIELD: Thank you, Judge.

1 JUDGE PRIDGIN: Thank you.

2 BY MS. OTT:

3 Q. Do you know who Dan Meyer is?

4 A. I do. He's in the courtroom today.

5 Q. And who is Mr. Meyer?

6 A. He's a cost professional that we have
7 used in the past.

8 Q. And is he also an independent contractor
9 for Schiff?

10 A. He's an independent contractor providing
11 services for Schiff Hardin on this project, that's
12 correct.

13 Q. And how much is Mr. Meyer -- how much is
14 KCP&L paying Schiff Hardin for Mr. Meyer?

15 A. Boy, as I sit here right now, I don't
16 know his exact fee.

17 Q. Do you know what his markup --

18 A. I'm sorry, is there a question?

19 Q. Do you know what the markup between his
20 -- what KCP&L is charging and then what actually Schiff
21 pays out to Mr. Meyer is?

22 A. At some point in the project, I couldn't
23 tell you exactly when, because of the administrative
24 costs of responding to DRs and other things, I think
25 there was a \$25 markup put on Mr. Meyer's fee.

1 Q. Have you located how much Mr. Meyer is
2 paid?

3 MR. HATFIELD: Judge, in case he does,
4 Mr. Meyer's specific fee is, I think, proprietary to
5 Schiff, but it's marked HC in these proceedings, and we
6 consider it HC.

7 JUDGE PRIDGIN: All right. Thank you.

8 THE WITNESS: Right now, I don't have it,
9 no.

10 MS. OTT: If we want to go in-camera, I
11 have a copy of an invoice I can show him to refresh his
12 memory.

13 JUDGE PRIDGIN: All right. Just a
14 moment, please. We'll go in-camera.

15 (REPORTER'S NOTE: At this point, an
16 in-camera session was held, which is contained in
17 volume 24, pages 1789 to 1790 of the transcript.)

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

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. And referring to the markup for Mr.
6 Meyer, what is that for?

7 A. Again, it was at some point in time
8 during this project, the extensiveness of the inquires
9 from Staff and the amount of work that it was taxing
10 the administrative support at KCP&L, we needed to mark
11 up the bills to reflect the additional services that
12 Schiff was providing in responding to the numerous data
13 requests that were coming in.

14 Q. So Mr. Meyer's markup is related to data
15 requests KCP&L was receiving, not data requests Schiff
16 Hardin was receiving?

17 A. Data requests that KCP&L was receiving
18 that we were being asked to help respond to, that's
19 correct.

20 Q. And why -- what is your understanding of
21 why Schiff Hardin needed to respond to data requests
22 and not KCP&L?

23 A. We were being asked by the general
24 counsel -- by the associate general counsel to assist
25 KCP&L in responding to those requests.

1 Q. Do you know why -- what's your
2 understanding of why they wanted you to assist in
3 responding to data requests?

4 A. I'm not sure how I answer that question.
5 We were requested to assist them. I would assume
6 because we had easier access to data and knowledge and
7 it would be faster in responding by using us.

8 Q. So was Schiff Hardin responding to the
9 data requests, or was Mr. Meyer responding to the data
10 requests?

11 A. There were a number of questions where
12 Schiff Hardin had to go back through documents in part
13 that Meyer had produced to respond to questions that
14 were being addressed.

15 Q. Now, included in Mr. Meyer's rate, was
16 there always a markup for the charges that Schiff was
17 submitting to KCP&L?

18 A. No. I think I previously answered at
19 some point in the project, there was a surcharge that
20 was put on Wilson and Meyer's rates that was identified
21 and discussed extensively with Riggins and Cheatum and
22 Reynolds prior to that surcharge being attached and the
23 reasons for the surcharge.

24 Q. So you talked about Mr. Wilson. Who is
25 Mr. Wilson?

1 A. He is a well-known forensic scheduler.

2 Q. And is he also -- he's an independent
3 contractor?

4 A. Yes, he is, to Schiff Hardin.

5 Q. And what is his rate in which he bills
6 Schiff Hardin?

7 MR. HATFIELD: Judge, I think that's HC
8 as well, the specific number.

9 JUDGE PRIDGIN: All right. So it's not
10 such an objection. We just need to go HC?

11 MR. HATFIELD: That's correct, it's not
12 an objection.

13 JUDGE PRIDGIN: Just a moment. We'll go
14 HC.

15 (REPORTER'S NOTE: At this point, an
16 in-camera session was held, which is contained in
17 volume 24, pages 1794 to 1794 of the transcript.)

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1 JUDGE PRIDGIN: We are back in public
2 forum. Thank you.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. Do you know where Mr. Jim Wilson &
6 Associates is located?

7 A. Nevada, Missouri.

8 Q. Now, does Schiff Hardin have a contract
9 with Mr. Meyer related to the Iatan project?

10 A. No.

11 Q. Does Schiff Hardin have a contract with
12 Jim Wilson related to the Iatan project?

13 A. Not to the best of my knowledge, no.

14 Q. Do you know if there's any reason why
15 KCP&L couldn't directly hire Jim Wilson to work on the
16 Iatan project?

17 A. Mr. Wilson predominantly works through
18 Schiff Hardin and is considered part of our team. I
19 know when he's been requested by others to work
20 independently, he has chosen not to.

21 Q. But he doesn't have a contract with you?

22 A. No, he does not.

23 Q. Do you know if KCP&L requested that Mr.
24 Wilson work directly with them and not through Schiff?

25 A. In the initial phases of this job in

1 2005, when we were explaining the services that we
2 provided and, in part, in reference to the December
3 2005 budgetary estimate that Mr. Schwarz presented to
4 me, we walked through who we would use, how we would
5 use them, and why those individuals have chosen to
6 provide these services through Schiff Hardin.

7 Q. Now, you're aware of the contract between
8 Schiff Hardin and KCP&L?

9 A. Yes.

10 Q. And are you aware of the terms and
11 conditions?

12 A. You know, I reviewed it in detail on or
13 about January 2007. I haven't looked at it, nor
14 studied it recently.

15 Q. Now, you came on to the project, though,
16 in 2005; is that correct?

17 A. Yes. I believe the first contact I had
18 with KCP&L would have been approximately August of
19 2005.

20 Q. How come there was at least a year and a
21 half delay before your relationship was memorialized
22 into a contract?

23 MR. HATFIELD: Object that it assumes
24 facts not in evidence.

25 JUDGE PRIDGIN: Overruled.

1 THE WITNESS: I believe that in
2 approximately October of 2005, we sent to Bill Riggins,
3 Bill Downey our letter of engagement, laid out our
4 client and scope of representation. It was very
5 similar to a document that we had presented to them in
6 August of 2005, and prior to a formal contract being
7 entered into, we worked off of our letter of
8 engagement.

9 BY MS. OTT:

10 Q. Do you believe it's prudent for KCP&L to
11 enforce the terms and conditions in its contract with
12 Schiff?

13 A. I would -- I would answer I think it's
14 prudent to follow your contract, yes.

15 Q. Now, do you know in the contract if
16 Schiff is required to seek approval of a rate change?

17 A. We're -- it was referenced in our
18 engagement letter and it was referenced in the
19 contract, that I believe 30 days before any rate
20 increase in both documents reference that there's going
21 to be regular rate increases, we need approval, that's
22 correct.

23 Q. And who would you make those requests to?

24 A. In each case, there was thorough
25 discussions of any rate increase with both Bill Riggins

1 and Jerry Reynolds.

2 MS. OTT: I think we need to go HC
3 because I'm going to hand him his contract, which I
4 believe has been attached to Mr. Hyneman's rebuttal.

5 JUDGE PRIDGIN: Okay. Just a moment,
6 please.

7 COMMISSIONER KENNEY: which contract?

8 MS. OTT: Schiff Hardin's contract for
9 legal services.

10 JUDGE PRIDGIN: Let's go in-camera, and
11 Commissioner Kenney can still hear.

12 (REPORTER'S NOTE: At this point, an
13 in-camera session was held, which is contained in
14 volume 24, pages 1799 to 1801 of the transcript.)

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1 JUDGE PRIDGIN: We are back in public
2 forum. Thank you.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. Is it prudent to not have documentation
6 to reflect those changes in rates?

7 A. I don't think it's imprudent in the sense
8 that Mr. Nielsen would use that word as it relates to
9 this case that that was not documented in writing, no.

10 Q. Now, you've worked in regulatory settings
11 before, have you not?

12 A. I have.

13 Q. And are you familiar with -- with having
14 -- auditors having to see documentation of changes in
15 rates, they review invoices?

16 A. As a catch and sink answer, yes.

17 Q. So why would you not think it's necessary
18 to document changes in rates?

19 A. Because the contract and the engagement
20 letter reflected that those would be 30 days in
21 advance, but more to answer your direct question, the
22 invoices that we provided to KCP&L did, in fact,
23 document those changes in rates.

24 And just to be clear, I believe the
25 contract that you're referring to did say that all fees

1 and costs are subject to annual adjustments which need
2 to be supplied and approved by KCP&L's general counsel
3 at least 30 days prior to the effective date. It
4 specifically didn't require those to be in writing.

5 Q. Now, Mr. Riggins was the general counsel
6 when you entered into that contract?

7 A. Yes, I believe that is correct.

8 Q. And he's not here today to testify? He's
9 no longer an employee?

10 A. That's my understanding.

11 Q. Now, Mr. Roberts, you testified that
12 Schiff employees did not charge hourly rates when
13 traveling back and forth from Chicago to Kansas City;
14 is that correct?

15 A. That's right. Our in travel time was a
16 write-off to these contracts.

17 Q. Now, is that the same for your
18 subcontractors, Mr. Meyer, Mr. Jones, Mr. Maiman, did
19 they charge -- and Mr. Wilson, did they charge travel
20 to the project?

21 A. As I sit here right now, I can't answer
22 that. I know for sure that that was specifically in
23 regards to Schiff direct employees.

24 Q. But I'm asking about their independent
25 contractors now. So you don't know?

1 A. As I sit here right now, I couldn't tell
2 you definitively.

3 Q. If I hand you that invoice for Mr. Meyer
4 again, can you review the itemized numbers, would it
5 help you answer?

6 JUDGE PRIDGIN: We can stay public?

7 MR. HATFIELD: As long as we don't talk
8 about the numbers, which I don't think we're doing.

9 THE WITNESS: I believe it shows that as
10 of August 3rd, '09, that part of a description on
11 August 3rd includes a description of travel to KCI, but
12 there's also three or four other description of
13 services.

14 BY MS. OTT:

15 Q. So Mr. Meyer would bill some portion for
16 his travel?

17 A. As I sit here right now, what I can only
18 definitively tell you is that Schiff Hardin employees
19 did not bill -- that bills associated, invoices
20 associated with our travel time were explicitly written
21 off. I cannot recall whether that was imposed on our
22 independent contractors.

23 Q. Do you review the invoices for Mr. Meyer?

24 A. I do.

25 Q. So as someone who has reviewed those

1 invoice, when you read that line item, what does that
2 mean to you?

3 A. He's listing that part of his description
4 was travel to KCI, file review for various cost issues,
5 and prep for an MPSC meeting.

6 Q. So would that mean to you that he did
7 bill for some travel?

8 A. I don't -- you know what, I can't answer
9 that because he's giving a listing of various services
10 that he rendered on that day.

11 Q. So do you verify that the line items in
12 which Mr. Wilson --

13 A. This is Mr. Meyer.

14 Q. -- Mr. Meyer -- sorry-- puts on a line
15 item on an invoice that those events actually occurred?

16 A. I did.

17 Q. So did you verify whether or not he
18 traveled to KC on that day?

19 A. He did.

20 Q. So he is billing for travel?

21 A. Boy, I am not trying to -- he's listing
22 as part of an item of description travel to KCI. As I
23 sit here right now, I don't believe that our
24 independent contractors were writing off their time for
25 travel. But as I sit here right now, the only thing I

1 definitively know is that Schiff Hardin did. I'm not
2 trying to be argumentative. I can't, as I sit here,
3 remember.

4 Q. Well, I think you've stated he traveled
5 and you verified it on that day, so --

6 A. He did.

7 Q. So I think that answers my question.

8 JUDGE PRIDGIN: Ms. Ott, I'm trying to
9 get an idea of when to break for lunch. Do you know
10 roughly how much more cross you'll have?

11 MS. OTT: I have awhile.

12 JUDGE PRIDGIN: Okay. I hate to
13 interrupt in the middle, but it is about 12:30. I'd
14 like to break for lunch until roughly 1:30. Is there
15 anything further from counsel?

16 MS. OTT: Can I just ask before break,
17 there's one question that follows up with this?

18 JUDGE PRIDGIN: Sure. Absolutely.

19 BY MS. OTT:

20 Q. So are you aware if subcontractors
21 provided receipts for their travel to Schiff Hardin?

22 A. I believe that Schiff Hardin did receive
23 actual receipts from its independent contractors. I
24 don't believe, per our agreement with Mr. Riggins and
25 Reynolds, that those were provided to KCP&L. They told

1 us that the line items and descriptions in the invoices
2 were sufficient and that at any time that they wanted
3 see the actual backup of the invoices, that they would
4 notify us.

5 But to answer your question, yes, Schiff
6 Hardin would get invoices, backup material from our
7 independent contractors.

8 Q. Now, did KCP&L ever notify you that they
9 wanted to see the invoices?

10 A. Yes. At one point in time, Jerry
11 Reynolds, I believe, did a two- to three-month review
12 of all Schiff Hardin invoices plus the backup materials
13 that would have included the individual invoices,
14 backup for travel not only of KCP&L but also of its
15 independent contractors, Jay Wilson and Dan Meyer.

16 Q. And do you know when that -- that two- to
17 three-month review by Mr. Reynolds took place?

18 A. The years blend together. It was, I
19 believe, -- I believe it was either January through
20 March of '09 or it was January through March of 2010.
21 I cannot tell you the exact year as I sit here.

22 Q. So those were the months he requested,
23 and the review was done sometime later?

24 A. That's the months and the time that he
25 did the review.

1 Q. Okay. And I just -- you said that KCP&L
2 and subcontractors. Did you mean Schiff Hardin and
3 subcontractors?

4 A. What was your question? I'm sorry.

5 Q. In regards to the receipts, and you said
6 that KCP&L had requested them, and you said yes, they
7 requested them of --

8 A. Yes, Jerry Reynolds did an in-depth dive
9 of not only Schiff Hardin's invoices and backup
10 documents, but those of our independent contractors as
11 well.

12 MS. OTT: Okay. I think that's a good
13 breaking point. Thanks.

14 JUDGE PRIDGIN: Ms. Ott, thank you.
15 Anything further from counsel before we stand to
16 recess? Just to alert counsel, I plan on following a
17 similar schedule tonight that I did last night, which
18 would be an afternoon break, a dinner break, and going
19 anywhere from 9:00, 10:00 o'clock this evening.

20 COMMISSIONER KENNEY: No kidding?

21 JUDGE PRIDGIN: No kidding.

22 COMMISSIONER KENNEY: All right.

23 JUDGE PRIDGIN: We will stand in recess
24 until 1:30. Thank you. We're off the reported.

25 (An off-the-record discussion was held.)

1 JUDGE PRIDGIN: Okay. Good afternoon.
2 We are back on the record. I believe, when we
3 adjourned for lunch, Ms. Ott was cross-examining Mr.
4 Roberts.

5 Is there anything further from counsel
6 before she resumes? All right. Mr. Roberts, you're
7 still under oath. Ms. Ott, when you're ready.

8 BY MS. OTT:

9 Q. Mr. Roberts, I just want to clarify some
10 of the discussions we were having before lunch. Who at
11 KCP&L approved Schiff's hourly rate increase?

12 A. Bill Riggins, Jerry Reynolds.

13 Q. And Mr. Riggins and Mr. Reynolds are no
14 longer employees?

15 A. That's my understanding.

16 Q. So how is it possible for Staff to verify
17 its annual rate increases that were sought by Schiff
18 when both of those individuals are no longer employees
19 of KCP&L?

20 A. One, they're reflected in the invoices I
21 sent; two, I'm a licensed attorney in Missouri, an
22 officer of the court. I would be in serious trouble to
23 be lying to you, which is, I guess, what the
24 implication would be.

25 Q. So is the only documentations that the

1 auditors have to verify the rate increases the invoices
2 that were provided by KCP&L?

3 A. As I sit here, I don't know all the
4 documents that the Missouri staff received. I know
5 that there's at least one e-mail talking about the rate
6 increases, but I would -- I know the invoices and the
7 documentation that Schiff sent with the invoices
8 reflected the hourly -- or increases.

9 Q. We were talking about Mr. Maiman earlier.
10 what type of due diligence did Schiff Hardin do on Mr.
11 Maiman before you hired him as an independent
12 contractor?

13 A. The -- the due diligence was extensive.

14 Q. And what did you do to verify Mr.
15 Maiman's credentials?

16 A. First, we had worked with him at
17 Commonwealth Edison. Secondly, the vice chairman of a
18 major East Coast utility had hired him for
19 consultation. And third, executives at OPG had hired
20 him as well. Part of the OPG experience was a blue
21 ribbon panel of what was billed the top utility
22 executives was assembled to advise the OPG board and
23 government, and this included executives from Southern,
24 Entergy, Pico, Exelon.

25 They all told the OPG board that they

1 probably had the most experienced person that that blue
2 ribbon panel knew in North America on construction
3 projects involving the utility. So that would -- that
4 would be the basis of the due diligence.

5 Q. OPG, was that a nuclear project?

6 A. What we worked on was nuclear, that's
7 correct.

8 Q. Do you know how many months that Mr.
9 Maiman worked on the OPG project?

10 A. Schiff was engaged on the project from
11 about two and a half to a little over three years. Mr.
12 Maiman was engaged by OPG for the vast majority of it.
13 He had, I believe it was, a -- he had an accident
14 during that tenure that had him in the hospital, but I
15 believe he was on OPG's for about three years as well.

16 Q. Now, did you ever work with Mr. Maiman
17 when you were involved with Commonwealth Edison on any
18 of the nuclear projects?

19 A. I worked -- yes, I was on projects that
20 he was in charge of, correct.

21 Q. Were you on any of the projects that
22 Commonwealth Edison was assessed fines and penalties
23 related to the nuclear project?

24 A. To the best of my knowledge, as I sit
25 here, I'm not aware of any project that Schiff worked

1 on where the NRC -- is that the entity you're referring
2 to -- would have assessed fines.

3 Q. Yes. What years did you work with Mr.
4 Maiman at Commonwealth Edison?

5 A. Our work experience at ComEd, is how we
6 referred to it, was more expansive than the projects
7 that I worked with Mr. Maiman on.

8 Q. Would you have worked with Mr. Maiman in
9 the '90s on nuclear projects?

10 A. I worked with Mr. Maiman on both fossil
11 and nuclear projects.

12 Q. I'm asking for a time frame when you
13 worked with Mr. Maiman.

14 A. And I was trying to answer your question.
15 I'm sorry. I worked at ComEd consistently from the
16 early '90s through mid-2000s, and I would have worked
17 periodically in that time period on projects that Mr.
18 Maiman had both on the fossil, when he ran the fossil
19 site, as well as the nuclear side.

20 But our scope of services for ComEd,
21 which then became Exelon, was much larger in that time
22 period. So the work I did with Maiman was intermittent
23 through that time period.

24 Q. Mr. Roberts, I'm going to hand you the
25 nuclear energy information service. It's radioactive

1 decay, Illinois Reactors, 1996 through 1997, kind of
2 gives some sort of time frame. Have you ever seen this
3 before?

4 A. No, ma'am.

5 Q. Can you take a look and look on the
6 second page? And then the entry under February 22nd,
7 1997, can you read that?

8 MR. HATFIELD: Judge, I'm going to object
9 on reading hearsay into the record.

10 MS. OTT: It's an article published that
11 can be verified on the web. It was recently printed on
12 January 25, 2011. It is from the Nuclear Information
13 Energy Source.

14 JUDGE PRIDGIN: I'll overrule it.

15 THE WITNESS: You want me to read the --

16 BY MS. OTT:

17 Q. The February 22nd entry.

18 A. Sure. "February 22nd, 1997. Experienced
19 reactor operator at Zion violates shutdown procedure.
20 NRC regional director, A. Bill Beach, states 'It
21 doesn't get any worse. No one was in control.' ComEd
22 reactor chief Tom Maiman states, 'This is perhaps the
23 most embarrassing career situation I've ever been in.'"

24 Q. Thank you. Did you work with Mr. Maiman
25 on this project that he's referencing here?

1 A. No, I don't believe I worked on Zion.

2 MR. HATFIELD: Judge, in light of that, I
3 would move to strike the previous reading of that as
4 wholly irrelevant.

5 MS. OTT: It is relevant as in he's
6 stating he fully vetted Mr. Maiman's prior work
7 history, and here's an incident on a nuclear plant in
8 which Mr. Maiman had the most embarrassing career
9 situation because the plant almost shut down.

10 JUDGE PRIDGIN: I'll overrule.

11 BY MS. OTT:

12 Q. Do you know how many months that Mr.
13 Maiman worked on the KCP&L Iatan project?

14 A. I don't know the months. It would have
15 been in the early stages prior to his wife dying.

16 Q. Do you have an approximate date when he
17 left the project?

18 A. I know he was involved in late '05, '06.
19 I want to say into '07. As I sit here right now, I
20 can't remember the date. His wife had lung cancer.

21 Q. Now, have you -- I know you've talked
22 that you've been on various construction projects
23 throughout your career.

24 Have you been on any specific
25 construction project that was related to a new coal

1 plant in the United States?

2 A. No. This is one of the first new
3 coal-fired plants built in the United States in recent
4 years.

5 Q. Are you familiar with Mr. Terry Murphy?

6 A. I am.

7 Q. And how does he relate to the Iatan
8 projects?

9 A. Mr. Murphy was hired in the early stages
10 of the project and was onsite. One of the previous
11 witnesses has said approximately six months in the
12 early stages, and that sounds about right.

13 Q. Now, had you previously worked with
14 Mr. Murphy?

15 A. Yes.

16 Q. And was that the Ontario project you've
17 been speaking of?

18 A. That was one of the projects, yes.

19 Q. Did you introduce Terry Murphy to KCP&L?

20 A. Introduced in terms of recommending him,
21 sure.

22 Q. And Mr. -- you, during your deposition,
23 referred to Mr. Murphy as an award-winning project
24 manager?

25 A. I believe I said that, yes.