

1 golf related to talking strategy with Mr. Churchman?

2 A. I didn't charge time while I was playing
3 golf. I charged time before I got to the golf course,
4 after we were -- after we had played golf, both of us
5 were on the phone extensively talking to the site,
6 talking through issues, and Churchman and I actually
7 had -- we were asked to leave our room because we were
8 both on our cell phone and we got a private room and
9 were working in that room on the 25th.

10 Q. So you were on your cell phone with
11 Mr. Churchman in a room with Mr. Churchman on the cell
12 phone?

13 A. No. Both of us were talking to people
14 onsite on various issues, and then we were talking to
15 one another.

16 Q. So you had your conversation with
17 Mr. Churchman, though, at the country club in which you
18 billed --

19 A. Part of -- I had conversations with Carl
20 Churchman that day at the country club, that's correct.

21 Q. Okay.

22 A. And the time I charged for it was not the
23 time that we were playing golf but was either before or
24 after the round.

25 Q. Did you pay for any other of Mr.

1 Churchman's lodging or meals while he was in Chicago to
2 play in that tournament?

3 A. Meals while we were at Medinah would have
4 been part of the tournament. I didn't pay for lodging,
5 I didn't pay for airfare.

6 Q. Do you know if Mr. Churchman covered
7 those costs or did KCP&L?

8 A. I have no idea.

9 Q. Now, you mentioned Ms. Cheatum was the
10 vice-president of procurement?

11 A. She was in charge of procurement, yes.

12 JUDGE PRIDGIN: Ms. Ott, do you know how
13 much longer you're going to be?

14 THE WITNESS: I could use a break, too.
15 As a male over 50, I'm willing to raise my hand.

16 MS. OTT: We need to take a break.

17 JUDGE PRIDGIN: Okay. We'll take about
18 15 minutes. We'll stand in recess until 3:35.

19 (A break was held.)
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23 JUDGE PRIDGIN: We are back on the
24 record. Ms. Ott, when you are ready.

25 MS. OTT: And actually, I want to go back

1 to the last, when we were talking about the invoice and
2 for clarity, I'd like to have an invoice marked as an
3 exhibit.

4 (Exhibit No. 272-HC was marked for
5 identification by the Court Reporter.)

6 BY MS. OTT:

7 Q. Now, Mr. Roberts, you have Schiff Hardin
8 Invoice No. 1407850 in front of you?

9 A. Yes, August 21, 2009 --

10 Q. Okay. And on page 16 --

11 A. -- that you have marked?

12 Q. Yes.

13 A. Yes.

14 Q. June 25, 2009.

15 A. Yes.

16 Q. This is the reference that you and
17 Mr. Churchman would have had a conversation on that
18 same day as the golf tournament you were in?

19 A. This is my time entry for 6/25/09, which
20 I believe is Thursday of that year.

21 MS. OTT: With that, I'd like to move for
22 KCP&L Exhibit 272 to be admitted.

23 JUDGE PRIDGIN: Any objection? Hearing
24 none, 272-HC is admitted.

25 (Exhibit No. 272-HC was received into

1 evidence.)

2 COMMISSIONER GUNN: what page is that

3 again? THE WITNESS: Page 16.

4 JUDGE PRIDGIN: 272-HC.

5 THE WITNESS: Are you done with this

6 document?

7 MS. OTT: Yes.

8 BY MS. OTT:

9 Q. I believe we were discussing Ms. Cheatum
10 before the break. Do you recall that?

11 A. No, I needed a bathroom break, I wasn't
12 really remembering your last question, to be honest.

13 Q. Okay. well, I think we established that
14 Ms. Cheatum was the vice-president of procurement on
15 the Iatan project.

16 A. Yes.

17 Q. Do you know when Ms. Cheatum left the
18 project?

19 A. As I sit here right now, I couldn't tell
20 you.

21 Q. Do you know who Ms. Maria Jenks is?

22 A. I do.

23 Q. And who is she?

24 A. I would say she's the person that took
25 over procurement responsibilities after Ms. Cheatem

1 left.

2 Q. So do you have an estimate when Ms. Jenks
3 joined the project?

4 A. Well, I believe Mary Jenks was in charge
5 of the audit process, and so she was in an audit
6 function on this project, I want to say from almost the
7 very beginning. If your question is: when did she
8 take over procurement, boy, as I sit here right now, it
9 was -- I think fairly -- '09, 2010 time period.

10 Q. So you're guessing around the end of
11 2009, beginning of 2010?

12 A. Ma'am, it's a guess.

13 Q. Were you ever consulted by KCP&L when she
14 was appointed to be the VP of procurement?

15 A. What do you mean by that?

16 Q. Did KCP&L ever, when Ms. Cheatum left,
17 come to you and consult with you about Ms. Jenks
18 accepting the role of VP of procurement?

19 A. No, they didn't ask my opinion as to who
20 they should put in charge of procurement.

21 Q. Do you know if Ms. Jenks had any prior
22 experience in procurement?

23 A. I would imagine from her audit function,
24 she in fact, had audited procurement.

25 Q. So she had audited procurement, not

1 actually engaged in procurement?

2 A. As I said right now, I don't know about
3 the background of Ms. Jenks.

4 Q. Did you ever inquire why Ms. Jenks was
5 appointed to the VP of procurement?

6 A. No.

7 Q. So you don't know if she was qualified
8 for the position or not?

9 A. I've had many dealings with her. She's a
10 very intelligent woman. I've dealt with many
11 procurement officers throughout the United States and
12 North America. I think she's, from my opinion,
13 imminently qualified and what I've seen in terms of how
14 she's performed on the job.

15 Q. But you don't know about her experience
16 with procurement prior to this position?

17 A. Right. I said I don't know her
18 background.

19 Q. Were you familiar with Ms. Cheatum's
20 background prior to the Iatan project?

21 A. Prior to the Iatan?

22 Q. Yes.

23 A. You mean did I know Cheatum prior to
24 Iatan?

25 Q. No, did you know anything about her

1 qualifications prior to working on the Iatan project
2 with her.

3 A. I remember discussing her background. It
4 was -- she had a -- I think she had an extensive
5 background, HR procurement throughout her career.

6 Q. So it's your understanding she had
7 procurement experience prior to her role as VP of
8 procurement?

9 A. As I sit here right now, I could not tell
10 you -- I could not recite her resume. All I can tell
11 you is in general, having discussions with her, I
12 thought she had some procurement background. In
13 dealing with her, she was very competent on procurement
14 matters.

15 Q. Now Mr. Roberts, were you required by
16 KCP&L to produce status reports for the Iatan project?

17 A. We weren't required. One of the things
18 that we said we would do is have periodic reports with
19 the oversight committee. Those reports could be both
20 verbal and/or written.

21 Q. Do you know how many reports were
22 written?

23 A. I believe that reports that we would have
24 written are somewhere in the 40 to 50 range.

25 Q. Forty to fifty written reports?

1 A. Yes, not including issue-specific memos.

2 Q. Now, those 40 to 50 reports, were they
3 status reports or were they various other types of
4 reports?

5 A. I think -- I think they were, for the
6 most part, status reports. There might have been some
7 special reports. Indeed when we had -- when we had the
8 settlement with Alstom, I know we wrote a report. I
9 know we've written reports as it relates to cost
10 reforecasts, but the vast majority would have been
11 status reports for the benefit of the executive
12 oversight committee as to what we were seeing and
13 issues impacting budget, schedule, commercial
14 negotiations.

15 Q. Now, did you write these reports
16 yourself?

17 A. My team and I wrote them, yes.

18 Q. Did your independent contractors write
19 any portions of these reports?

20 A. They would have provided data that would
21 have been included in the report. The reports were
22 written by Schiff Hardin. For instance, there's charts
23 that are attached to those reports, charts that were
24 periodically prepared and presented to the oversight
25 committee. Charts like this (indicating).

1 Q. Had to get that in?

2 A. Well, no, Commissioner Kenney, you can't
3 see it. There's a large chart in the room. That's a
4 Wilson chart. That would be an example of charts that
5 he prepared that would have been part of what was
6 submitted on an ongoing basis during the five years.

7 Q. Now, who is Joe Byce?

8 A. Joe Byce is -- is someone who works with
9 Dan Meyer and that we've worked with in the past.
10 Another cost control independent contractor.

11 Q. Do you know where he's located?

12 A. I believe Joe Byce resides in Atlanta,
13 Georgia.

14 Q. Now, does Joe Byce exclusively work with
15 Dan Meyer?

16 A. No.

17 Q. Okay. So Dan Meyer, then, contracts with
18 Joe Byce?

19 A. When -- Joe Byce on this project, and I
20 believe on some others when we've had the additional
21 need for cost expertise, has -- has -- has worked with
22 Meyer and Schiff and did so on this project, if that
23 answers your question.

24 Q. Now, are you familiar with the project
25 management body of knowledge?

1 A. No.

2 Q. So --

3 A. I don't know what you're referring to.
4 You're holding up a book.

5 Q. The Project Management Institute. Are
6 you familiar with that?

7 A. I've heard of Project Management
8 Institute. I'm not familiar with the book that you've
9 just held up.

10 Q. Have you ever heard of the term "project
11 management body of knowledge?"

12 A. As I sit here, no, I've never heard of
13 anybody referring to -- what was the word you used?

14 Q. The project body -- or project management
15 body of knowledge.

16 A. Yes, I've never heard of that term used
17 in the normal course of a job.

18 Q. So you don't know if it's the industry
19 standard for project management?

20 A. No.

21 Q. Are you certified by the Project
22 Management Institute?

23 A. No.

24 Q. Now, are you familiar with Brent Davis's
25 direct testimony in the 2009 KCP&L KCC rate case?

1 A. Yes.

2 Q. Are you familiar with R&O 360 related to
3 the JLG incident?

4 A. I am familiar with the JLG incident and I
5 am familiar that there was an R&O. I want to -- the
6 project management -- if they have local chapters, I
7 think I might have given -- I think I might have given
8 one or two lectures or seminars if they have local
9 bodies, but it was on contract risk transfer. I just
10 -- in case -- I don't remember the -- there was some
11 project management group that has local chapters that I
12 know I've given speeches to.

13 Q. Thank you.

14 A. Sorry.

15 Q. That's all right. Are you familiar --
16 you said you're familiar with Mr. Davis's testimony in
17 the 2009 KCC rate case of KCP&L?

18 A. I remember, I was -- yes, I'm familiar
19 with it. I don't know it by heart.

20 Q. Do you remember if Mr. Davis gave an
21 opinion on the JLG incident?

22 A. Yes. I mean, I'm vaguely familiar with
23 his testimony on the JLG.

24 Q. And do you know what Mr. Davis's opinion
25 was?

1 A. Boy, I mean, as I sit here, I don't think
2 I could cite his exact opinion. Overall, I think he
3 thought it was a prudent expenditure for the JLG.

4 MS. OTT: Can we go in-camera?

5 JUDGE PRIDGIN: Just a moment, please.

6 (REPORTER'S NOTE: At this point, an
7 in-camera session was held, which is contained in
8 volume 24, pages 1879 to 1881 of the transcript.)

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1 JUDGE PRIDGIN: We're in public session.

2 Thank you.

3 THE WITNESS: I'm on page 34.

4 KENNETH ROBERTS testified as follows:

5 BY MS. OTT:

6 Q. Okay. On line 19, you say, "The
7 Commission should consider the significant personal
8 sacrifice of your attorneys, paralegals and clerks in
9 regards to the Iatan project." And I think this
10 conversation goes into the building rates that started
11 on page 33.

12 A. Okay.

13 Q. Now is this -- I guess I'm having a hard
14 time understanding the personal sacrifice because the
15 response to Mr. Major's data request 852 is that they
16 spent a significant amount of time on the project and
17 having to be away from their families in Kansas City.

18 wasn't that inherent with this -- when
19 Schiff took on this project that you'd be working in
20 Kansas City and working out of their offices and -- I
21 mean, when you took the project, you were aware of the
22 conditions that resulted in having a client not based
23 in Chicago.

24 A. Absolutely.

25 Q. So you're asking for the Commission to

1 find the personal sacrifice that your employees had for
2 having to be in Kansas City and away from their
3 families into consideration?

4 A. Yes. I think that finding people that
5 will go out to the construction sites far away from
6 their homes, spend long hours early in the morning,
7 late at night, that is -- there is something unique
8 about that. We're one of the only firms in the United
9 States that I'm aware of that has people, and very
10 proud to say that has women out on construction sites
11 working on very harsh conditions.

12 And the point is, is that -- and I'm
13 proud to say it. We leave a bit of our soul on every
14 one of these sites when you're out there day in and day
15 out, you know, sometimes six a.m. in the morning until
16 well past ten o'clock. Those are unique circumstances,
17 as Mr. Riggins has cited. It's not the typical
18 conditions, you know, that most attorneys work under.

19 Do we recognize it as a part of our job?
20 Yes. It also is one of the difficulties in attracting
21 and retaining good people is that we're really working
22 and -- in tough conditions. That was the point of
23 citing that.

24 Q. Thank you. Let's go to page 3 of your
25 surrebuttal.

1 A. Page 3.

2 Q. Yes. You're discussing giving reports to
3 the executive oversight committee. Did KCP&L ever
4 disagree with any of Schiff Hardin's evaluations?

5 A. I apologize, can you tell me on page 3
6 what lines you're looking at.

7 Q. It's question that starts on 3 and your
8 answer ends on line 15?

9 A. "QUESTION: If you were working on behalf
10 of KCP&L senior management, what was independent about
11 your role?" That question?

12 Q. well, and then when you start on line 12,
13 "Schiff Hardin reports to senior management" and I'm
14 asking if KCP&L's senior management ever disagreed with
15 Schiff's evaluation that they provided to senior
16 management.

17 A. I would say that there's never been a
18 project we worked on when Schiff gave its report
19 analysis of a situation, we would not expect senior
20 management to genuflect to Schiff's altar and accept
21 that everything we said in that meeting be
22 instantaneously approved or accepted. So as I sit here
23 right now, I can't tell you of a meeting that I was in
24 that senior management ever said Schiff, you're full of
25 beans when you make that analysis. But I'm sure that

1 there was members of the team throughout the five years
2 of the project when there's give and take as to what
3 the data was showing at any given point in time.

4 Q. Okay. Let's go to page 5.

5 A. We're still in my surrebuttal?

6 Q. Yes.

7 A. Thank you. I'm on page 5.

8 Q. Okay. Lines 21 through 22. You said:
9 Though, those occasions were -- I guess if you read the
10 whole sentence, "Overall, we would spot issues that we
11 believe needed to be corrected in one way that KCP&L's
12 project team was collecting and reporting data,
13 although those occasions were relatively infrequent and
14 usually involved relatively minor adjustments."

15 what were the infrequent or minor
16 adjustments that you're referring to regarding the cost
17 and the scheduling?

18 A. I would contend that those would be
19 included specifically in the numerous reports that --
20 that we provided to KCP&L's senior manager. As I sit
21 here right now, they were more of a technical nature.
22 Dan Meyer certainly can go into issue spotting that he
23 did on cost issues and there was some technical issues
24 Jim Wilson identified on watching the schedule. They
25 were, I would contend, very technical in nature as to

1 how to gather data and interpret the data. But Dan
2 Meyer certainly could identify on a cost perspective
3 things that he suggested and that Forrest Archibald
4 included.

5 Q. Mr. Roberts, do you know how much you've
6 personally charged to both the Iatan projects?

7 A. Ken Roberts himself?

8 Q. Yes.

9 A. Over a five-year period, I think it's
10 approximately 2.5 million. I made a tallying of the
11 invoices provided would give you an exact number, but
12 that's an approximation.

13 Q. That's what I tallied it up to be
14 approximately correct, too, so.

15 A. Thank you.

16 Q. And are you the only Schiff employee who
17 is testifying in this proceeding?

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

19 Q. Can you identify each Schiff Hardin
20 employee who's in the hearing room right now?

21 A. I can.

22 Q. You can't?

23 A. I can.

24 Q. Oh, can you do that for me?

25 A. Yes. Eric Gould, Carrie Okizaki, Mandy

1 Schermer, Dan Meyer is an independent contractor, but
2 with Schiff.

3 Q. And can you identify what their hourly
4 rates they're currently charging to KCP&L?

5 A. They were frozen as of 2009. I believe I
6 can if you give me a second.

7 Q. Okay.

8 MR. HATFIELD: Judge, can I ask that we
9 go in-camera if we're going to disclose actual rates?

10 MS. OTT: On that note, though, I have a
11 DR on asking Mr. Robert's hourly rates and it's not
12 marked highly confidential, so I don't know that this
13 is highly confidential information.

14 THE WITNESS: It should be.

15 MR. HATFIELD: It should be.

16 THE WITNESS: Without taking your
17 thunder.

18 MS. OTT: I am just saying that in
19 response, it was not highly confidential.

20 JUDGE PRIDGIN: Okay. we'll go in-camera
21 for just a moment, please.

22 MR. HATFIELD: I was assuming the witness
23 knew the answer to this question, by the way.

24 JUDGE PRIDGIN: Okay. We're in-camera.

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

1 in-camera session was held, which is contained in
2 Volume 24, pages 1892 to 1892 of the transcript.)

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1 JUDGE PRIDGIN: Okay. Just a moment,
2 please.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. Mr. Roberts, who at KCP&L approved for
6 all of the Schiff Hardin employees to sit in this room
7 that are non-witnesses for the past -- last week and
8 this week?

9 MR. HATFIELD: Assumes facts not in
10 evidence.

11 MS. OTT: I think --

12 JUDGE PRIDGIN: I'm sorry, can you ask
13 the question again, please?

14 BY MS. OTT:

15 Q. Mr. Roberts, has Mr. Gould, Ms. Okizaki,
16 Ms. Schermer and Mr. Meyer been present in the hearing
17 room since the commencement of this rate case?

18 A. I believe so. I haven't been in the room
19 for the full duration, but I believe they've been here,
20 that's correct.

21 Q. And who approved those individuals --
22 that you have stated you're the only witness from
23 Schiff Hardin in this case -- to sit in the hearing
24 room?

25 A. Heather Humphrey, the general counsel

1 who's sitting in this room.

2 Q. And was that a verbal request from
3 Ms. Humphrey?

4 A. It was a part of the overall scope and
5 listing out activities in what we would do, yes.

6 Q. So there's no written documentation
7 regarding Ms. Humphrey's request?

8 A. There is a vendor liability form where we
9 list out one-month look-ahead and there is numerous
10 discussions as to -- and documentation as to what
11 Schiff is doing on a legal basis that is heavily
12 discussed and vetted with Roger, KCP&L attorney,
13 in-house, and Heather Humphreys.

14 Q. And what is their role in attending these
15 hearings?

16 A. Well, part of that, I would -- part of
17 that gets into communications between myself and -- and
18 KCP&L legal. Overall, they're here to support and
19 assist in KCP&L's briefing and hearings on this case.

20 Q. Now does Mr. Gould provide legal
21 services?

22 A. Mr. Gould is not an attorney but the
23 product of what he does is incorporated into our legal
24 services.

25 Q. And has Mr. Gould ever worked on project

1 controls for a new coal-fired power plant?

2 A. Nobody in my team has ever worked on a
3 new coal-fired plant.

4 Q. Thank you. Now, in working on several
5 construction plants, I think when Mr. Davis was on the
6 stand, we discussed his experience. Have you ever seen
7 a project director with less experience than Mr. Davis
8 working on a major construction project?

9 A. That's a loaded question. I think Mr.
10 Davis has a greet deal of experience.

11 Q. And specifically construction experience?

12 A. I think that he has 30-some years in the
13 operation, maintenance, the way this industry has been
14 without new construction until very recently, that the
15 extensive knowledge he had on maintenance is the -- in
16 this business, is equivalent of a construction
17 experience. I think he's very well versed on it.

18 Q. That wasn't my question. My question
19 was: Have you ever seen a project director with less
20 experience than Mr. Davis, construction experience than
21 Mr. Davis?

22 A. Yes.

23 MS. OTT: I have no further questions.

24 JUDGE PRIDGIN: Ms. Ott, thank you.

25 Commissioner Jarrett?

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EXAMINATION

QUESTIONS BY COMMISSIONER JARRETT:

Q. Good afternoon, Mr. Roberts.

A. Good afternoon.

Q. From your direct testimony, I take it that you have experience working on numerous major capital improvement projects similar to Iatan.

A. Yes, sir.

Q. The Iatan project. I guess I'm kind of looking for like a 50,000-foot level view here, just to sort of get an overall picture. Compared with some of the other projects you have worked on, where would you say KCP&L's management of the project rates?

A. Top notch.

Q. And why -- why is that?

A. I think that there are -- I think there's three factors that if you brought anybody up that has seen projects of a similar nature, and I think that Dr. Nielsen can comment on this and Dan Meyer can. Three things that I would look at.

One is the initial control budget estimate set five years before the project is completed at 25 percent engineering. To have a project that comes within two and a half months of that date, to have a project that comes in within 15, 16 percent of

1 that budget, I think any of those gentlemen would tell
2 you that's top tier.

3 Number two, when you look at the 2008
4 reforecast, when you have engineering at 75 percent
5 done, to have a project that comes on that schedule
6 within two percent of that budget, that 2008
7 reforecast, I think that both of them -- those
8 gentlemen would tell you that that, indeed, is top
9 tier. And that's not by accident. That takes a lot of
10 information. It takes a lot of work to -- to get to
11 that number.

12 The third thing is a project of this
13 duration of this amount of money, to have no major
14 litigation, to have been able to resolve all the issues
15 in realtime during the course of this job, I will tell
16 you anybody that has been in this business would
17 attribute a significant sum of money in terms of the
18 disruption and cost to a project when you are fighting
19 in commercial space through the duration with the
20 various vendors.

21 so that you have a project that is within
22 15 percent of the original budget, absolutely
23 outstanding. Two and a half months of when it was
24 established, outstanding. To have a reforecast in 2008
25 when 75 percent of the drawings are done and then come

1 within two percent of that budget and on schedule, I
2 would tell you that's top tier.

3 And then not to have any litigation
4 associated with it, having issues resolved in the
5 field, all of that adds up to a project management that
6 took all of the issues that Drabinski identified, which
7 really come from the Schiff reports and E&Y audits,
8 every one of the things he listed were issues.

9 What Drabinski doesn't do is he doesn't
10 tell you, if you're familiar with Paul Harvey, the rest
11 of the story. He doesn't tell you how KCP&L's
12 management team worked their butts off to make sure
13 that those issues were resolved or mitigated and the
14 proof positive that indeed they -- all of the issues he
15 cites were, in fact, resolved or mitigated.

16 You don't get a project, you simply do
17 not get a project that is completed five years later
18 from the control budget estimate within 15 percent of
19 that cost within two and a half months of that
20 schedule. You simply don't get a project that is
21 completed within two percent of the first reforecast at
22 75 percent engineering and on that schedule. You don't
23 get that accomplished without a lot of work to mitigate
24 all of the issues that Drabinski cites that really came
25 from, vastly, the Schiff reports and E&Y audit.

1 That's how I would answer your question, sir.

2 Q. Okay. I don't know if you've been here
3 for the entire testimony the last three days or so, or
4 the last few days. Do you recall testimony about
5 quarterly meetings with Staff, our Staff --

6 A. I do, sir.

7 Q. -- those types of things? Were you
8 involved in any of those meetings?

9 A. I was.

10 Q. Could you characterize those meetings,
11 how they were conducted, what generally types of things
12 were discussed?

13 A. I can recall -- I can recall, for
14 instance, a very good conversation, anything they
15 wanted to talk about on March 8. I know we brought in
16 Dan Meyer and he explained in detail the cost
17 reforecast, explained in detail why you do a
18 reforecast. There were people on Staff that were
19 looking at it as if something was wrong to do a cost
20 reforecast. Dan Meyer went into a lengthy explanation
21 that that's not true, that the good projects have cost
22 reforecast. You're testing those fundamental
23 assumptions, you're looking forward. I can remember
24 projects or meetings where Forrest Archibald --

25 MR. HATFIELD: Judge, I'm sorry to

1 interrupt. Before he moves along, I'm not sure if he
2 gave a year.

3 COMMISSIONER JARRETT: Oh, that's right.

4 THE WITNESS: Excuse me, that was March
5 of 2008. Sorry.

6 MR. HATFIELD: Oh, I'm so sorry to
7 interrupt, Commissioner.

8 COMMISSIONER JARRETT: Thank you.

9 THE WITNESS: And I can remember Forrest
10 Archibald walking through the staff, walking through
11 the various cost reforecasts and how we were tracking
12 the costs. And so I can -- Mr. Miles asking good
13 questions --

14 MR. HATFIELD: Mills.

15 THE WITNESS: Mills, sorry, asking good
16 questions, you know, throughout. And there were people
17 asking questions of what was going on in the job, what
18 we were doing with -- with various settlements. So I
19 viewed it as very proactive. I viewed it as an
20 opportunity that if staff had any questions, perfect
21 opportunity to raise them, especially with Forrest
22 Archibald giving detailed walk-throughs as to how we
23 were doing costs and looking at it. Dan Meyer being
24 available to go through those issues. So I viewed it
25 as a very open process that I thought was very good.

1 COMMISSIONER JARRETT: Okay. Mr.
2 Roberts, thank you for your testimony. I don't have
3 any further questions.

4 JUDGE PRIDGIN: Commissioner Jarrett,
5 thank you. Commissioner Gunn.

6 COMMISSIONER GUNN: I do have a couple
7 questions. I'll try to go through these very quickly.

8 EXAMINATION

9 QUESTIONS BY COMMISSIONER GUNN:

10 Q. How did you first become aware that
11 Kansas City Power & Light needed help with the project?
12 who was the person that initiated contact?

13 A. I'm not sure it was they needed help. I
14 think that Tom Maiman said you should meet Bill Downey,
15 they're doing a major project and I think they could
16 use your services.

17 Q. Okay. And that's how contact was
18 initiated, it was a referral, essentially?

19 A. Mr. Maiman introduced me to Bill Downey.

20 Q. Okay. And then how was -- how was --
21 then there was an informal meeting. Did you-guys also
22 do what we referred to yesterday and what we commonly
23 refer to as a dog-and-pony show?

24 A. Yes, sir.

25 Q. So you brought a proposal in to Mr.

1 Downey?

2 A. In early August, 2005, Eric Gould and I
3 were at a nuclear site and were asked to come and meet
4 with Grimwade and Easley and potentially -- I can't
5 remember if Downey was part of it. I know that meeting
6 was definitely with Grimwade and Easley and we were --
7 gave him, in essence, a very thorough review of what
8 we've done on other projects. They knew Grimwade and
9 Easley knew the project. We literally left to come to
10 the meeting, knew the project managers, knew the senior
11 VPs. And it was very evident, had made phone calls
12 before we arrived as to -- to talk about what we were
13 doing for that other utility.

14 Q. Was costs or budget discussed at that
15 initial meeting?

16 A. If it wasn't discussed at that initial
17 meeting, I think that -- I think the initial meeting
18 that I am thinking of with Grimwade and Easley was
19 really a vetting of our background, qualifications,
20 what we did. Once we got through that hurdle, which
21 wasn't just one meeting, there was a number of phone
22 calls, number of discussions, in August, early
23 September, I started sitting down with -- as our scope
24 of services, potential scope of services was being
25 hashed out, I was having discussions with Riggins and

1 Reynolds on cost and budget.

2 Q. So prior to engagement, did you send the
3 company a -- a -- essentially a proposal or a
4 presentation for them to -- to review or was it all
5 just kind of in-person briefings?

6 A. It was a combination of both. I know
7 that -- I know that Bill Riggins had our fee structure
8 prior to him getting the engagement letter. If I can,
9 to answer your question, the first time that Bill
10 Riggins's senior KCP&L management team saw my rates,
11 saw what we were doing, it was prior to the engagement
12 letter being sent to them and accepted.

13 Q. Okay.

14 A. If that answers your question.

15 Q. It does. Now, the first -- the first
16 contact in these first meetings that you had, was the
17 concept always this kind of hybrid legal services,
18 project management approach or was it initially just
19 for legal services?

20 A. I guess I'd start off by saying I don't
21 think we do project management. The oversight we do,
22 on tracking budget and schedule, we view as legal. And
23 that was one of the services that we talked about up
24 front that we literally said, look, here's what we're
25 doing at the site we just came from. We helped them

1 negotiate contracts, we've helped them with change
2 orders, we've helped them with the contract
3 administration, we've helped them with contract
4 strategy. At that particular site we had given some
5 similar very high-level debriefs to senior management,
6 to the board on costs and schedule of the project.

7 Q. But there is a difference with the team
8 that you assemble between the legal side and then some
9 of the management side, because you're bringing in some
10 non-lawyers and consultants to -- to do things other
11 than things that are strictly legal?

12 A. I guess, yes, Dan Meyer's time; yes, Jim
13 Wilson's time in setting up or assisting to set up the
14 project controls and how you collect the data where the
15 schedule is, where the costs are. Those aren't
16 obviously legal services, but the by-product of that
17 work, the data that comes out of that definitely feeds
18 into our legal services in telling KCP&L here's where
19 the project is, here's what the options are, what these
20 contractors --

21 So I would -- I would -- it would be,
22 like, my brother-in-law's a county prosecutor, was a
23 county prosecutor. When he hires an investigator, a
24 former FBI investigator, that investigator is
25 considered part of the legal team and his services are

1 considered part of the legal work. That's what Dan
2 Meyer and Jim Wilson do. That's what Eric Gould does
3 in working with them in the trailers to make sure it's
4 established. That by-product is everything to our
5 analysis to senior management of where the project is.

6 Q. Is part of the benefit of that that you
7 can assert attorney-client privilege with folks that
8 aren't lawyers?

9 A. Yes.

10 Q. Do you market it that way?

11 A. No, but it certainly at OPG, which was a
12 Crown company, the work we did was fed into the
13 government and they have as -- they have Freedom
14 Information Act that is the same or more liberal than
15 ours. And all the work that we provided to OPG and to
16 the government was deemed to be attorney-client and
17 there was significant challenges by various parties in
18 Canada on that.

19 So I don't go to -- I don't go to in
20 KCP&L or OPG and say use us so that you can hide behind
21 attorney-client privilege. That's the opposite. We're
22 trying to get transparency to senior management, we're
23 trying to get transparency to any government body
24 that's overseeing it as to where the project is on
25 budget and schedule.

1 Part of what we do as attorneys in giving
2 that advice on strategy, what's your options on Alstom,
3 how do you react to this data, part of that by
4 definition has always been viewed by any jurisdiction
5 that's looked at it and I would contend by the ALG in
6 this case is indeed attorney-client privilege. But we
7 don't market it and we don't -- that's not a selling
8 point to why you should use Schiff.

9 Q. And I'm not suggesting that privilege was
10 asserted improperly in this case. I think one of the
11 -- one of the problems that we run into is that
12 privilege is probably asserted properly in some of
13 those things, but that creates a challenge for us to
14 determine some of the -- of the prudence because there
15 is a -- there is a legitimate privilege interest that
16 needs to be protected, but it makes it more difficult
17 for us. I'm not in any way asserting privilege is
18 done.

19 A. Okay.

20 Q. What I'm trying to figure out is whether
21 this was -- how this was kind of bundled together and
22 what the purposes was. So let me go back. When did
23 you have the first conversations with Mr. Maiman, if
24 I'm pronouncing that correctly, to join the team?

25 A. I think it would have been in the late --

1 it would have been September or October.

2 Q. of 2005?

3 A. Yes. And that would have been based on
4 describing to Easley the role that Tom Maiman played
5 for OPG and another major east coast utility, my
6 recollection is that Easley said, man, I would like to
7 have that experience, I'd like to have that sounding
8 board, I like that idea a lot. And I think I
9 approached Maiman and said, you know, KCP&L would like
10 to hire you directly to do the same role you did at
11 OPG, same role you did at this major east coast
12 utility. And Maiman said, well, I would like to help
13 you-guys, but I actually want to work under the Schiff
14 umbrella. I would like access to your data, I think
15 that would be more effective. And then there was a
16 discussion with Mr. Easley on that.

17 Q. So the discussion happened after KCP&L
18 came to you and said we want you to hire him?

19 A. Yes, KCP&L hired Schiff and -- you know,
20 if you look at the December budget, that's when we
21 included Maiman.

22 Q. Okay. I'm going to ask you some
23 questions about kind of the legal services that you
24 provided.

25 A. Sure.

1 Q. At some point, I'm going to ask you some
2 specific questions so we can go HC, but for right now,
3 I think I'm okay.

4 So I assume you have a standard schedule
5 of rates for every lawyer, paralegal, everybody in the
6 firm?

7 A. Yes.

8 Q. Does that have -- does that schedule have
9 tiers, like in my experience, you have a standard, you
10 have a premium and maybe a discounted or whatever you
11 want to call it?

12 A. If I understand your question correctly,
13 my going rate for 2011 is anywhere from 680 to 650 an
14 hour.

15 Q. And that's depending on the agreement you
16 have with the client?

17 A. Yes.

18 Q. And there's the exception, obviously,
19 would be KCP&L that I'm billing out at five -- are we
20 in-camera? I need to be, thank you. Help me here,
21 guys.

22 MR. HATFIELD: I'd like to go in-camera
23 for your current rates, but if you don't mind yelling
24 them out.

25 THE WITNESS: well, I'd like to go

1 KENNETH ROBERTS testified as follows:

2 BY COMMISSIONER GUNN:

3 Q. There was a question about your
4 recollection on the Pegasus meeting. Did you go back
5 and verify with time records or did you-guys just rely
6 on your own recollections. It's just for my
7 edification.

8 A. I -- somehow it came up, but was there a
9 meeting with Pegasus and I said, man, I can't remember
10 one with the assistant. And Carrie Okizaki and Eric
11 Gould said, you idiot, we had one meeting and you were
12 there. So that was good enough for me.

13 Q. Okay. Fair enough. I want to move on to
14 Mr. Drabinski -- some of Mr. Drabinski's testimony.

15 A. Sure.

16 Q. He used -- he used kind of the -- kind of
17 a confession analogy where he said, well, what KCP&L's
18 asking for is that we essentially -- because Schiff
19 Hardin was brought in, that we wipe away the sins --
20 the original sins that took place between 2004 and
21 2006. Were you here for that testimony?

22 A. I was.

23 Q. Okay. If you had been brought in at the
24 very beginning of the project, do you think that --
25 that whatever mistakes were made from 2004 to 2006

1 would have occurred?

2 A. We were running at the very beginning of
3 the project, the essence of the project. I mean, not
4 when the original maybe stip was signed, but for all
5 practical purposes, if you look at the timeline, if you
6 look at this document and go back to August, 2005, that
7 was very -- I would consider that very early in this
8 project.

9 Q. But there were -- but there were
10 management decisions made prior to you being brought
11 in, correct?

12 A. Well, the -- I'm sure -- there was, but
13 the contracting strategy had not been made.

14 Q. Okay. But you mentioned earlier that
15 said that -- that -- that many of the issues that --
16 that Mr. Drabinski had were based upon Schiff's audits
17 of KCP&L's management of the project up to this point,
18 or analysis. I don't want to call audits.

19 A. Right.

20 Q. But you did some analysis of what
21 happened prior to when you were brought in and changes
22 were made to the project management based on your
23 analysis, correct?

24 A. I don't -- I would say that our reports,
25 specifically in 2005, 2006 was not looking backwards.

1 It was looking at where we were at in realtime.

2 Q. Okay. But you determined that some
3 changes needed to be made to the management of the
4 project.

5 A. And how data was collected, a variety of
6 issues, yes, sir.

7 Q. And part of that was to control costs?

8 A. Control schedule, yeah, which we've done
9 in costs, yes.

10 Q. Okay. So you did -- the analysis did
11 contain, and for lack of a better word -- well,
12 suggested improvements to the way that KCP&L could be
13 running the project?

14 A. Yes.

15 Q. Okay. So there was a period of time in
16 which KCP&L had -- had put systems in place that, if
17 not modified, may have increased the costs --

18 A. Yes.

19 Q. -- later on?

20 A. And if I can add to that, our analysis
21 wasn't looking in the rearview mirror, we were looking
22 in realtime saying this is what you have, this needs to
23 be improved to hold costs and schedule.

24 Q. So you didn't --

25 A. It was a realtime analysis. The project

1 was in its infancy when we joined it.

2 Q. Sure, but your -- so you're saying that
3 at 2005 when you went to -- when you did your analysis,
4 when you were brought into the project, that there were
5 no decisions that were made prior to that that
6 ultimately impacted the cost of the project?

7 A. Very few.

8 Q. Can you put a dollar figure on it?

9 A. Well, the only thing I could -- as I sit
10 here right now and you look at the various charts, it
11 would be the -- just the -- in essence, the agreement
12 that Mr. Giles, Curtis talked about in terms of the
13 overall CEP when KCP&L would -- would have the plant,
14 you know, in service. That would be the biggest one,
15 that they wanted -- about the only decision made prior
16 to -- to Schiff getting involved that would have had an
17 impact, that as I said here today, would have been the
18 discussion to have this plant up and running by the end
19 of summer, fall of 2010.

20 Q. So -- so absent Schiff's involvement,
21 this project -- the cost wouldn't have gone up except
22 for the cost of that decision?

23 A. Well, I'm not saying that at all. I'm
24 saying that that's the only major -- there was
25 literally a thousand decisions since August of 2005

1 that were presented to the management team that but for
2 their mitigation or action, would have caused this
3 project to most certainly be above the 15 percent of
4 the controlled budget estimate and most certainly would
5 have been beyond the two and a half months from the
6 June date.

7 Q. And those decisions would have been
8 necessary in the course of a regularly managed project?

9 A. Yes. What I tell executives is on a
10 project like this, this is your worst roller coaster
11 ride. Bring your vomit bucket because there's going to
12 be issues du jour every week, every month that are
13 going to be gut busters. And that's a -- and a
14 well-managed project, and I think Mr. Nielsen can go
15 into this in depth, a well-managed project is how does
16 that senior management, how do they get the data, how
17 accurate is the data and what is the -- what is the
18 vetting around their decision-making process.

19 That's -- that's -- I believe that that's
20 a shorthand version of his definition of "prudent."
21 That's what I've been brought up as to how you would
22 judge whether this project was -- was managed
23 prudently. It is the collection of the data,
24 timeliness of that data, the vetting of the options
25 that senior management has that judges it, and man, on

1 a project of five-year duration of almost two million
2 dollars, there are going to be a lot of issues.

3 And if I -- I don't want to run, but Wolf
4 Creek, the decision in Wolf Creek, if you're in this
5 business, you see that decision in almost every state
6 and that decision really is -- is the genesis of our
7 practice. The Commission in Wolf Creek says owner, you
8 can't just sign up with an EPC target price, which is
9 what Wolf Creek started out as. You can't be in
10 business class. This is your plane, you got to be in
11 the cockpit, you got to see the data, you can't
12 contract away your responsibility.

13 That is, in essence, what Schiff does is
14 it makes sure the owner, the senior management team,
15 that they're in the cockpit, they're seeing data in
16 realtime and making decisions to try to influence those
17 contractors on how to hold budget and schedule. I hope
18 that answered your question.

19 Q. Were you -- were you involved in the
20 original CBE?

21 A. Yes, sir. The original CBE is -- the --
22 the CBE is issued in December of 2006.

23 Q. Right.

24 A. Dan Meyer, my team worked very
25 extensively with the KCP&L team in developing that.

1 Q. And then the reforecast was 2008.

2 A. The first recast -- the first reforecast
3 was 2008, yes, sir.

4 Q. Okay.

5 A. And there was 3rd in September of 2010
6 and I believe they're putting the final touches on
7 that, the final reforecast.

8 Q. Okay. Were you a regular -- did you
9 regularly appear before the EOC?

10 A. Absolutely.

11 Q. Were those -- when you -- were you
12 requested to appear before the EOC or were the
13 appearances driven by Schiff's analysis?

14 A. I was expected to report at each meeting.

15 Q. Okay. Did the EOC ever implement -- did
16 it ever make a decision that went contrary to your
17 analysis or your recommendation?

18 A. The project was managed at the
19 construction trailers on site and the executive
20 committee gave suggestions oversight. They weren't
21 making day-to-day decisions as to how it would be
22 carried out on the site.

23 Q. Right.

24 A. As I sit here right now, boy, I can't
25 think of any major recommendation that Schiff gave to