

1 (KCP&L Exhibit No. 254-HC was marked for  
2 identification.)

3 MR. WILLIAMS: May I approach the  
4 witness?

5 JUDGE PRIDGIN: You may.

6 WILLIAM DOWNEY, having been previously sworn,  
7 testified as follows:

8 CROSS-EXAMINATION BY MR. WILLIAMS:

9 Q. Mr. Downey, I'm handing you what's been  
10 marked as Exhibit No. KCP&L 254. Mr. Downey, have you  
11 had an opportunity to review what's been marked for  
12 identification as Exhibit No. KCP&L 254?

13 A. I've had a chance to scan it.

14 Q. Do you recognize it?

15 A. Yes.

16 Q. And what is it?

17 A. It's an R&O analysis sheet for work  
18 around a -- an incident that occurred in 2008 and a  
19 soil stabilization project that we undertook  
20 subsequent to that incident.

21 Q. And is that incident involving the JLG  
22 crane?

23 A. Yes, sir.

24 Q. And didn't you testify last Friday that  
25 when you signed the settlement agreement with Alstom

Appendix  
H-H

1 for the JLG and soil stabilization settlements, that  
2 Kansas City Power and Light had a basis for believing  
3 that it was at fault?

4 A. I think what I indicated was that we were  
5 concerned about the safety on the site and that this  
6 issue extended to a broader issue. We had a very  
7 significant number of lift pieces of equipment onsite  
8 and this incident raised questions around the site  
9 with regard to safety with those pieces of lift  
10 equipment. And for that and other reasons, we settled  
11 this claim and proceeded to do additional work for  
12 the -- the mat, the construction mat, at the site.

13 Q. Does Exhibit No. KCP&L 254 reflect an  
14 analysis by Kansas City Power and Light Company as to  
15 its fault for soil compaction issues?

16 A. Are you referring to -- to the Alstom  
17 document --

18 Q. You're talking --

19 A. -- that's attached to the R&O?

20 Q. Yes.

21 A. This document I'm not as familiar with.  
22 This -- this is an Alstom document. I'm not  
23 familiar -- as familiar with it. It appears to  
24 outline the -- the work that was going to be done.

25 Q. would you turn to the last few pages of

1 Exhibit 254. There's one marked page No. 64.

2 A. Yes, I've read page 64.

3 Q. And does it reflect an opinion by Kansas  
4 City Power and Light Company regarding its liability  
5 exposure?

6 A. It does.

7 Q. And then on page 66 do those -- does it  
8 also express an opinion of Kansas City Power and Light  
9 Company about its liability exposure?

10 A. Yes, it does.

11 Q. And are both of those opinions pertinent  
12 to the Alstom settlement?

13 A. To -- to the specifics of it, yes.

14 Q. Yes.

15 A. Yes.

16 Q. And I believe this is an Exhibit --  
17 KCP&L 254 is a highly confidential document, is it  
18 not?

19 A. Yes.

20 MR. WILLIAMS: I move for the admission  
21 of Exhibit KCP&L 254.

22 JUDGE PRIDGIN: 254 is offered. Any  
23 objections? Hearing none, 254 is admitted. And  
24 that's 254-HC.

25 (KCP&L Exhibit No. 254-HC was received

1 into evidence.)

2 COMMISSIONER KENNEY: Is 254 the document  
3 that Mr. Downey has right now?

4 MR. WILLIAMS: Yes.

5 COMMISSIONER KENNEY: Okay.

6 MR. WILLIAMS: We'll provide more  
7 copies. I just don't have them at the moment.

8 BY MR. WILLIAMS:

9 Q. So is it your testimony that there were  
10 reasons other than Kansas City Power and Light  
11 Company's analysis of its fault regarding the claims  
12 in the Alstom -- Alstom settlement that caused it to  
13 enter into that settlement? Is that what you meant  
14 when you said the company was at fault?

15 MR. HATFIELD: I'm going to object it  
16 assumes facts not in evidence. What he just said was  
17 that 254 is KCPL's full analysis. And that's not in  
18 evidence at all.

19 JUDGE PRIDGIN: Mr. Williams?

20 MR. WILLIAMS: I'm not sure I understand  
21 the objection.

22 JUDGE PRIDGIN: I think it's assuming  
23 facts not in evidence.

24 MR. HATFIELD: Right. Judge, he just  
25 characterized it as if Exhibit 254 is the full

1 analysis. The question is -- related to your analysis  
2 referred to 254. He hasn't established that 254 was  
3 the complete analysis done by KCP&L.

4 MR. WILLIAMS: I'll ask that.

5 BY MR. WILLIAMS:

6 Q. Mr. Downey, do you know if Kansas City  
7 Power and Light Company did any analysis that's not  
8 reflected in Exhibit No. KCP&L 245 regarding the JLG  
9 incident?

10 A. This analysis related specifically to the  
11 facts around the JLG incident. This settlement and  
12 agreement with Alstom, however, was part of a larger  
13 set of discussions and negotiations that were going on  
14 at the time. It was a particularly contentious time  
15 between us and Alstom. There were many things  
16 occurring.

17 And this ultimately -- this was the start  
18 of a larger negotiation where we were working on a  
19 number of things that were very important to the  
20 project and to moving schedule and costs along. So  
21 this became an initial settlement that became part of  
22 a broader package and agreement with Alstom that I  
23 think helped us move the unit 1 project along and the  
24 unit 2 project.

25 Q. So are you saying that the Alstom

1 settlement reg-- Kansas City Power and Light Company's  
2 settlement with Alstom regarding the JLG incident  
3 doesn't stand alone?

4 A. That's correct.

5 Q. Mr. Downey, didn't you also testify last  
6 Friday that you and your wife took trips to Pebble  
7 Beach, California and New-- Newport, Rhode Island for  
8 which Alstom paid all your expenses except airfare?

9 A. Yes.

10 Q. How many days were you in Pebble Beach,  
11 California?

12 A. Two or three. I don't recall.

13 MR. WILLIAMS: May I approach?

14 JUDGE PRIDGIN: You may.

15 BY MR. WILLIAMS:

16 Q. Mr. Downey, I'm handing you what appears  
17 to be an expense report that appears to have your  
18 signature on it and the date of December 4th of 2006.  
19 would you take a look at the daily expense summary  
20 explanation on that -- the document?

21 A. Yes.

22 Q. Is it still your testimony that you were  
23 in Pebble Beach two to three days or does that  
24 document refresh your memory?

25 A. It says that I had reservations on 10/2

1 and came back on 10/05, yes.

2 Q. Does that mean you would have been out  
3 there -- would two days have been travel and the  
4 remainder of the time you were in Pebble Beach?

5 A. Yes.

6 Q. What was the Kansas City Power and Light  
7 Company business purpose for that trip, if any?

8 A. We had just completed the contract  
9 negotiations with Alstom. I had not been involved in  
10 those. I was uninvolved in the negotiation. Our  
11 purchase and legal groups were involved with it. So  
12 with the successful completion and with the approval  
13 of my boss, we accepted an invitation to meet with  
14 the -- the management that would now run the project  
15 and they had invited me out there.

16 I -- I got the necessary approval  
17 internally and spent that time with the executive team  
18 from Alstom who would be leading and managing this  
19 project, which involved three segments of Alstom:  
20 their boiler segment; their air quality control  
21 division down in -- in Knoxville, Tennessee; and their  
22 construction organization.

23 Q. Did you do anything but meet with these  
24 individuals from Alstom?

25 A. Yes. We played golf.

1 Q. And I believe you said "we." Was the  
2 "we" your wife or were there other people from Kansas  
3 City Power and Light Company that went to this  
4 particular meeting?

5 A. I don't believe my wife came with me to  
6 the Pebble Beach meeting.

7 Q. Whose name appears at the top of that  
8 expense report?

9 A. I -- I -- but I don't -- her name is --  
10 is -- is on there. I don't know why. It says, Change  
11 due to family emergency. I don't recall that she was  
12 with me. I mean I could be wrong, but I think this  
13 was just for me. This says -- it does say her name,  
14 but I don't remember that she was with me. She was  
15 with me in -- in the Newport trip, but I don't believe  
16 she was on this one.

17 Q. Well, turning to the Newport trip, how  
18 many days were you -- were you in Newport, Rhode  
19 Island?

20 A. I think it was a weekend; Friday,  
21 Saturday, Sunday.

22 Q. What was the Kansas City Power and Light  
23 Company business purpose of that trip?

24 A. Alstom has an annual conference there. I  
25 was among a number of utility executives who are



1 customers that they host. There's a formal meeting  
2 and then there are dinners and other social events.

3 MR. WILLIAMS: Judge, may I approach to  
4 take the document back?

5 JUDGE PRIDGIN: You may.

6 BY MR. WILLIAMS:

7 Q. Thank you. Mr. Downey, is there any  
8 relationship between the Kansas City Power and Light  
9 Company settlements with Alstom on the JLG and soil  
10 compaction -- or soil stabilization issues and the  
11 all-expense, except airfare, trips you took to Pebble  
12 Beach and Newport, Rhode Island that Alstom provided  
13 to you and your wife?

14 A. No.

15 Q. would you turn your -- do you have your  
16 direct testimony with you?

17 A. I do.

18 Q. would you -- would you turn to page 4 of  
19 that testimony?

20 MR. HATFIELD: We had a page number  
21 problem last week. Make sure we're right on the right  
22 page.

23 THE WITNESS: I hope I have a correct one  
24 this week.

25 BY MR. WILLIAMS:

1 Q. We'll try to get that.

2 A. I changed it out. I don't know which  
3 version I'm currently holding.

4 Q. At least on the version I have, on  
5 lines 9 to 10 you refer to CEP, Comprehensive Energy  
6 Plan, projects being under the control of the senior  
7 vice president of supply, Stephen Easley, do you not?

8 A. Yes.

9 Q. Was the Iatan construction project under  
10 Mr. Easley's control at any time?

11 A. Yes. He was in charge at this point in  
12 time. He did report to me, but he was in charge of  
13 the project.

14 Q. During what periods of time was he in  
15 charge of the project, the Iatan project?

16 A. From the beginning of the project through  
17 till about mid-2008. I don't have exact time, but  
18 somewhere in that mid-2008 time frame.

19 Q. Mr. Downey, is a \$26 million -- or would  
20 a \$26 million federal income tax credit be significant  
21 to KCP&L Greater Missouri Operations Company?

22 A. Yes, I would think so.

23 Q. And last Friday you referred to Melissa  
24 Hardesty as being the company witness on the issue of  
25 the advanced coal tax credit, did you not?

1 A. Yes.

2 Q. Are you familiar with her testimony?

3 A. No

4 MR. WILLIAMS: Judge, may I approach?

5 JUDGE PRIDGIN: You may.

6 BY MR. WILLIAMS:

7 Q. Mr. Downey, I'm handing you what the  
8 company's marked as GMO Exhibit 18, which is the  
9 rebuttal testimony of Melissa K. Hardesty on behalf of  
10 KCP&L Greater Missouri Operations Company. And direct  
11 your attention to page -- page 8 where there's a  
12 section that starts -- that has a title Advanced Coal  
13 Credits and Other ITC that goes through page 12.  
14 would you take a look at that section of her  
15 testimony, please?

16 A. I've read through page 12.

17 Q. Do you disagree with anything  
18 Ms. Hardesty has said there?

19 A. This is a complicated tax issue. I'm not  
20 a tax expert so I will leave her testimony to stand on  
21 its own.

22 Q. So you don't know if you agree with it or  
23 not?

24 A. This is our company's position based on  
25 our head of tax who will be testifying in the GMO case

1 on the question.

2 Q. Does KCP&L Greater Missouri Operations  
3 Company currently have any advanced coal tax credit  
4 for Iatan 2?

5 A. I don't believe so, but I'm not -- I'm  
6 not certain.

7 Q. And doesn't Ms. Hardesty say that the  
8 reason the company had -- I guess KCP&L Greater  
9 Missouri Operations Company has not sought to get an  
10 allocation of the advanced coal tax credit because of  
11 a concern that the benefits of the coal tax credit  
12 will no longer be available?

13 MR. HATFIELD: Judge, I'm going to object  
14 that we're covering cumulative evidence with that  
15 specific question. Ms. Hardesty's testimony is in the  
16 record. It's direct testimony. Going over it again  
17 with Mr. Downey when he's not familiar with it is  
18 cumulative.

19 I'd also add, this particular witness was  
20 given to Staff for a deposition. They were allowed to  
21 take the deposition of this witness. They only used  
22 about half of the time that was allowed. And they  
23 were also told that if they needed more time, they  
24 could get more time.

25 So I think at this point when we're just

1 re-treading other witness's testimony, I'd like to ask  
2 your Honor's intervention to move us along and not go  
3 over the same testimony.

4 JUDGE PRIDGIN: I'll overrule.

5 And, Mr. Downey, obviously if you don't  
6 know the answer to the question, you're most free to  
7 say that you don't know.

8 THE WITNESS: I -- I don't know. I do  
9 know that we -- we got this allocation in 2008. We  
10 didn't acquire the GMO properties until the middle of  
11 2008. So we would have probably applied for this  
12 before GMO was part of KCPL and would have been  
13 granted those.

14 And from Ms. Hardesty's testimony, it  
15 appears that there were pretty strict IRS rules then  
16 regarding reallocation which she can better answer  
17 than I, but I believe we might have applied for this  
18 prior to the acquisition of GMO.

19 BY MR. WILLIAMS:

20 Q. Well, if KCP&L Greater Missouri  
21 Operations Company has no benefit from the advanced  
22 coal tax credit now, why wouldn't it seek that  
23 benefit?

24 A. I -- I believe Mrs. Hardesty suggests a  
25 willingness to work with the staff on this, but a

1 concern about Internal Revenue Service rulings.

2 MR. WILLIAMS: Judge, may I approach?

3 JUDGE PRIDGIN: You may.

4 MR. WILLIAMS: I'm done with that line of  
5 questions. Thank you.

6 Judge, I think my next series of  
7 questions need to be handled in camera.

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

10 (REPORTER'S NOTE: At this point, an  
11 in-camera session was held, which is contained in  
12 volume 22, pages 1284 to 1304 of the transcript.)

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1 JUDGE PRIDGIN: We are back in public  
2 forum. Mr. Williams, when you're ready.

3 MR. WILLIAMS: Is the next Exhibit  
4 No. 256?

5 JUDGE PRIDGIN: Yes, sir.

6 MR. WILLIAMS: This would be KCP&L 256.  
7 (KCP&L Exhibit No. 256 was marked for  
8 identification.)

9 MR. WILLIAMS: The next exhibit would be  
10 then 257?

11 JUDGE PRIDGIN: Yes, sir.

12 (KCP&L Exhibit No. 257 was marked for  
13 identification.)

14 MR. WILLIAMS: Then the next exhibit  
15 would be 258.

16 (KCP&L Exhibit No. 258 was marked for  
17 identification.)

18 MR. WILLIAMS: The next then would be  
19 KCPL 259.

20 JUDGE PRIDGIN: Correct.

21 (KCP&L Exhibit No. 259 was marked for  
22 identification.)

23 MR. WILLIAMS: And then KCP&L 260.

24 JUDGE PRIDGIN: Correct.

25 (KCP&L Exhibit No. 260 was marked for

1 identification.)

2 WILLIAM DOWNEY testified as follows:

3 BY MR. WILLIAMS:

4 Q. Mr. Downey, I've provided you with what  
5 have been marked for identification as Exhibit Nos.  
6 KCP&L 256, 257, 258, 259 and 260. would you turn to  
7 what's been marked for identification as KCP&L 256?

8 A. Yes.

9 Q. Is Exhibit No. KCP&L 256 Staff's request  
10 to Kansas City Power and Light Company for  
11 documentation related to Iatan 1 and Kansas City Power  
12 and Light Company's initial response to that request?

13 MR. HATFIELD: Object to a lack of  
14 foundation. He hasn't even established that this  
15 witness has seen any of these documents. And, Judge,  
16 in advance, we have no problem admitting all of these  
17 documents into evidence in their entirety.

18 JUDGE PRIDGIN: Mr. Williams?

19 MR. WILLIAMS: Well, with that, I'll go  
20 ahead and offer Exhibits KCP&L 256 through KCP&L 260.

21 JUDGE PRIDGIN: Any objection?

22 MR. HATFIELD: No objection.

23 JUDGE PRIDGIN: Exhibits 256, 257, 258,  
24 259 and 260 are all admitted. Are any of them HC?

25 MR. HATFIELD: They are not.



1 JUDGE PRIDGIN: All right. Thank you.

2 (KCP&L Exhibit Nos. 256, 257, 258, 259

3 and 260 were received into evidence.)

4 JUDGE PRIDGIN: Mr. Williams?

5 MR. WILLIAMS: Thank you.

6 BY MR. WILLIAMS:

7 Q. Mr. Downey, have you seen what's been

8 marked as Exhibit No. KCP&L 256 before?

9 A. No. There were thousands literally of  
10 data requests over the years and Mr. Giles in the  
11 regulatory department, subsequently Mr. Blanc managed  
12 this process and so they would have been the focal  
13 point of these.

14 Q. Are you familiar with company responses  
15 to Staff data requests?

16 A. Yes, I would have seen some and been  
17 involved in some.

18 Q. Did you see the company's responses to  
19 Staff's Data Request 490 which has been marked for  
20 identification as KCP&L 256 before today?

21 A. I -- I don't recall.

22 Q. Have you had an opportunity to review  
23 that data request and response?

24 A. 490?

25 Q. Yes.

1 A. Yes.

2 Q. Do you disagree with anything that's said  
3 in that response?

4 A. I have no reason to.

5 Q. Then turning to what's been marked for  
6 identification as Exhibit No. KCP&L 257, have you had  
7 an opportunity to review that question and response?

8 A. Yes.

9 Q. Do you disagree with that response at the  
10 time it was made?

11 A. I don't understand it or the context  
12 within which it was given.

13 Q. Do you know what Kansas City Power and  
14 Light Company's last rate case before this Commission  
15 was numbered?

16 A. No, I don't keep track of the numbers.

17 Q. Are you familiar with the dates whenever  
18 the rate cases are ongoing?

19 A. Yes. I believe I was here the last one.

20 Q. And what response date is indicated on  
21 this data request?

22 A. Date of response was February 3rd, 2009.

23 Q. Given that date and the question asked  
24 and the response given, do you have any disagreement  
25 with the response that was provided at -- on that

1 date?

2 A. Even with those clues, I'm not sure that  
3 I understand the context of this. I'm -- I'm -- I  
4 just don't -- I don't.

5 Q. Is there something confusing about the  
6 question?

7 A. Well, I'm -- I'm not sure. Would you  
8 rephrase it for me?

9 Q. The question I was referring to is the  
10 data request or the request that's made. Do you find  
11 that request confusing? Please provide copies of all  
12 the documentation --

13 A. What I said is I don't understand the  
14 context of the objection. I -- I was not involved  
15 with this.

16 Q. So you're referring to the objection  
17 itself?

18 A. Well, Mr. Giles and Mr. Blanc would have  
19 probably been better to have answered this question.

20 Q. Turning your attention to what's been  
21 marked for identification as Exhibit KCP&L 258, which  
22 shows a later date of response of April 17th of 2009,  
23 do you have any disagreement with that response that  
24 was given at that date to that particular request?

25 A. Well, it refers back to a response to

1 490. I have no reason to agree or disagree.

2 Q. Turning to Exhibit No. KCP&L 259, what is  
3 that exhibit?

4 A. It says that it's a Revised Privilege Log  
5 and it's labeled Missouri Public Service Commission.  
6 So I'm assuming it is the document from the Missouri  
7 Public Service Commission.

8 Q. And what is that privilege log -- what  
9 does that privilege log reflect for Data Request  
10 No. 490?

11 A. Could you be more specific about what --  
12 what do you mean "reflect"?

13 Q. There's a table that appears on that  
14 page 1 of 5, is there not?

15 A. Yes.

16 Q. And are there a series of data request  
17 numbers provided on the first column?

18 A. Yes.

19 Q. And are the first three rows with  
20 information in them designated as Data Request  
21 No. 490?

22 A. Yes.

23 MR. HATFIELD: Judge, I'm going to try  
24 again on cumulative evidence. The document's been  
25 admitted. It's in evidence.

1 JUDGE PRIDGIN: It certainly has been  
2 admitted. And, Mr. Williams?

3 MR. WILLIAMS: Mr. Downey has indicated  
4 he doesn't have an understanding about the document,  
5 so I'm just trying to find out if I can get a  
6 clarification of his understanding and ask some  
7 questions.

8 JUDGE PRIDGIN: All right. I'll  
9 overrule.

10 BY MR. WILLIAMS:

11 Q. What is your understanding of this  
12 document?

13 A. I have no idea. I mean it looks like a  
14 log that is kept by the Commission Staff, I assume.  
15 I -- I've never seen this before.

16 Q. Do you know what Exhibit No. KCP&L 260  
17 is?

18 A. It's a -- it's labeled Confidential  
19 Memorandum to Steve Easley from Kenneth Roberts and  
20 Eric Gould regarding the summary of Iatan 2  
21 contingency analysis.

22 Q. Do you know if this document is the only  
23 document that was provided to Staff by Kansas City  
24 Power and Light Company in response to Staff Data  
25 Request 490 and 491?

1 A. I don't.

2 Q. Who at Kansas City Power and Light  
3 Company to -- decided to assert the attorney/client  
4 privilege in response to Staff Data Request 490 and  
5 491?

6 A. I don't know. Mr. Giles would have been  
7 the individual monitoring the data request process.

8 Q. Do you know what documents, if any,  
9 Kansas City Power and Light Company has provided the  
10 Staff to support the development, review, analysis and  
11 approval of the contingency and executive contingency  
12 included in the control budget estimate for Iatan 2?

13 A. No, I'm not specifically aware.

14 MR. WILLIAMS: Judge, I'd like to have  
15 another exhibit.

16 JUDGE PRIDGIN: This should be 261.

17 MR. WILLIAMS: I believe -- I'll confirm  
18 with the company, but I believe this will be HC.

19 JUDGE PRIDGIN: All right. This is HC?

20 MR. FISCHER: Yes.

21 JUDGE PRIDGIN: Thank you.

22 (KCP&L Exhibit No. 261-HC was marked for  
23 identification.)

24 BY MR. WILLIAMS:

25 Q. Mr. Downey, I've provided you with what's

1 been marked for identification as Exhibit KCP&L  
2 261-HC. Have you seen that exhibit before?

3 A. I'm sure I have.

4 Q. Are these board of directors minutes?

5 A. It looks like it would have been a part  
6 of the minutes.

7 Q. And what would have been the date of the  
8 meeting that those minutes were for?

9 A. It was a board of directors meeting so  
10 that -- the title says Proposed Control Budget  
11 Estimate, Iatan 2 Project, Board of Directors Meeting  
12 December 4 and 5, 2006.

13 Q. And do these particular minutes that are  
14 in Exhibit KCP&L 261-HC, do they accurately reflect  
15 the budget information and recommendation that the  
16 board of directors approve a control budget estimate  
17 for Iatan 2 of a base cost estimate of 1.465 billion,  
18 a contingency of 220 million, and a total project  
19 without AFUDC of 1.685 billion?

20 A. Yes.

21 Q. Is that control budget estimate based on  
22 the more detailed Appendix 2, Summary of Project Cost  
23 Estimates to Current Working Estimates that is the  
24 last page of Exhibit KCP&L 261-HC?

25 A. What was the question again?

1 Q. Is that control budget estimate based on  
2 the more detailed Appendix 2, Summary of Project Cost  
3 Estimates to Current Working Estimates that is the  
4 last page of Exhibit KCP&L 261-HC?

5 A. Yes.

6 Q. Did the board of directors approve that  
7 control budget estimate?

8 A. It did.

9 Q. Is that control budget estimate what  
10 Kansas City Power and Light Company has identified as  
11 the definitive estimate for Iatan 2 for its  
12 experimental alternative regulatory plan?

13 A. Yes.

14 MR. WILLIAMS: Judge, at this time I'd  
15 like to offer Exhibit KCP&L 261-HC.

16 JUDGE PRIDGIN: Any objections?

17 MR. HATFIELD: No objection from the  
18 company.

19 JUDGE PRIDGIN: 261 is admitted.

20 (KCP&L Exhibit No. 261-HC was received  
21 into evidence.)

22 BY MR. WILLIAMS:

23 Q. would you turn to the last page of  
24 Exhibit KCP&L 261-HC? Do you see the category on the  
25 left column of that page that has Owner's Indirects as



1 a label?

2 A. Yes.

3 Q. And do you see a line under that label  
4 for Owner's Indirects of Outside Management Oversight?

5 A. Yes.

6 Q. Do you know if the information on that  
7 line to the right whether that's confidential or not  
8 or proprietary information?

9 A. I don't.

10 MR. FISCHER: Yes.

11 MR. WILLIAMS: We need to go in-camera  
12 for a couple of questions then.

13 JUDGE PRIDGIN: Just a moment, please.

14 (REPORTER'S NOTE: At this point, an  
15 in-camera session was held, which is contained in  
16 volume 22, pages 1316 to 1321 of the transcript.)

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1 JUDGE PRIDGIN: All right. We're back in  
2 public forum. I am getting some requests for a recess  
3 and I show 10:05. Anything from counsel before we go  
4 on break? All right. Let's resume at 10:20, please.  
5 Thank you. We're off the record.

6 (A recess was taken.)

7 JUDGE PRIDGIN: All right. We are back  
8 on the record. Anything from counsel before  
9 Mr. Williams resumes examining Mr. Downey?

10 All right. Mr. Williams, when you're  
11 ready.

12 MR. WILLIAMS: Thank you, Judge.

13 BY MR. WILLIAMS:

14 Q. Mr. Downey, how long have you known  
15 Mr. Thomas J. Maiman?

16 A. Probably back to the early '70s.

17 Q. When did you first meet Mr. Maiman?

18 A. Working at Commonwealth Edison Company in  
19 Chicago.

20 Q. What were you doing at that time?

21 A. I was probably district manager of the  
22 Elgin district.

23 Q. And what was Mr. Maiman doing?

24 A. He was the area manager of the Glen Bart  
25 area. There were five areas in districts within this

1 division -- operating division of the company.

2 Q. Then did you work under Mr. Maiman?

3 A. Ultimately I did. Later on in our  
4 career, we all rotated around a good bit into  
5 different assignments.

6 Q. Was Mr. Maiman head of Commonwealth  
7 Edison's nuclear fleet at any time?

8 A. Yes, he was.

9 Q. Do you know what points in time?

10 A. I don't recall the dates.

11 Q. Any idea at all?

12 A. I would just be guessing. I would say in  
13 the '80s possibly. He was -- actually in the '80s he  
14 was in charge of construction of the nuclear plants, I  
15 think. And then later -- it would have been in the  
16 '90s that he was perhaps -- but I'm guessing at this  
17 point.

18 Q. You reference Unicom Energy Services  
19 Company in your direct testimony, do you not?

20 A. I do.

21 Q. And you were president of it?

22 A. Yes.

23 Q. Was it involved with nuclear generators  
24 when you were president of it?

25 A. No. Never was.

1 Q. Is -- or was Unicom Energy Services  
2 Company when you were president of it, a subsidiary of  
3 Commonwealth Edison?

4 A. Yes. Actually it was a subsidiary of our  
5 holding company. Not of Commonwealth Edison, but the  
6 holding company.

7 Q. So it was an affiliate of Commonwealth  
8 Edison?

9 A. Yes.

10 Q. Did the NRC impose civil penalties on  
11 Commonwealth Edison for violations of NRC regulations  
12 when Mr. Maiman was head of Commonwealth Edison's  
13 nuclear fleet?

14 A. I don't know that for certain. It's  
15 possible.

16 Q. Did the NRC impose civil penalties on  
17 Commonwealth Edison in 1996 that aggregated to  
18 450,000?

19 A. As I said, I -- I don't know.

20 Q. Did the NRC impose civil penalties on  
21 Commonwealth Edison for violations of NRC regulations  
22 that aggregated 850,000 in the first quarter of 1997?

23 A. I don't know.

24 Q. Mr. Downey, in the 1990's when you were  
25 at Commonwealth Edison, were you an officer at the

1 corporation?

2 A. I was probably beginning around 1992.

3 Q. And were you familiar with SEC filings  
4 made by Commonwealth Edison while you were an officer  
5 of the corporation?

6 A. I would not have been involved in  
7 preparing them or developing them. I might have read  
8 them.

9 MR. WILLIAMS: Judge, may I approach?

10 JUDGE PRIDGIN: You may.

11 BY MR. WILLIAMS:

12 Q. Mr. Downey, I've handed you what's -- is  
13 indicated on it to be a Form 10-K for Commonwealth  
14 Edison, portions of it for the period of December 31  
15 of 1996. would you turn to the second sheet which  
16 shows a page number of 26 on it.

17 A. Yes.

18 Q. And does it show for Thomas J. Maiman,  
19 positions he held at ComEd as an executive?

20 A. Yes.

21 Q. And would you take a look at the dates  
22 and the -- the positions that are reflected in there?  
23 And do those appear correct to you?

24 A. Yes.

25 Q. And what positions and dates are

1 reflected there that Mr. Maiman held at ComEd?

2 A. Executive vice president of ComEd  
3 beginning January 1997. Senior vice president of  
4 ComEd from 1992 to January of '97. And vice president  
5 of Commonwealth Edison 1992.

6 Q. And do you know what, if any of those  
7 positions -- while Mr. Maiman was in any of those  
8 positions, he would have been head of the nuclear  
9 positions of ComEd?

10 A. I just can't recall.

11 Q. Then toward the bottom of that page it  
12 lists you, does it not?

13 A. Yes, it does.

14 Q. And does it accurately reflect your  
15 positions at ComEd and the dates you held them?

16 A. Yes.

17 Q. And what does it show there?

18 A. Vice president of ComEd since 1992 and  
19 manager of marketing and customer services of ComEd  
20 1992.

21 Q. And were those the positions you held at  
22 the time this 10-K was filed, which would have been I  
23 believe March of 1997?

24 A. Yes.

25 Q. Then turning to the last page on what

1 I've handed you which shows it to be page No. 15, do  
2 you see towards the bottom of the page a header  
3 Environmental?

4 A. Yes.

5 Q. And then do you see two paragraphs above  
6 that header that starts off, During the year 1996?

7 A. Yes.

8 Q. Would you read that paragraph, please?

9 MR. HATFIELD: Judge, I'm going to object  
10 to having the witness read hearsay into the record.

11 MR. WILLIAMS: I just asked him to read  
12 it. I haven't asked him to read it aloud.

13 MR. HATFIELD: Oh, sorry. I didn't know  
14 he meant read it to himself.

15 JUDGE PRIDGIN: Thank you.

16 MR. HATFIELD: Withdrawn.

17 JUDGE PRIDGIN: Thank you.

18 THE WITNESS: Yes.

19 BY MR. WILLIAMS:

20 Q. Do you know if the statements in that  
21 paragraph are accurate?

22 A. Well, it's their 10-K, so I'm assuming  
23 it's accurate.

24 Q. And what do those statements say?

25 A. During the year --

1 MR. HATFIELD: Object to having the  
2 witness read hearsay into the record.

3 JUDGE PRIDGIN: Mr. Williams?

4 MR. WILLIAMS: All right. I'll withdraw  
5 the question.

6 BY MR. WILLIAMS:

7 Q. Mr. Downey, do you agree with the  
8 statements in that paragraph?

9 A. I'm assuming they're a matter of fact.

10 Q. And why are you assuming they're a matter  
11 of fact?

12 A. They're in their 10-K. It's not a good  
13 thing to lie in a 10-K.

14 Q. And why do you believe they're in the  
15 company's 10-K?

16 A. They were -- they rose to a level of  
17 significance to be reported.

18 Q. Does that paragraph refresh your  
19 recollection about whether or not the NRC imposed any  
20 civil penalties on ComEd in 1996 or 1997?

21 A. It says here that they did.

22 Q. And did they?

23 A. I don't recall specifically.

24 Q. Mr. Downey, was Mr. Maiman your mentor at  
25 Commonwealth Edison?



1           A.     I would not call him my mentor. I would  
2 call him a peer and then ultimately a -- my boss. We  
3 spent about 30 years together working sometimes  
4 together, sometimes in different locations. We were  
5 part of a management development process and we each  
6 had many different jobs.

7           Q.     How long was he your boss?

8           A.     Probably several years he was my direct  
9 boss.

10          Q.     When you say "several years," can you --

11          A.     In the --

12          Q.     -- quantify --

13          A.     -- late '90s he was a head of all  
14 division operations for a period of time and that was  
15 the area that I was in and -- and reported to him.

16          Q.     So are we talking more than five years?

17          A.     No. I think it was less than that.

18          Q.     More than two?

19          A.     Somewhere around that number.

20          Q.     And when is it that Mr. Maiman left  
21 Commonwealth Edison?

22          A.     I don't remember the exact year he  
23 retired.

24          Q.     Do you know approximately when it was he  
25 left?

1 A. I honestly don't. It was -- I don't.  
2 He's been retired for a while.

3 Q. Well, apparently he was still there in  
4 the 1990's?

5 A. Yes.

6 Q. Do you know if he was there after 2000?

7 A. I just can't remember. I think he was.

8 Q. Did Kansas City Power and Light Company  
9 seek Mr. Maiman's services for the Iatan construction  
10 project or its Comprehensive Energy Plan?

11 A. I did.

12 Q. And what services did you seek from  
13 Mr. Maiman?

14 A. Consultation and advice. Mr. Maiman had  
15 an enormous amount of experience on large construction  
16 projects. He had been through it all and -- and I  
17 wanted and sought his advice and counsel as we were  
18 setting up our projects and -- and beginning this  
19 five-year journey through major construction.

20 Q. When did you begin seeking Mr. Maiman's  
21 consultation and advice?

22 A. It would have been in the 2005 time  
23 frame. We periodically talked, in any event. We had  
24 maintained a relationship and talked about business  
25 matters and other things.

1 Q. Was Mr. Maiman compensated for the  
2 consultation and advice that you're referring to?

3 A. I mean ultimately he was. Ultimately I  
4 asked that he be part of consulting team.

5 Q. And when was it that you asked that he  
6 become part of the consulting team?

7 A. Would have been probably either late 2005  
8 or 2006.

9 Q. Was he directly employed by Kansas City  
10 Power and Light Company?

11 A. No.

12 Q. Then how was he -- how was it that he  
13 came to be compensated for his consultation and  
14 advice?

15 A. I asked that he be part of the team that  
16 we were assembling through Schiff Hardin.

17 Q. So did you request Schiff Hardin to have  
18 Mr. Maiman provide services?

19 A. Yeah. He became part of the -- the  
20 construction consulting part of -- of that  
21 organization.

22 Q. Was that done at your request?

23 A. Yes.

24 Q. Didn't Mr. Maiman recommend Schiff Hardin  
25 to you for the Iatan construction project?

1 A. Yes.

2 Q. And did you solicit his recommendation?

3 A. I think it occurred in -- in the process  
4 of one of our conversations about the project. When  
5 he -- when we announced that we were going to be  
6 engaging in this effort, we were having one of our  
7 periodic conversations and he gave me some of his  
8 experience and made some recommendations.

9 He had been working I believe  
10 independently at this Ontario project separate and  
11 apart from Schiff, but they were working together  
12 there and so he'd had that experience and he had  
13 walked me through it.

14 Q. I believe the other day in the context of  
15 Terry Murphy, the project in Ontario came up. Was  
16 Mr. Murphy working on the same project as Mr. Maiman  
17 in Ontario?

18 A. Yes. That's my understanding.

19 Q. And Schiff Hardin worked on that project  
20 as well?

21 A. They did.

22 Q. How often do you speak with -- or let's  
23 break it up by time period. Prior to 2005, how often  
24 did you speak with Mr. Maiman after you left  
25 employment with Commonwealth Edison?

1           A.     We would talk periodically.  we'd  
2 become -- beside business peers and co-workers, we'd  
3 become good friends.  we periodically would see  
4 them -- he and his wife socially.  And so it was, you  
5 know, on a periodic basis.

6           Q.     Roughly once a month, once a week?

7           A.     Probably more once a month.

8           Q.     And after 2005, how often did you  
9 socialize with Mr. Maiman?

10          A.     I don't think it changed any.

11          Q.     Why did you solicit Mr. Maiman's  
12 recommendation that ultimately caused you to retain  
13 Schiff Hardin for the Iatan construction project?

14          A.     Mr. Maiman and I were talking about it.  
15 He had enormous experience, he knew some of the  
16 challenges of embarking on a mega project like  
17 Iatan 2, he had been through it himself.  And we  
18 talked about the -- the issues that arise in the  
19 course of those.  And he was impressed with the kind  
20 of things that Schiff Hardin was doing.

21                   I was intrigued with the thought that we  
22 would anticipate problem and solve them up front as  
23 opposed to wait for problems to arise and -- and deal  
24 with them later.  Classic example, Wisconsin Electric  
25 Power in their last big construction project were

1 presented with a half billion dollar change order by  
2 one of their contractors at the end of the project,  
3 which ultimately became a major mediation and I think  
4 they settled for something just under \$100 million. I  
5 wanted to avoid that on this project, if I could.

6           And I believe we have. In fact, I know  
7 we have. That's been one of the significant  
8 accomplishments of the project.

9           Q. Do I understand you correctly that you  
10 informally consulted with Mr. Maiman before he was  
11 ever retained to provide any consulting services?

12           A. Yes.

13           Q. And what were the natures of the  
14 disclosures you made to Mr. Maiman regarding Kansas  
15 City Power and Light Company and its Iatan  
16 construction project that were done in those informal  
17 discussions?

18           A. I don't think I disclosed anything  
19 significant at all other than having conversation  
20 about projects like this in a generic sense. We were  
21 in the very, very early stages and we were talking  
22 about ideas on structure and management and issues  
23 that would come up. But I certainly wasn't talking to  
24 him about any confidential information in the company.

25           Q. Did Mr. Maiman tell you why he

1 recommended Schiff Hardin for the Iatan construction  
2 project?

3 A. well, he -- he raised the kinds of things  
4 that they do and why they might be beneficial. That  
5 was something we obviously internally in the company  
6 vetted ourselves. But I don't think it's unusual --  
7 certainly I don't believe it's unusual at my level  
8 to -- to rely on people who have long experience in  
9 the industry, who know the issues and -- and to talk  
10 to about advice and -- and input.

11 I certainly make my own decisions, our  
12 own company makes their own decisions, but his advice  
13 comes from many years of experience and I thought it  
14 was very valuable.

15 Q. You said that he told you about things  
16 Schiff does. what things did he tell you about what  
17 Schiff does?

18 A. well, as I mentioned, the whole issue of  
19 understanding what contractors are doing,  
20 understanding what your own project teams are doing.  
21 when you realize that we have about 3,000 people at  
22 KCP&L and we were about to embark on a project that by  
23 itself would have 3- to 4,000 people onsite for most  
24 of the construction period.

25 You are getting into a very, very

1 significant kind of issue in terms of management and  
2 the management processes. And all the processes you  
3 put in place for your ongoing business, somehow with  
4 some of these big projects, they become an island onto  
5 themselves. And so the whole issue was how do we  
6 manage to stay in touch with what's going on --

7 MR. WILLIAMS: Judge, would you direct  
8 the witness to answer the question?

9 JUDGE PRIDGIN: Did you want to re-ask  
10 the question, Mr. Williams?

11 BY MR. WILLIAMS:

12 Q. The question was, what things did Schiff  
13 does -- did Mr. Ma-- what was it Mr. Maiman told you  
14 were the things that Schiff does?

15 A. I thought that's what I was doing. I was  
16 talking about the kind of project oversight, the --  
17 the commercial issues that arise in these projects,  
18 the need for transparency in reporting what's  
19 occurring and the importance of having independent  
20 checks and balances on a very large organizations  
21 that's basically temporary. It exists for a five-year  
22 life and it didn't exist before and -- and it closes  
23 down when it's over.

24 So how do you manage all that and what  
25 kinds of things do you need and what kind of



1 skill-sets do you need and how do you want to approach  
2 it? And those are the kinds of things that attracted  
3 me to the Schiff proposal and ultimately attracted our  
4 senior leadership team to it.

5 MR. WILLIAMS: Judge, I believe he still  
6 hasn't answered the question as to what it was the  
7 things -- the things that Mr. Maiman told him that  
8 Schiff does.

9 JUDGE PRIDGIN: Mr. Downey, if you  
10 want -- apparently Mr. Williams is not satisfied with  
11 your answer. I don't know if you could be more direct  
12 in what it is Mr. Maiman told you.

13 THE WITNESS: I thought I answered it,  
14 but I -- I'll give it another try.

15 BY MR. WILLIAMS:

16 Q. Well, what is it that Mr. Maiman told you  
17 that Schiff does?

18 A. They provide oversight, they -- they  
19 provide knowledge of the contractors we were going to  
20 be getting involved with. This is a very small group  
21 of -- of firms who do this kind of work and  
22 understanding who they are, what their business  
23 strategies are.

24 Schiff, in particular its senior  
25 leadership, work every day with these companies in

1 multiple settings around the country and so they bring  
2 valuable input there, they bring knowledge about  
3 project controls and project reporting. They advise  
4 not only senior leadership, but boards of directors  
5 with regard to large complex construction projects.

6           They have people on the ground, they have  
7 a unique set of skills -- not only lawyers, but -- but  
8 people knowledgeable in construction. And they live  
9 and breathe on the site every day through it  
10 documenting all of the technical things that are going  
11 on that have commercial implications and you  
12 ultimately wind up battling and negotiating and  
13 fighting. Those were things that I perceived as very  
14 valuable and unique and not in existence in our own  
15 company.

16           Q.     And all of those are things that  
17 Mr. Maiman told you that Schiff does?

18           A.     I don't recall the specifics. Some of  
19 those he may have mentioned and some of those I may  
20 have acquired over time from working with them for  
21 five years.

22           Q.     And the question was specifically limited  
23 to the things that Mr. Maiman told you that Schiff  
24 does.

25           A.     Is -- I -- I thought I answered that.

1 JUDGE PRIDGIN: Do you recall what  
2 Mr. Maiman told you?

3 THE WITNESS: I don't have specific  
4 memory of conversation back in 2005, no. We talked  
5 about all these issues as general issues, as problems  
6 that I was going to face, that he had faced. We were  
7 sharing common experiences.

8 BY MR. WILLIAMS:

9 Q. Mr. Downey, did you testify in your  
10 deposition that you believe that both Mr. Maiman  
11 independently and Schiff Hardin were hired by the  
12 Canadian government in connection with the restart of  
13 some nuclear units that had been mothballed?

14 A. Yes.

15 Q. Had you ever heard of Schiff Hardin  
16 before Mr. Maiman made his recommendation to you to  
17 retain them?

18 A. Yes.

19 Q. Where did you hear of them?

20 A. I lived in Chicago for 30 years. They're  
21 a very well known law firm.

22 Q. And how did you hear of them?

23 A. They did some work for Commonwealth  
24 Edison. Nothing that I was directly involved in, but  
25 I've -- I think they've done forensic analyses of

1 commercial issues for ComEd.

2 Q. Do you know if Mr. Maiman, Schiff Hardin  
3 and Terry Murphy worked on the Ontario Power  
4 Generation, Inc. Nuc-- Incorporated Nuclear unit  
5 restart at the same time?

6 A. I believe they did.

7 Q. Did you solicit any input from Terry  
8 Murphy regarding Schiff Hardin?

9 A. No.

10 Q. Why not?

11 A. I didn't know him until we hired him.

12 Q. How did it come about that Kansas City  
13 Power and Light Company hire Terry Murphy?

14 A. Tom Maiman was onsite talking with  
15 Mr. Easley, with Mr. Grimwade. I don't know exactly  
16 how that came about, but I'm sure there was a  
17 connection.

18 Q. Are you saying it's your understanding  
19 that Mr. Maiman recommended Mr. Murphy?

20 A. In all probability, that occurred.

21 Q. Did you solicit any recommendation from  
22 Mr. Murphy for outside management oversight of the  
23 Iatan construction project?

24 A. No.

25 Q. Why not?