

1 A. I didn't know him at the time.

2 Q. Mr. Downey, Kansas City Power and Light
3 Company did not hire Schiff Hardin to work on the
4 Iatan construction project as a result of a
5 competitive bid process, did it?

6 A. No.

7 Q. And Mr. Maiman has worked on the Iatan
8 construction project through Schiff Hardin, has he
9 not?

10 A. Yes.

11 Q. Did Kansas City Power and Light Company
12 retain Schiff Hardin to provide management oversight
13 services to Kansas City Power and Light Company for
14 the Iatan construction project?

15 A. Yes.

16 Q. Did Kansas City Power and Light Company
17 also retain Schiff Hardin to provide legal services to
18 Kansas City Power and Light Company for the Iatan
19 construction project?

20 A. Yes.

21 Q. Did Kansas City Power and Light Company
22 retain Schiff Hardin to provide any other services to
23 Kansas City Power and Light Company for the Iatan
24 construction project?

25 A. Yes. They -- as I've said before, they

1 had a unique bundle of skills, so project controls was
2 also an important issue. Also, the -- the -- the
3 onsite eyes and ears and documentation of construction
4 issues that ultimately can lead to either disputes or
5 lawsuits, their day-to-day documentation of the field
6 work as it relates to commercial -- subsequent
7 commercial issues is -- is huge. And it was -- having
8 that relative strength in dealing with these big
9 companies like Alstom, like Kiewit was very important
10 to our company.

11 we hadn't been in the game for 25 years.
12 when you get into this, it's a small world. These big
13 jobs are complex. The contract for Alstom was
14 1,800 pages and 6 volumes. Interpreting that in the
15 day-to-day world in the field is a -- certainly a
16 challenge. And they brought all those things and
17 those were the things that caused us to hire them.

18 Q. Excluding expense reimbursement, do you
19 know if Schiff Hardin's billings to Kansas City Power
20 and Light Company to date for legal services exceed
21 one half of its total billings to Kansas City Power
22 and Light Company?

23 A. I'm sorry. would you repeat that
24 question?

25 Q. Excluding expense reimbursements, do you

1 know if Schiff Hardin's billings to Kansas City Power
2 and Light Company to date for legal services exceed
3 one half of its total billings to Kansas City Power
4 and Light Company?

5 A. I don't know. I'm not sure I even
6 understand your question.

7 Q. Do you know what percentage of Schiff --
8 excluding expense reimbursements, do you know what
9 percent of Schiff Hardin's billings to Kansas City
10 Power and Light Company to date have been for legal
11 services?

12 A. I would say 65 to 70 percent.

13 Q. And excluding expense reimbursements, do
14 you know what percentage of Schiff Hardin's billings
15 to Kansas City Power and Light Company for management
16 oversight have been in comparison to its total
17 billings?

18 A. I don't -- I don't know that we have a
19 category -- or that we've organized a category called
20 management oversight.

21 Q. Not all of the individuals providing
22 services for which Schiff Hardin has billed Kansas
23 City Power and Light Company on the Iatan construction
24 project are attorneys or attorney support staff, are
25 they?

1 A. No.

2 Q. Mr. Jim Alberts has worked on the Iatan
3 construction project under contract to Schiff Hardin,
4 has he not?

5 A. Jim Wilson I think is -- Mr. Wilson's --
6 Mr. Wilson is a project controls expert who cut his
7 teeth at the original Iatan unit back in the '70s when
8 we were building it. And he -- he and his team are --
9 are probably the dominant component of the project
10 controls charges to the company and they're not
11 lawyers. They're -- they're construction guys and
12 scheduling guys.

13 Q. Thank you for the correction, by the way.
14 I think Jim Wilson is who I was trying to refer to as
15 opposed to Jim Alberts.

16 A. Jim Alberts is our customer service vice
17 president.

18 Q. Mr. Daniel F. Meyer has worked on the
19 Iatan construction project under contract to Schiff
20 Hardin, has he not?

21 A. Yes.

22 Q. Mr. Meyer is not an attorney, is he?

23 A. No. Not at all. He -- he's a
24 construction expert going back 50 years.

25 Q. Mr. Steve Jones is working on the Iatan

1 construction project under contract to Schiff Hardin,
2 has he not?

3 A. He has worked under contract with Schiff
4 Hardin, yes.

5 Q. Do you know if he's still working under
6 contract for Schiff Hardin?

7 A. I don't believe so, except in this
8 instance here.

9 Q. Mr. Jones is not an attorney, is he?

10 A. No. He's a purchasing expert.

11 Q. Were you interviewed by Pegasus
12 Consulting?

13 A. Yes.

14 Q. Do you know a Dr. Nielsen?

15 A. I do.

16 Q. How do you know Dr. Nielsen?

17 A. Through this engagement. Our legal
18 counsel retained his firm separately to assess our
19 projects.

20 Q. When you say "this engagement," are
21 you -- what are you referring to?

22 A. Our legal department engaged Pegasus for
23 purposes of reviewing the prudence of the actions
24 we've taken on this project and unit 1.

25 Q. On page 40 of his rebuttal testimony in

1 this case, Mr. Nielsen lists a series of interviews
2 that include one with Bill Downey, KCP&L president and
3 CEO and GPE president and COO. Are you the Bill
4 Downey referenced there?

5 A. Yes.

6 Q. Were you the president and CEO of Kansas
7 City Power and Light Company when you were interviewed
8 by Pegasus Global Holdings, Inc.?

9 A. Did you say president and COO?

10 Q. President and CEO.

11 A. Could have been after the title change
12 that I interviewed. Are you talking unit 2 or unit 1?

13 Q. I'm talking about -- you were interviewed
14 by Mr. Nielsen and he identified you as KCP&L
15 president and CEO and GPE president and COO.

16 A. Well, he -- yes, we had probably had a
17 change from the first time he interviewed me on unit 1
18 versus the second time on unit 2. And his testimony
19 here is with regard to unit 2 so it should say
20 president and COO.

21 Q. So you were interviewed twice by
22 Mr. Nielsen?

23 A. Yes.

24 Q. And the first interview was regarding
25 Iatan 1?

1 A. Yes.

2 Q. And the second interview was regarding
3 Iatan 2?

4 A. Yes.

5 Q. When were you interviewed by Mr. Nielsen
6 regarding unit 2?

7 A. Sometime last year. I absolutely have no
8 recollection of the date.

9 Q. And when were you interviewed by
10 Mr. Nielsen regarding unit 1?

11 A. My memory's even more stressed on that
12 question. I don't remember.

13 Q. Was it before you were interviewed
14 regarding unit 2?

15 A. Yes.

16 Q. Substantially before?

17 A. Yes.

18 Q. Years?

19 A. Probably a year, at least.

20 Q. Were the -- was the interview regarding
21 Iatan 1 with Mr. Nielsen conducted in person?

22 A. Yes.

23 Q. And was the interview regarding unit 1
24 with Mr. Nielsen also conducted in person?

25 A. I believe so. I'm having trouble

1 recalling the specifics of that meeting. He -- in the
2 unit 2 one he also had his president and chief
3 operating officer with him.

4 Q. Well, turning to the unit 2 interview,
5 where was that conducted?

6 A. In our offices.

7 Q. When you say "in our offices," are you
8 talking about the headquarters of Kansas City Power
9 and Light Company?

10 A. Yes.

11 Q. And how long was that interview?

12 A. Something over an hour.

13 Q. And I believe you indicated Mr. Nielsen
14 conducted that interview?

15 A. Yes.

16 Q. Did anyone else for Pegasus Global
17 Holdings, Inc. participate in that interview?

18 A. Yes. Patricia -- I want to say
19 Gallagher. I think I've got that right. As president
20 and chief operating officer.

21 Q. Did she ask you questions too?

22 A. Yes.

23 Q. What preparation did -- preparations did
24 you make for the interview before you were
25 interviewed? And I'm referring to the Iatan 2

1 interview.

2 A. I don't know that I made any specific
3 preparations.

4 Q. Did you speak with anyone in preparation
5 for the interview?

6 A. No.

7 Q. Was anyone else besides Mr. Nielsen -- I
8 think you said Patricia Gallagher --

9 A. Uh-huh. Gallagher.

10 Q. -- Gallagher and yourself were present at
11 the interview.

12 A. I think Mr. Riggins was there. Perhaps
13 some of the regulatory people. I'm not sure.

14 Q. When you say "regulatory people," you're
15 speaking of?

16 A. Could have been Mr. Blanc or Mr. Rush. I
17 don't -- I don't recall specifically, but I'm thinking
18 that there might have been some regulatory people in
19 the room.

20 Q. But whenever you refer to "regulatory
21 people," you're talking about employees of --

22 A. My own -- our own company.

23 MR. WILLIAMS: Judge, would you instruct
24 him to let me finish the question before he answers?

25 JUDGE PRIDGIN: All right. Mr. Downey,

1 if you'll let Mr. Williams finish his question.

2 BY MR. WILLIAMS:

3 Q. You did anticipate my question, by the
4 way. The "regulatory people" you're referring to are
5 regulatory -- employees of Kansas City Power and Light
6 Company?

7 A. Yes.

8 Q. Did anyone instruct you as to the level
9 of your cooperation during the interview in advance of
10 it?

11 A. No. I don't think that was a question.

12 Q. Did you have any legal representation at
13 the interview?

14 A. No.

15 Q. What was the purpose of Mr. Riggins being
16 there?

17 A. Mr. Riggins had retained them and this
18 was an independent assessment that was going on of the
19 operating organization.

20 Q. And what was Mr. Riggins' position with
21 the company at the time?

22 A. General counsel.

23 Q. Did you bring any documents with you to
24 the interview you had with Mr. Nielsen regarding
25 Iatan 2?

1 A. No.

2 Q. Did Mr. Nielsen or anyone else show you
3 any documents at that interview?

4 A. No.

5 Q. Do you know if anyone took notes at your
6 interview?

7 A. Not that I'm aware of.

8 Q. And how was the interview conducted? Was
9 it informal?

10 A. Yes. It was a conversation about
11 management processes and structure and they asked a
12 variety of questions.

13 Q. Do you know if the interview was recorded
14 or transcribed?

15 A. I don't believe so.

16 Q. And what was it you discussed at the
17 interview?

18 A. As I said, the general management
19 processes and procedures, state of the project, my
20 views on -- for any of the issues.

21 Q. Your views on what sorts of issues?

22 A. How the project was going, what the
23 strengths were, what -- what issues might have been in
24 the discussion. I think they probed for decision
25 making and the reporting structure, the work of the

1 oversight committee, how information flowed, how we
2 made decisions.

3 Q. Were there discussions by others at the
4 interview?

5 A. As I said, chief operating officer asked
6 questions. I don't -- I don't have that recall of the
7 entire conversation piece by piece.

8 Q. Well, was anyone speaking besides
9 yourself and the people from Pegasus in terms of
10 participating in the interview?

11 A. No. I don't think so.

12 Q. Did you have any follow-up discussions
13 with Pegasus Global Holdings, Inc. after the
14 interview?

15 A. No.

16 Q. Did you have any follow-up discussions
17 regarding the interview with anyone else?

18 A. No. They were conducting a number of
19 interviews of people throughout the -- and they were
20 giving an independent assessment.

21 Q. You've testified earlier that William G.
22 Riggins was chief legal counsel I believe at Kansas
23 City Power and Light Company, have you not?

24 A. Yes.

25 Q. And he's no longer employed at the

1 company. Correct?

2 A. That's correct.

3 Q. Do you know when it is that he left the
4 company?

5 A. It was in the fourth quarter of last
6 year.

7 Q. Do you know why he left? Did he retire
8 or resign or something else?

9 A. No. He didn't -- he didn't retire. He
10 resigned of his own volition.

11 Q. And what offices and positions did he
12 have at Kansas City Power and Light Company at the
13 time he resigned?

14 A. Senior vice president and general counsel
15 and he also had responsibility for our environmental
16 affairs group.

17 Q. Do you know how long he was senior vice
18 president?

19 A. I actually don't. Somewhere in
20 between -- we -- that letter that you had me look at
21 back in 2005 and -- and last year he'd become senior
22 vice president. Probably -- probably had been senior
23 vice president two or three years.

24 Q. And do you know how long he was general
25 counsel of Kansas City Power and Light Company?

1 A. Back before I joined the company. So
2 it's over ten years.

3 Q. You also said he had responsibility I
4 believe for environmental affairs. Do you know how
5 long he had those responsibilities?

6 A. He acquired those somewhere probably in
7 the last five years -- five or six years.

8 Q. Do you know what the nature of
9 Mr. Riggins' job duties were immediately before he
10 resigned from Kansas City Power and Light Company?

11 A. The same ones that I just mentioned,
12 senior vice president, general counsel and head of
13 environmental affairs.

14 Q. Well, what was he doing as senior vice
15 president?

16 A. He headed up our legal function.

17 Q. And as general counsel, was he the person
18 who made ultimate legal decisions if there was any
19 disagreement?

20 A. Yes. He was not only general counsel,
21 but a member of our senior leadership team.

22 Q. You referenced Kansas City Power and
23 Light Company having a line organization. Was
24 Mr. Riggins a direct report to you when he resigned
25 from the company?

1 A. No.

2 Q. who did he direct report to?

3 A. Our chairman.

4 Q. Did Mr. Riggins at any time while he was
5 employed by Kansas City Power and Light Company ever
6 directly report to you?

7 A. No.

8 Q. Do you know if Mr. Riggins was Kansas
9 City Power and Light Company's chief attorney when
10 this Commission approved Kansas City Power and Light
11 Company's experimental alternative regulatory plan in
12 Case No. EO-2005-0329?

13 A. Yes.

14 Q. was he?

15 A. Yes, he was.

16 Q. And during his employment at Kansas City
17 Power and Light Company, did Mr. Riggins actively
18 practice law?

19 A. Sounds like a term of art, actively
20 practicing law. If -- he was our general counsel.
21 Was he in the courtroom? No.

22 Q. well, did he give legal advice to the
23 company?

24 A. Yes.

25 Q. And did he make decisions on legal

1 matters for the company?

2 A. Yes.

3 MR. WILLIAMS: Judge, I'm going to turn
4 to an exhibit that's already been marked and I believe
5 is in evidence, Exhibit 251.

6 JUDGE PRIDGIN: All right.

7 MR. WILLIAMS: May I approach the
8 witness?

9 JUDGE PRIDGIN: You may.

10 BY MR. WILLIAMS:

11 Q. Mr. Downey, I'm handing you what's been
12 marked as Exhibit No. 251-HC. Do you recognize that
13 exhibit?

14 A. Yes, I do.

15 Q. And what is it?

16 A. It's the Iatan Construction Project
17 Execution Plan issued June 2007.

18 Q. And isn't that exhibit highly
19 confidential?

20 A. Yes.

21 Q. Does the cover page of that exhibit show
22 how Kansas City Power and Light Company expected the
23 Iatan station to look after the Iatan project is
24 completed with only one chimney?

25 MR. HATFIELD: Judge, I just want to

1 object on this chimney stuff, that it's completely
2 irrelevant. There's no disallowance recommended by
3 anyone related to chimneys.

4 JUDGE PRIDGIN: Mr. Williams?

5 MR. WILLIAMS: Well, it is not irrelevant
6 in that the original -- I believe it was the
7 definitive estimate included costs for demolition of
8 the existing chimney.

9 JUDGE PRIDGIN: I'll overrule.

10 BY MR. WILLIAMS:

11 Q. Mr. Downey?

12 A. I've been advised that -- that the
13 project budget didn't have demolition costs in it for
14 the chimney, but this is a one stack and there are two
15 stacks at the site.

16 Q. And turning to page 1, is there a diagram
17 there that provides a little better representation of
18 how the site actually appears?

19 A. 1.0 page? Yes.

20 Q. Did the executive oversight committee
21 approve Exhibit KCP&L 251?

22 A. Approve the -- approve the Project
23 Execution Plan?

24 Q. Yes.

25 A. We would have reviewed it with -- with --

1 and acknowledged it as -- yes.

2 Q. Would you turn to page 2 and the 1.2
3 purpose of the plan section of Exhibit KCP&L 251, in
4 particular the last paragraph?

5 A. Yes.

6 Q. Does that paragraph indicate that the
7 Project Execution Plan will be changed as of when
8 appropriate to accommodate the evolving stages of the
9 project?

10 A. Yes, it does.

11 Q. Was the Iatan construction project not
12 large enough that Kansas City Power and Light Company
13 required its Project Execution Plan to be kept updated
14 and current?

15 A. I believe that the way this document
16 lived going forward was through processes and
17 procedures established in individual departments.

18 Q. Are you testifying that the Project
19 Execution Plan was kept updated and current by
20 policies and procedures in departments?

21 A. What I was saying is that this was a
22 broad outline of responsibilities and then a lot of
23 these were flushed out in individual departments and
24 within the project.

25 Q. Is it correct then that if a basic plan

1 or strategy is not included in Exhibit 251 or changes
2 to Exhibit 251, then that plan or strategy was not
3 executed?

4 A. No.

5 Q. So there could have been basic plan or
6 strategy changes that are not reflected in Exhibit 251
7 or changes to it?

8 A. I'm sure that's possible.

9 Q. Turning to page 3 in the second paragraph
10 of Exhibit 251, isn't there a statement there that the
11 PEP is a control document and will be reviewed and
12 revised periodically in accordance with the management
13 of change, MOC, process?

14 A. Yes.

15 Q. Was that done?

16 A. I'm not aware if it was or wasn't.

17 Q. Turning to the fourth page of Exhibit
18 KCP&L 251, the third paragraph there --

19 A. Can you -- I'm having trouble with the
20 page. What -- what -- what section are you on?

21 MR. WILLIAMS: May I approach?

22 JUDGE PRIDGIN: You may.

23 BY MR. WILLIAMS:

24 Q. Let me see if I can get you there. We
25 have pagination issues.

1 A. Right.

2 Q. Right here (indicating).

3 A. Okay.

4 Q. Direct your attention to that. On that
5 page in the third paragraph which we're talking about
6 following the index would be page No. 4 --

7 A. Okay.

8 Q. -- in the third paragraph. Isn't the
9 role of Schiff Hardin described in the Project
10 Execution Plan to be Schiff Hardin, LLP with its
11 consultants, Thomas J. Maiman, Jay Wilson and
12 Associates, Inc. and Meyer Construction Consulting,
13 Inc., collectively Schiff, will provide independent
14 oversight and project controls, advice to KCP&L
15 throughout the course of CEP projects, including the
16 Iatan construction project?

17 A. That's what it says.

18 Q. And is that what Schiff Hardin did?

19 A. It -- it is. And then they obviously
20 provided additional legal advice. I think that that
21 paragraph goes on to elaborate a little bit more than
22 that specific statement.

23 Q. well, turning to the last paragraph on
24 that same page, isn't there a statement, Schiff's
25 primary functions will be, one, report on -- report

1 the Iatan construction project's progress to KCP&L
2 senior management; and two, identifying ways in which
3 KCP&L may improve its execution of various phases of
4 the Iatan work.

5 Schiff will prepare reports of the Iatan
6 construction project's progress which will identify
7 critical aspects of the project's progress on the
8 basis of industry standard metrics. To that end,
9 Schiff will work with KCP&L to develop appropriate
10 project metrics that will identify the critical
11 aspects of each of the project's progress.

12 A. Yes.

13 Q. And did Schiff do what's stated there?

14 A. Yes. I think they did it and did it very
15 well.

16 Q. Do you know how many reports Schiff
17 provided KCP&L -- or Kansas City Power and Light
18 Company in 2006 and 2007?

19 A. No. I don't recall the specific number,
20 but those would have been -- that would have been
21 early in the project and there would have been many of
22 them. I think that as we moved through the project,
23 the need for those written reports declined, but early
24 on -- those two years would have been very busy years.
25 Maybe as many as 12 or more reports.

1 Q. When you say "12 or more," are you
2 talking about between the two years or each year?

3 A. Each year.

4 Q. And do you know how many reports Kansas
5 City Power and Light Company received from Schiff
6 after 2007?

7 A. There would have been very significantly
8 fewer. Maybe a half a dozen or more, maybe a half a
9 dozen to nine. I don't remember the exact.

10 Q. Was the Iatan construction project a
11 success?

12 A. I think it was an enormous success, both
13 in terms of cost and schedule. We -- we built this
14 plant through the worst inflation era construction
15 period in this industry and through a great recession
16 and during a period when we were closed out of the
17 capital markets for over a year and a half. The
18 stresses during this period were great.

19 I think the project came in very well and
20 the plant is running well. It's met the environmental
21 commitments that we made to our communities. It was
22 probably the single largest construction project in
23 this state during that five-year period. So all in
24 all, I'd say it was a huge success.

25 Q. Does the Project Execution Plan set out

1 success criteria in section 5.1.2?

2 MR. FISCHER: Counsel, do you have a page
3 number?

4 THE WITNESS: There aren't pages numbered
5 here, are there?

6 MR. HATFIELD: Yeah, they are in the --

7 THE WITNESS: I haven't found them if
8 they are.

9 MR. MILLS: Little circle in the bottom.

10 THE WITNESS: Oh, there they are. Thank
11 you. I've been struggling to find them. It is
12 page 15.

13 MR. MILLS: Fifteen.

14 MR. FISCHER: Thank you.

15 BY MR. WILLIAMS:

16 Q. I'm also hampered by having provided my
17 copy to Mr. Downey so --

18 A. Yes. There are success criteria that
19 there.

20 Q. And based upon those success -- or on
21 those criteria, was the project a success?

22 A. I would say yes.

23 Q. In section 5.1.2 what is the first safety
24 criteria?

25 A. The first bullet under safety?

1 Q. Yes.

2 A. Everyone goes home at the end of the day.

3 Q. Did everyone go home at the end of the
4 day each day of the Iatan construction project?

5 A. No. We had two fatalities during the
6 course of the construction.

7 Q. Do you know the names of the individuals
8 who died?

9 A. I can't recall their names.

10 Q. In terms of safety then, was the Iatan
11 construction project a success?

12 A. It was in the sense that its accident
13 rate is -- was -- a metrics we use was better than the
14 average on these large construction projects. We
15 obviously do everything we can to avoid fatalities and
16 two contractor employees died in two separate
17 incidents during the course of this project. But we
18 work very hard every day on safety issues and -- and I
19 think in total, the -- the effort was a strong one.

20 Q. What is the first criterion listed for
21 schedule success?

22 A. Meet or better the Iatan 1 and 2
23 provisional acceptance dates.

24 Q. Did Iatan 1 meet or better the
25 provisional acceptance date of December 15th of 2008?

1 A. No, it didn't.

2 Q. Did Iatan 2 meet or better the
3 provisional acceptance date of June 1st, 2010?

4 A. No, it came in slightly later.

5 Q. How much later?

6 A. August 26th.

7 Q. In terms of schedule then, was the Iatan
8 construction project a success?

9 A. When you look at these projects over a
10 five-year period, yeah, I would say that this plant
11 was a tremendous success. That June 1 date was a
12 commercial date, which we targeted and challenged all
13 off our contractors to. We promised this plant in the
14 summer of 2010. It came. We didn't hit provisional
15 acceptance, but the plant was up and running and
16 producing megawatt hours through July and August,
17 through the summer peak and -- and met our -- our
18 promise to our customers to have this plant in service
19 in the summer of 2010.

20 Q. What was the purpose of Exhibit 251, the
21 Project Execution Plan?

22 A. To provide a high-level guideline and set
23 of directions with regard to organizational structure
24 and focus on the project, project direction.

25 Q. Were there any consequences attached to

1 failing -- failure to meet any of the guidelines set
2 out in the Project Execution Plan?

3 A. Can you be a little more specific on
4 consequences? what are you referring to?

5 Q. Failure to meet some criterion result in
6 some adverse consequence -- or some consequence,
7 presumably adverse?

8 A. well, this is a directional document, not
9 a -- not a -- a -- this is a directional document.
10 I'm not sure -- I'm still not sure what you mean.

11 Q. By "directional" you mean it's guidance,
12 it's not mandatory?

13 A. No, I didn't say that it wasn't
14 mandatory. This provides the direction which people
15 expect to follow.

16 Q. Under the Project Execution Plan, what is
17 the first criterion for cost success?

18 A. Are you referring to a specific page?

19 Q. I believe it's on the following page.

20 A. which is 16?

21 Q. I believe.

22 MR. FISCHER: Yes.

23 THE WITNESS: well, that was the
24 challenge. Obviously we didn't meet that number and I
25 gave you earlier some of the reasons why.

1 BY MR. WILLIAMS:

2 Q. Well, what is that criterion?

3 A. Complete the Iatan 1 and 2 projects
4 within the control budget.

5 Q. Did Kansas City Power and Light Company
6 complete Iatan 1 within the control budget?

7 A. No.

8 Q. Did Kansas City Power and Light Company
9 complete Iatan 2 within the control budget?

10 A. No. But I believe what we did do given
11 the circumstances at the time was a success.

12 Q. What is the third criterion for cost
13 success?

14 A. Leave CEP oversight committee contingency
15 in the bank while meeting other success criteria.

16 Q. Was the CEP oversight committee
17 contingency left in the bank?

18 A. No.

19 Q. And above that, what is the second
20 criterion for cost success?

21 A. Effectively manage the project
22 contingency through the change control process.

23 Q. Was the Iatan construction project a
24 success in terms of cost?

25 A. Given the conditions and circumstances of

1 the time and in comparison to other plants built in a
2 similar period, I would say yes.

3 Q. Was your Project Execution Plan overly
4 ambitious then?

5 A. I don't believe it was overly ambitious.
6 I believe it was challenging.

7 Q. And did Kansas City Power and Light
8 Company meet that challenge?

9 A. I believe we did. I believe we have a
10 team that worked very hard. I think we were
11 incredibly transparent. We had a lot audiences, a lot
12 of people we were accountable to and I believe that we
13 were successful in meeting those accountabilities.

14 Q. Has any Kansas City Power and Light
15 Company employee received a bonus based on Iatan
16 construction project results?

17 A. The -- our -- our variable compensation
18 plan for both officers and non-officers had elements
19 of compensation in it for this project for -- for
20 specific people.

21 Q. And do you know if anyone has received or
22 is eligible for that -- under your variable
23 compensation plan, for a bonus based on the Iatan
24 construction project results?

25 A. Yes.

1 Q. Are these bonuses included in the cost of
2 the Iatan construction project?

3 A. Certainly a number of them are.

4 Q. And those that are included in the cost
5 of the Iatan construction project, are they included
6 in the cost you're seeking to include in your rates in
7 this case?

8 A. Yes.

9 Q. Is Kansas City Power and Light Company
10 planning to pay any bonuses to any of its employees
11 based on the results of the Iatan construction project
12 results?

13 A. Would you repeat that?

14 Q. Is Kansas City Power and Light Company
15 planning to pay any bonuses to any of its employees
16 based on the results of the Iatan construction
17 project?

18 A. Yes.

19 Q. Will these bonuses be included in the
20 cost of the Iatan construction project?

21 A. Yes.

22 Q. Will these bonuses be included in the
23 cost you are seeking to include in your rates in this
24 case?

25 A. Yes.

1 Q. Has any vendor received bonus payments
2 for performance?

3 A. Not bonus payments, no.

4 Q. Could any vendor have received bonus
5 payments for performance?

6 A. I -- I don't believe so.

7 Q. Do you know -- sorry. Are any Kansas
8 City Power and Light Company's -- Company employees
9 eligible for bonuses based on the outcome of this
10 case?

11 A. No.

12 Q. Are you familiar with Kansas City Power
13 and Light Company's code of conduct?

14 A. Yes.

15 Q. Does Kansas City Power and Light
16 Company's code of conduct apply to employees at the
17 Iatan construction project?

18 A. Yes.

19 Q. Do you know when Kansas City Power and
20 Light Company's code of conduct was issued to
21 employees at the Iatan construction project?

22 A. I don't. It's generally available to
23 everybody.

24 Q. Do you know if it was specifically
25 distributed?

1 A. I don't.

2 Q. Do you know who David Price is?

3 A. I do.

4 Q. Who is he?

5 A. He was vice president of construction,
6 2007 to 2008 time frame.

7 Q. Was he vice president of construction --
8 or what were his duties as vice president of
9 construction between 2007 and 2008?

10 A. His responsible for our Comprehensive
11 Energy Plan construction, specifically at that point
12 focused on the Iatan units.

13 Q. Before he became vice president of
14 construction, was he an employee of Kansas City Power
15 and Light Company?

16 A. No.

17 Q. And did he leave the company in 2008?

18 A. Yes.

19 Q. Do you know why he left the company?

20 A. He was recruited back by his previous
21 employer who was building two 800-megawatt coal units
22 in southern Illinois.

23 Q. When he was vice president of
24 construction, did he direct report to you?

25 A. Yes, he did

1 MR. WILLIAMS: Judge, what's the next
2 exhibit number?

3 JUDGE PRIDGIN: I would have 262.

4 MR. WILLIAMS: Thank you.

5 (KCP&L Exhibit No. 262 was marked for
6 identification.)

7 Judge, may I approach?

8 JUDGE PRIDGIN: You may.

9 BY MR. WILLIAMS:

10 Q. Mr. Downey, I'm handing you what's
11 been -- Mr. Downey, I'm handing you what's been marked
12 for identification as Exhibit No. KCP&L 262.

13 A. Yes.

14 Q. Do you recognize what's been marked as
15 Exhibit No. KCP&L 262?

16 A. Yes. I -- our code of conduct. And then
17 a e-mail from Dave Price to his -- what looks like
18 his -- well, to his leadership team. And a previous
19 e-mail from Brad Lutz to Bob Schallenberg about the
20 code of compliance response.

21 Q. Does Exhibit No. KCP&L 262 indicate that
22 Kansas City Power and Light Company provided its code
23 of conduct and related documents to the construction
24 management team for the Iatan construction project on
25 Monday, September 24th, 2007?

1 A. Yes.

2 Q. Do you know if, in fact, those documents
3 were distributed on that date?

4 A. I don't know.

5 Q. Does the Exhibit 262 also indicate that
6 all Kansas City Power and Light Company employees at
7 Iatan were to meet to review those documents by the
8 end of that week?

9 A. Yes.

10 Q. Do you know if those meet-- that meeting
11 occurred?

12 A. I don't.

13 Q. Does Exhibit 262 also indicate that the
14 code of conduct documents were provided to
15 Mr. Schallenberg of the Commission Staff on
16 September 17th of 2007?

17 A. Yes.

18 Q. Do you know if, in fact, those documents
19 were provided to Mr. Schallenberg on that date?

20 A. I don't.

21 Q. Is the code of conduct materials included
22 in Exhibit 262 relevant to the Iatan construction
23 project?

24 A. Yes. It's relevant to all of our
25 employees.

1 Q. Would you turn to page 5 of the
2 July 25th, 2006 code of business conduct in ethics?

3 A. Yes.

4 Q. And do you see on the left of that page,
5 I believe it's towards the bottom, the word "gifts" in
6 bold?

7 A. Yes.

8 Q. Would you read the first three paragraphs
9 next to that bolded word?

10 A. We and members of our immediate family
11 will not directly or indirectly request, take, accept
12 or receive any gift or gratuity from any person or
13 entity with which the company does business or is
14 likely to do business if the acceptance or the
15 prospect of future gifts or gratuities might limit us
16 or be perceived as limiting us from acting solely in
17 the best interest of the company.

18 We and members of our immediately family
19 will not directly or indirectly offer or provide any
20 gift or gratuity to any person or entity with which
21 the company does business or is likely to do business
22 if the acceptance would limit or be perceived as
23 limiting those persons or entities from acting solely
24 in their best interests.

25 Gifts or gratuities include cash,

1 bonuses, trips, fees, commissions, services, private
2 or personal discounts including discounted loans,
3 entertainment or any similar form of consideration of
4 other than nominal or insignificant value.

5 Do you want me continue on the next page?

6 Did you want me to -- or should I stop there?

7 Q. I don't know. Have you completed the
8 first three paragraphs?

9 A. I did.

10 Q. Would you go ahead and read the fourth?

11 A. The occasional giving and receiving of
12 modest gifts, meals, services or entertainment is an
13 accepted practice of promoting goodwill and building
14 and maintaining business relationships; however, they
15 should be infrequent reasonable, customary, legal and
16 of modest value.

17 Acceptable forms of entertainment include
18 infrequent, moderate hospitality such as meals,
19 charity events, sporting events, holiday gatherings or
20 other celebrations, plays, concerts or other cultural
21 events.

22 It is inappropriate to accept meals,
23 refreshments or entertainment on a regular basis or
24 without returning the hospitality at business-related
25 functions. Invitations to functions that involve

1 travel or overnight stays that are in the best
2 interest of the company will either be paid for by the
3 company or be approved in advance by the president of
4 the applicable company.

5 Q. Now, is what you read regarding gifts in
6 the code of business conduct and ethics applicable to
7 Kansas City Power and Light Company employees?

8 A. Yes.

9 Q. And do you know how long that particular
10 provision has applied to Kansas City Power and Light
11 Company employees?

12 A. It's been there for quite some time. We
13 reviewed it in 2008, compared and contrasted it to
14 other similar policies for corporations in Kansas City
15 and that are in our industry and so it was reviewed
16 and affirmed in 2008. But it's been in place for
17 quite a while.

18 Q. Do you know how much in advance of 2008
19 it's been in place?

20 A. I don't.

21 Q. Was it in place at the beginning of the
22 Iatan construction project?

23 A. I believe it was.

24 Q. Do employees at Kansas City Power and
25 Light Company comply with this code of conduct

1 regarding gifts?

2 A. I believe they do. We make every effort
3 to communicate it and to make sure that our employees
4 understand the importance of this in the conduct of
5 their business.

6 Q. Do you comply with it?

7 A. I believe I do.

8 Q. Would you explain how the gift provisions
9 of the code of conduct permit you to accept from
10 Alstom trips for you and your wife to Pebble Beach and
11 Newport, Rhode Island at the same time that Kansas
12 City Power and Light Company had a major construction
13 contract with Alstom?

14 A. First of all, as I said, my wife did not
15 go to Pebble Beach with me on that trip. I was there.
16 I was there at the urging of our chairman to establish
17 business relationships with what was going to be our
18 largest contractor on this project for five years and
19 to begin building relationships with their leadership
20 team, which -- and to get to know them.

21 we had a consortium at Alstom that had
22 three different heads of three different organizations
23 who had to work together, proved to be quite a
24 challenge for them. So getting to know that
25 organization and their people on a social level as

1 well as on a business level was critical to engaging
2 them as we went forward.

3 I met people on that -- those initial
4 visits who became people that I had to sit across the
5 table with and negotiate with and bargain with in some
6 very challenging and intense environments. So getting
7 to know them was a fundamental part of our business
8 and I did it with approval and clear knowledge of my
9 supervisor. And it was every bit appropriate in terms
10 of the business context in which we were operating.

11 Q. Thank you for the explanation about why
12 you did it, but what I was asking is how it comports
13 with the code of conduct regarding gifts.

14 A. I don't believe --

15 MR. HATFIELD: I believe that's what he's
16 answered, Judge. Asked and answered.

17 JUDGE PRIDGIN: I'll overrule.

18 THE WITNESS: I believe it comports and
19 in no way did it affect my business judgment relative
20 to Alstom or the management of them and the
21 implementation of their contract.

22 BY MR. WILLIAMS:

23 Q. What about the perception concern that's
24 stated in the code of business conduct?

25 A. As I said, I had approval, it was done

1 openly with approval of my boss -- actually with the
2 urging of my boss. And it -- it was an expected and I
3 think normal course of business function.

4 Q. When you say it was an expected normal
5 course of business function, who had that expectation?

6 A. I -- I believe that if you read our
7 policy, you see that we encourage the interaction.
8 Obviously it's got to be such that it does not impact
9 our ability to represent our company. And I believe
10 that I represent our company very strongly and -- and
11 so I believe it's -- I believe it's appropriate.

12 MR. WILLIAMS: Judge, I'd like to have
13 another exhibit marked.

14 JUDGE PRIDGIN: This would be 263.

15 MR. WILLIAMS: May I approach?

16 JUDGE PRIDGIN: You may.

17 (KCP&L Exhibit No. 263 was marked for
18 identification.)

19 BY MR. WILLIAMS:

20 Q. Mr. Downey, I'm handing you what's been
21 marked for identification as Exhibit No. KCP&L
22 No. 263. Mr. Downey, do you recognize Exhibit 263?

23 A. Yes.

24 Q. What is it?

25 A. It's a memo -- two memos actually. One

1 from Dave Price with some of the Alstom management
2 and -- and then a second memo from Dave Price to me
3 about a dilemma he thought he had with regard to some
4 jackets that Alstom had purchased for the site to give
5 to the field folks to wear.

6 Q. Did you approve the distribution of
7 winter jackets from ALSTOM to Kansas City Power and
8 Light Company employees for which ALSTOM paid about
9 \$150 a piece?

10 A. You know, I can't recall. I probably
11 did. Do you have something that confirms it? If you
12 do, then maybe I did.

13 Q. I do, but I don't have it handy.

14 MR. WILLIAMS: Judge, may I approach?

15 JUDGE PRIDGIN: You may.

16 MR. WILLIAMS: I don't want to get
17 duplicative.

18 MR. HATFIELD: What was the exhibit
19 number on that last one?

20 MR. WILLIAMS: The last one was 263.

21 MR. HATFIELD: 26--

22 MR. WILLIAMS: 3. Judge, I'd like to
23 mark another exhibit.

24 JUDGE PRIDGIN: Okay.

25 (KCP&L Exhibit No. 264 was marked for

1 identification.)

2 BY MR. WILLIAMS:

3 Q. Mr. Downey, I've handed you what's been
4 marked for identification as KCP&L 264. Do you
5 recognize that exhibit?

6 A. I never would have remembered it, but I
7 do recognize it.

8 Q. Doesn't it include a statement by you in
9 it?

10 A. Yes.

11 Q. And what's that statement regarding?

12 A. It's regarding partial answer to -- well,
13 it answers one of the questions in Mr. Price's memo
14 and then it says to go ahead with regard to the jacket
15 distribution.

16 MR. WILLIAMS: Judge, I'd like to offer
17 Exhibit KCP&L 264 at this time.

18 JUDGE PRIDGIN: 264 -- KCP&L 264 is
19 offered. Any objections?

20 MR. HATFIELD: No objection.

21 JUDGE PRIDGIN: 264 is admitted.

22 (KCP&L Exhibit No. 264 was received into
23 evidence.)

24 MR. WILLIAMS: And I'd also like at this
25 time to offer Exhibit KCP&L 263.

1 JUDGE PRIDGIN: Any objections?

2 MR. HATFIELD: That's the earlier

3 e-mails. Right?

4 MR. WILLIAMS: Yes.

5 MR. HATFIELD: No objection.

6 JUDGE PRIDGIN: 263 is admitted.

7 (KCP&L Exhibit No. 263 was received into
8 evidence.)

9 BY MR. WILLIAMS:

10 Q. Mr. Downey, do you know if the winter
11 jackets were distributed to Kansas City Power and
12 Light Company employees?

13 A. I assume they were.

14 Q. And what's the basis for your assumption?

15 A. These memos.

16 Q. Going back to the gift policy and the
17 business code of conduct for -- that you said applies
18 to Kansas City Power and Light Company, where in that
19 code does it permit Kansas City Power and Light
20 Company to accept the winter jackets?

21 A. I -- Kansas City Power and Light -- these
22 were distributed to individuals who were working at
23 the construction site. And it -- I think it fits
24 within the general statement in the policy. It's hard
25 to find a construction worker on a site like that that

1 doesn't have something with somebody's name on it.

2 Q. Well, do you know what the value of those
3 winter jackets were or -- what those winter jackets
4 were valued at?

5 A. It says here in the memo \$150 each.

6 Q. Do you have any reason to dispute that
7 valuation?

8 A. No. I have no knowledge of it.

9 Q. And was that your understanding of the
10 value at the time that you authorized their being
11 distributed?

12 A. Yes.

13 Q. Do you believe Alstom provided those
14 winter jackets with no expectation of any quid pro
15 quo?

16 A. I -- I think it's probably pretty typical
17 on construction projects. It was probably -- let's
18 see, it was November so it's going into the winter. I
19 think they -- they distributed them as part of an
20 effort to build teamwork and camaraderie between their
21 group and ours. There was enough tension onsite with
22 the daily back and forth. I'm sure they viewed it as
23 a positive step in the field level.

24 Q. Don't the winter jackets create an
25 impression that the concessions Kansas City Power and

1 Light Company made to Alstom were influenced by the
2 gifts of the winter jackets?

3 A. I think that those are so far apart and
4 so not connected, that -- as to -- I have trouble with
5 that question.

6 Q. I think it calls for a yes or no.

7 A. No.

8 Q. And you said you think they're so far
9 apart that there's little, if any, connection, I
10 believe. What do you mean by little, if any,
11 connection?

12 A. The field workers who got these jackets
13 had -- had no knowledge or engagement in the
14 settlement agreements you refer to.

15 Q. Do you know if anyone in the Iatan
16 construction project procurement or contract
17 administration area received winter jackets?

18 A. I don't.

19 MR. WILLIAMS: Judge, I'd like to have
20 another exhibit marked.

21 JUDGE PRIDGIN: This will be 265.

22 (KCP&L Exhibit No. 265 was marked for
23 identification.)

24 MR. WILLIAMS: Judge, may I approach?

25 JUDGE PRIDGIN: You may.

1 BY MR. WILLIAMS:

2 Q. Mr. Downey, I'm handing you what's been
3 marked for identification as KCP&L 265. Have you seen
4 Exhibit 265 before?

5 A. No.

6 Q. Is the subject of Exhibit 265 a Kiewit
7 offer of a golf outing?

8 MR. HATFIELD: Judge, I'm going to
9 object. There's no foundation. He's never seen the
10 document before.

11 JUDGE PRIDGIN: Mr. Williams?

12 MR. WILLIAMS: I just asked him if the
13 subject of the document is a Kiewit golf outing. He
14 can say yes or no certainly.

15 JUDGE PRIDGIN: I'll overrule.

16 THE WITNESS: It says the subject is a
17 golf invite flyer.

18 BY MR. WILLIAMS:

19 Q. Do you know if Kiewit offered a golf
20 outing to members of the Iatan project team?

21 A. I wouldn't have other than seeing this
22 e-mail.

23 Q. well, did you see that e-mail?

24 A. I did.

25 Q. when did you see that e-mail first?

1 A. When you handed it to me.

2 Q. But you're unaware of any golf outing
3 offer before then?

4 A. No. Not surprised that they occur, but I
5 wasn't aware. I don't think I ever saw this before
6 you handed it to me.

7 Q. Do you know if Kiewit ever offered golf
8 outings independent of seeing that exhibit?

9 A. I don't know. They could have. I'm not
10 sure.

11 Q. Did any contractor at the Iatan
12 construction site offer to you a golf outing?

13 A. I -- I may have attended a golf outing or
14 two. I don't recall any specifically, but yeah, I
15 probably was offered outings; some of which I might
16 have accepted, some of which I might not have.

17 Q. Was accepting offers of golf outings from
18 contractors viewed to be inappropriate at the Iatan
19 construction site?

20 A. Not -- not in total. I mean I would -- I
21 see what he says in this e-mail, but I don't know that
22 it's inappropriate.

23 Q. When would it be inappropriate?

24 A. I think that's a judgment to be made.

25 Dave Price obviously made a judgment on this one for