

1 some reason. I have no knowledge of it. I don't know
2 why -- why he felt that this was sensitive.

3 Q. At the time the winter jackets were
4 distributed to Kansas City Power and Light Company
5 employees, did Alstom have change order requests
6 pending?

7 A. I don't know. I mean there were always
8 change orders. I have no idea.

9 Q. Do you still have an Exhibit No. KCP&L
10 262 before you?

11 A. Yes, I do.

12 Q. Would you turn to the -- I believe it's
13 the last two pages of that exhibit. Are those -- the
14 last two pages an annual letter to vendors?

15 A. Yes.

16 Q. Do you know when the annual letter to
17 vendors was sent to Iatan project vendors?

18 A. I don't.

19 Q. And over whose signature is that annual
20 letter to vendors indicated it's to be sent?

21 A. Lora Cheatum.

22 Q. Did Ms. Cheatum report directly to you at
23 that point in time? And that would be September 23rd
24 of '07?

25 A. I believe so.

1 Q. Does Kansas City Power and Light Company
2 provide the information or the annual letter to
3 vendors to the vendors when they sign significant
4 contracts with Kansas City Power and Light Company?

5 A. I don't recall if it's a part of the
6 attachment.

7 Q. Do you know if Kiewit had received a
8 vendor letter before the golf outing flyer was
9 received?

10 A. I don't know.

11 Q. Had Burns and McDonnell done business
12 with Kansas City Power and Light Company before the
13 Iatan construction project?

14 A. Yes.

15 Q. Do you know if Burns and McDonnell was
16 aware of Kansas City Power and Light Company's code of
17 conduct from its business dealings with Kansas City
18 Power and Light Company before the Iatan construction
19 project?

20 A. I assume they did.

21 Q. Do you know if Burns and McDonnell
22 invited any Kansas City Power and Light Company
23 employees to any Kansas City Chiefs games?

24 A. I'm not aware of any specific invitations
25 other than invitations I might have received. I know

1 I've been invited probably a number of times. I don't
2 know that I've ever accepted. Not because I thought
3 it was inappropriate but just didn't meet my schedule.

4 Q. So you believe attending a football -- or
5 Kansas City Chiefs football game that Burns and
6 McDonnell pays for complies with Kansas City Power and
7 Light Company's code of business conduct?

8 MR. HATFIELD: Judge, I just want to for
9 the record launch a relevance objection. If -- if the
10 test for relevance is the balance between probative
11 value and prejudicial effect of having someone on the
12 stand for hours and hours, I was waiting because I
13 thought maybe they had something but a \$150 jacket, a
14 Kansas City Chiefs game, an occasional golf outing, we
15 are so far beyond relevance here that I'd like to ask
16 your Honor to order Staff counsel to either move along
17 with something that is relevant or abandon this line
18 of questioning.

19 JUDGE PRIDGIN: Mr. Williams?

20 MR. WILLIAMS: well, I think the giving
21 of gifts certainly is relevant to the issues of
22 prudence and the conduct of management and the conduct
23 of the control systems at the Iatan project.

24 COMMISSIONER GUNN: Can I ask a question,
25 Mr. Williams? Let's assume that a gift was given.

1 Can -- if -- if an independent inquiry determines that
2 the -- or without the gift, we still make the
3 determination that -- that whatever was done was
4 prudent, what relevance does that have?

5 MR. WILLIAMS: The gift is certainly a
6 factor the Commission can take into consideration as
7 determination of prudence.

8 COMMISSIONER GUNN: That wasn't my
9 question. My question was, if we make the
10 determination that it's prudent regardless of the
11 gift, what relevance does the gift have?

12 MR. WILLIAMS: I'm sorry. I
13 misunderstood your question. I thought you said
14 without knowing about the gift. I don't think it
15 would be relevant anymore at that point because a
16 determination would have already been made. We're
17 not -- I hope we're not at that stage yet.

18 COMMISSIONER GUNN: No. I don't think
19 so, but I mean we might be getting there. This is
20 going on a really, really long time and I know we both
21 have other questions to ask too. So I -- I understand
22 if this particular objection is not overruled, but I
23 would appreciate it if we could move the ball a little
24 bit farther down the field.

25 we've already spent half day -- almost a

1 full day on Mr. Downey. And I know there's going to
2 be a lot of questions and direct. I'm not trying to
3 tell you how to make your case, but I think you've
4 made your point and while this particular objection
5 the judge can rule on, I would prefer if we sped this
6 up a little bit. Thank you.

7 MR. FISCHER: Judge, I would note that a
8 very similar issue came up in the context of the
9 acquisition of Aquila case. In that case, the
10 Commission ruled that gifts and gratuities were a
11 wholly irrelevant issue and excluded it, didn't even
12 allow an offer of proof.

13 JUDGE PRIDGIN: Mr. Fischer, thank you.

14 MR. MILLS: And just to chime in a little
15 further on that, that question is now pending before
16 the Supreme Court as to whether they properly ruled.

17 JUDGE PRIDGIN: Duly noted. It's
18 overruled. Mr. Williams.

19 COMMISSIONER GUNN: And let me be fair.
20 I'm not trying to stop this line of inquiry. I'm just
21 saying I think we need to -- we've got -- we are now
22 in the Monday of the second week of hearings, we still
23 have a lot of other things to get to. So if we could
24 try to just move this quickly, that would be helpful
25 to all of us. We still have another -- I mean how

1 many witnesses have we gotten through, Judge?

2 JUDGE PRIDGIN: I believe this is number
3 five.

4 COMMISSIONER GUNN: We've been through
5 five witnesses in however many days of testimony. So
6 we don't have the time to spend another six hours
7 talking to this one witness. So I would like to move
8 it along.

9 MR. WILLIAMS: I understand,
10 Commissioner. I'll see what I can do to speed things
11 up.

12 COMMISSIONER KENNEY: I can maybe offer a
13 suggestion how this might become helpful to us. My
14 mic on? Sorry.

15 I'd like to know the timing of the
16 specific gifts that we're talking about as it pertains
17 to the Alstom and Kiewit settlements specifically.
18 And then another line of inquiry -- and I think this
19 might help move things along -- is if the golf
20 outings -- are there examples of gifts that would, in
21 fact, violate the internal prohibition on accepting
22 gifts?

23 And again, I don't -- I'm like
24 Commissioner Gunn. I don't want to tell you how to
25 prosecute your case, but I'm trying to focus the

1 questions to things that may be helpful to the issues
2 that are at issue in the case. Because we're not
3 making I think the kind of progress we need to be
4 making in terms of the witnesses that we need to get
5 through.

6 So I'm not asking the questions, but I'm
7 just giving you some ideas of what might be of benefit
8 to those of us on the bench here.

9 BY MR. WILLIAMS:

10 Q. I think the question pertained to how
11 receiving -- or accepting offers of going to Kansas
12 City Chiefs football games comports with the Kansas
13 City Power and Light Company code of business conduct?

14 A. I think if it's an occasional and not a
15 consistent, it would be appropriate. As I've said,
16 I've had invitations. I don't believe I've ever gone
17 to a Kansas City Chief game at the invitation of Burns
18 and McDonnell.

19 The two outings that you refer to with
20 Alstom occurred at the very beginning of the project,
21 probably several years before we ever got into the
22 battles on commercial issues and it was at the very
23 outset trying to get to know who the people were on
24 the other side of the table.

25 COMMISSIONER KENNEY: Was it before or

1 after the contract was awarded?

2 THE WITNESS: After the contract was
3 awarded, in which I played no role in the negotiation.
4 And this -- in fact, the group that I was meeting with
5 did not play a role in the negotiation. These were
6 the people who were going to do the work as opposed to
7 the people who negotiated the contract.

8 JUDGE PRIDGIN: And Mr. Williams, if I
9 can inquire briefly, do you have an idea about how
10 much more cross-examination you have of this witness?

11 MR. WILLIAMS: I'm going to guess half an
12 hour. I'm going to try to move it along as quickly as
13 I can certainly.

14 JUDGE PRIDGIN: All right. Because we've
15 been going for, you know, two hours or so and I do
16 want to give Mr. Downey a break and give the court
17 reporter a break. And I hate to interrupt in the
18 middle, but it is about 12:15. Let us reconvene at
19 1:15. Is there anything further from counsel before
20 we go off the record?

21 All right. Hearing nothing, we will
22 stand in recess until 1:15.

23 (A recess was taken.)

24 JUDGE PRIDGIN: All right. We are back
25 on record. Before we resume examining Mr. Downey,

1 just to try to give the parties as much notice as
2 possible, we will be going this evening fairly late.
3 We are considerably behind schedule and I don't know
4 if we have much of a chance to make it up, but I at
5 least want to stop falling further behind.

6 Mr. Fischer?

7 MR. FISCHER: Yes, Judge. Can I inquire
8 how you'd like to structure the evening? Do you
9 intend to take an evening meal break --

10 JUDGE PRIDGIN: Yes, sir

11 MR. FISCHER: -- or just go through?

12 JUDGE PRIDGIN: No. I would want to take
13 an evening meal break, probably roughly an hour or so.
14 You know, my plans right now are to take a break the
15 middle of the afternoon, take another break -- you
16 know, a dinner break roughly around 6:00, somewhere in
17 there. And it may be 15, 30 minutes one way or the
18 other, but -- and then come back until -- you know,
19 take another break in the evening and then I'm
20 thinking somewhere around 9:00 or 10:00, call it a
21 night.

22 Anything further before we resume with
23 Mr. Downey? All right. Mr. Williams, when you're
24 ready. Mr. Downey, you're still under oath, sir.

25 THE WITNESS: Yes, sir.

1 MR. WILLIAMS: Thank you, Judge.

2 JUDGE PRIDGIN: You're welcome.

3 BY MR. WILLIAMS:

4 Q. Mr. Downey, is Burns and McDonnell the
5 owner's engineer on Kansas City Power and Light
6 Company's upcoming La Cygne environmental project?

7 A. No.

8 Q. Who is?

9 A. Black and Veatch.

10 Q. Was Burns and McDonnell considered for
11 that opportunity to be an owner's engineer on that
12 project?

13 A. Yes.

14 Q. Was it -- Burns and McDonnell's
15 performance on the Iatan construction project a factor
16 in why it is not the owner's engineer for the upcoming
17 La Cygne environmental project?

18 A. No.

19 Q. Mr. Downey, did David Price directly
20 report to you?

21 A. Yes, he did.

22 MR. WILLIAMS: Judge, I need to have
23 another exhibit marked.

24 JUDGE PRIDGIN: Excuse me. I show 266.
25 Does that comport with others -- other records?

1 That's what I have.

2 MR. WILLIAMS: I'm not sure about 265,
3 but I'll take it.

4 JUDGE PRIDGIN: I had 265 and then -- but
5 didn't have anything written down. Perhaps we didn't
6 get to 265.

7 MR. WILLIAMS: We can make this 266.

8 JUDGE PRIDGIN: That would be safer.

9 (KCP&L Exhibit No. 266 was marked for
10 identification.)

11 MR. WILLIAMS: May I approach?

12 JUDGE PRIDGIN: You may.

13 BY MR. WILLIAMS:

14 Q. Mr. Downey, I'm handing you what's been
15 marked for identification as KCP&L 266. Do you
16 recognize it?

17 A. Yes.

18 Q. What is it?

19 A. It's a short memo from Dave Price to me.

20 Q. And did you receive that memo?

21 A. I -- I -- I may have. I don't remember.

22 Q. Well, what was the time frame which that
23 document indicates the memo was sent to you?

24 A. October 18th, 2007.

25 Q. And what was Mr. Price saying to you in

1 that memo?

2 A. Says, I have now finalized my long-term
3 plans for the management of Iatan and La Cygne. I do
4 not need to talk to or meet with Roberts and Maiman.
5 I will talk to you later.

6 Q. Do you know why Mr. Price stated that he
7 did not need to meet or talk with Mr. Roberts or
8 Mr. Maiman?

9 A. No, I don't.

10 Q. Were you making any requirements on him
11 at that time to talk or meet with Schiff Hardin?

12 A. Schiff was onsite every day of the week.
13 I don't -- I'm not sure that I -- I don't know what --
14 whether he'd already done it or what. I'm not sure
15 what -- what this meant.

16 Q. Was Schiff Hardin hired to provide senior
17 management with a second opinion on the Iatan
18 construction project?

19 A. Yes. That was a part of their
20 assignment, the oversight and independent
21 verification.

22 Q. And why was that second opinion needed in
23 Kansas City Power and Light Company's view?

24 A. Well, as I explained before, in -- in our
25 normal day-to-day organization, you have a matrix of

1 people and -- and on the day-to-day functions, there
2 are check and balances set up. When you create a very
3 large singular project like this, the challenge is to
4 have checks and balances on such a project. Huge
5 decisions are being made.

6 So the oversight committee was set up so
7 we got more input then -- and reporting to the broader
8 management team, this third-party independent
9 verification was set up. We enhanced our internal
10 audit function with E and Y.

11 We did a series of things that were about
12 governance and about making sure that -- that this
13 project and the flow of information from it didn't get
14 too narrow and that we had many inputs and many points
15 of view on -- on the big decisions and the big
16 expenditures that were going to take place.

17 So that's also not an easy thing to do.
18 It's not an easy thing to manage. And certainly for
19 the people on site at the project, it's a challenge
20 because they're -- of the scrutiny that they're under,
21 but that's the reality of these very big projects.

22 Q. Why was there a need to go to someone
23 external as opposed to developing that internally?

24 A. For the very reason that they were
25 external and they represented a very different point

1 of view and they brought a very rich background in
2 this particular framework of building large
3 construction projects in this industry.

4 They -- they were experts. They had many
5 experiences in this arena, they had seen it and done
6 it. They had brought experience with the vendors,
7 they had brought experience with managements and with
8 boards of director wrestling with the same thing.
9 They brought great insight and wisdom to the project.
10 And it's not without its challenges to manage this
11 successfully.

12 MR. WILLIAMS: Judge, may I have another
13 exhibit marked, please?

14 JUDGE PRIDGIN: You may.

15 MR. WILLIAMS: This will be 267.

16 JUDGE PRIDGIN: Yes, sir.

17 MR. WILLIAMS: And while I'm at it, I'd
18 like to have another exhibit marked as well, which I
19 believe will be 268.

20 JUDGE PRIDGIN: Yes, sir.

21 (KCP&L Exhibit Nos. 267 and 268 were
22 marked for identification.)

23 MR. WILLIAMS: Judge, may I approach?

24 JUDGE PRIDGIN: You may.

25 BY MR. WILLIAMS:

1 Q. Mr. Downey, I'm handing you what's been
2 labeled as KCP&L 267 and separately KCP&L 268. would
3 you please take a look at 267? Do you recognize KCP&L
4 267?

5 A. I see it.

6 Q. Do you recognize it?

7 A. I -- I -- I can remember the issues
8 around it. I don't -- you know.

9 Q. And what were the issues around it?

10 A. Well, Dave -- Dave -- this was -- so this
11 was October of 2007 and Dave had come in in May of
12 that year. And we were moving into the heavy duty
13 part of the unit 1 work, the retrofit work. And he
14 was expressing concern.

15 I don't remember the specific meeting,
16 but obviously I had challenged some of the planning
17 and issues and he was getting back and answering
18 whatever the -- the problems or the issues were at the
19 time.

20 Q. well, what is his statement about the
21 Iatan 1 planning issues you're talking about?

22 A. Said that he would be getting personally
23 involved in the unit 1 management plan starting with a
24 meeting that day.

25 Q. And didn't he also say that someone at

1 the meeting was not as prepared as he had hoped they
2 would be?

3 A. He said, We were not as prepared,
4 meaning -- he was accepting responsibility for his
5 team for -- for whatever questions we were asking them
6 and they obviously weren't prepared to answer.

7 Q. And --

8 A. These were pretty grueling meetings.

9 Q. -- what's the date of that e-mail?

10 A. October 4th, 2007.

11 Q. Would that e-mail be referring to an
12 executive oversight committee meeting?

13 A. It -- it could have been.

14 Q. Would you take a look at -- I believe
15 it's been marked as Exhibit KCP&L 268?

16 A. Looks like that's it.

17 Q. And what is Exhibit 268?

18 A. It is a -- an agenda from the oversight
19 meeting that was held October 3rd.

20 Q. And who are the individuals that were
21 listed in those minutes as being responsible for the
22 Iatan 1 presentation?

23 A. Brent Davis and John Forristal.

24 Q. And do you have any disagreement with
25 that it was Brent Davis and John Forristal who

1 presented the Iatan 1 presentation at those EOC --
2 that EOC meeting?

3 A. Well, that's what it says here that they
4 were the ones. I have no reason to doubt that that's
5 who presented it.

6 Q. And is it your opinion that that
7 presentation was inadequate at that executive
8 oversight committee meeting?

9 A. I -- I -- I -- I -- I don't remember the
10 specifics of the presentation.

11 Q. well, you indicated earlier that
12 Mr. Price had sent the e-mail to you because you had
13 some view that the presentation was inadequate, did
14 you not?

15 A. That's what it says. And as I say, I --
16 I don't remember the specifics of the October 3rd,
17 2007 discussion.

18 Q. And did Mr. Price indicate what action
19 he'd taken with regard to the Iatan 1 project in terms
20 of management?

21 A. would you ask that again? I'm sorry.

22 Q. Did Mr. Price relay to you what he
23 planned to do regarding management of the Iatan 1
24 project?

25 A. He said he was going to get personally

1 involved in the management plan and was going to have
2 a meeting. That there was -- there was obviously some
3 issue at that point around the buyer side of this and
4 that he was doing to have Steve Jones -- have the
5 unit 1 buyers reporting directly to him. I'm not sure
6 that I understand exactly what was going on here.

7 Q. Let me try it this way. Did he say that
8 prior to that presentation that was inadequate, that
9 he had stayed out of management of Iatan 1 for
10 30 days?

11 A. He -- he says that he stayed out of the
12 management to see if -- if his challenge to a couple
13 of my guys would be met. I don't know what that
14 meant. I don't recall what that means.

15 Q. Did he confer with you before he took
16 that course of action?

17 A. He was in charge and he was letting me
18 know the action he was taking so -- and I -- I
19 would -- he was in charge. I would not have
20 challenged him on that.

21 Q. The question is did he -- well, let me
22 ask it this way: Did he consult with you before he
23 took that course of action?

24 A. He's telling me here what he's about to
25 do. He's letting me know. I don't remember whether I

1 called him and followed up or we had another
2 discussion, but I -- I -- my sense is that I would
3 have said he was in charge and -- and -- I don't
4 remember the specific issues around -- that we were
5 talking about in the meeting is my problem.

6 Q. So you're saying it's your understanding
7 that he was letting you know that he was planning to
8 stay out of management of Iatan 1 for 30 days as
9 opposed to that he'd already done so?

10 A. He'd already done so is what he was
11 saying in the memo, I think.

12 Q. And what I'm asking, and you may not know
13 or recall, was whether or not he conferred with you
14 about taking that course of action before he did it?

15 A. Well, I doubt that he -- he was in charge
16 at the site. I wasn't out at the site.

17 Q. How long was Mr. Price in charge of
18 Iatan 1?

19 A. He -- he came on board in May of 2007 and
20 he left in February of 2008.

21 Q. And I believe you testified earlier that
22 he left to pursue an opportunity with a former
23 employer?

24 A. Yeah. I think we've shared with the
25 staff the whole documentation --

1 Q. Yes or no?

2 A. -- on -- yes.

3 MR. WILLIAMS: May I have another exhibit
4 marked, Judge?

5 JUDGE PRIDGIN: You may. 269.

6 (KCP&L Exhibit No. 269 was marked for
7 identification.)

8 MR. WILLIAMS: May I approach?

9 JUDGE PRIDGIN: You may.

10 BY MR. WILLIAMS:

11 Q. Mr. Downey, I'm handing you what's been
12 marked for identification as KCP&L 269.

13 A. Yes.

14 Q. Can you identify that exhibit?

15 A. I've never seen it before.

16 Q. That consists of two e-mails does it not?

17 A. Yes. An e-mail from Dave Price to his
18 team with directions on preparing a presentation and
19 then the second memo with a man named Doug Lafleur
20 back and forth. I'm having a hard time understanding
21 what it's about. I don't really understand a lot of
22 the references.

23 Q. Did you and Mr. Chesser talk to Mr. Price
24 after Mr. Price informed you that he was resigning
25 from Kansas City Power and Light Company?

1 A. It was probably mostly me. I made an
2 effort to retain Dave. He had been approached by
3 headhunters for his previous employer and they made a
4 significant offer to him. And I countered, but he --
5 he had made up his mind that he was moving back to
6 this project.

7 Q. What was the time frame of the offer to
8 Mr. Price and your counteroffer?

9 A. So he left in February. It would have
10 been -- I think it was right after the first of the
11 year that he -- he first told me that he was leaving.
12 Came to my office and --

13 Q. I'm sorry?

14 A. He came into my office and said he was
15 leaving.

16 Q. And in the e-mail between Mr. Price and
17 Mr. Lafleur, does it contain a reference to that
18 talk?

19 MR. HATFIELD: Judge, I think it calls
20 for speculation. Mr. Lafleur -- I mean, we can voir
21 dire the witness if we want -- is not even a Kansas
22 City Power and Light employee. So I think the --
23 asking the witness to comment on an e-mail between a
24 guy he doesn't know and Mr. Price is calling for
25 speculation.

1 JUDGE PRIDGIN: Mr. Williams?

2 MR. WILLIAMS: I believe the e-mail just
3 reflects a time whenever the talk supposedly occurred
4 and I'm just asking if that was when it did occur.

5 MR. HATFIELD: Well, that's a little
6 different question. I don't object to that question,
7 Judge, sorry.

8 JUDGE PRIDGIN: That's all right.

9 THE WITNESS: Could you ask that question
10 again?

11 BY MR. WILLIAMS:

12 Q. Let's just ask it that way: When did you
13 have a talk with Mr. Price regarding his resignation?

14 A. I don't recall the exact days and I have
15 no idea who Doug Lafleur is. It would have been in
16 this time frame. He would have come in my office, I
17 told him that I wanted to see if we could retain him,
18 we had some back and forth, but he was intent on
19 departing. He had -- obviously had had talks.

20 He had left this project which was twice
21 the size of ours because financing had fallen apart,
22 he thought the project was going under. So we were
23 able to recruit him in that venue. That project got
24 refinanced, they got reinvigorated and they had a
25 headhunter come back and recruit him back to the same

1 project. So it was something he was comfortable with,
2 he knew and I was unable to convince him to stay.

3 Q. And was that discussion in January of
4 2008?

5 A. It was somewhere in that framework. I
6 don't remember the specific days.

7 Q. Well, he left in February?

8 A. February. Yeah. It was -- it was -- I
9 think I got about three weeks notice.

10 Q. So December to January?

11 A. Yeah.

12 Q. And do you recall the discussion you had
13 with Mr. Price? When you said -- you made a
14 counteroffer?

15 A. Yes. And I think we've documented that
16 with material to the staff. I think the staff has
17 seen some back and forth. I can't remember the
18 specifics of it, but I know in the last case we went
19 through this.

20 Q. Did you discuss anything else with him
21 such as his reasons for wanting to leave?

22 A. He was -- you know, he was very
23 professional. I couldn't get underneath other than
24 the fact that he had this offer and he thought it was
25 better for him to be there.

1 Q. Did he tell you he would not entertain
2 any offers from Kansas City Power and Light Company
3 because of working conditions there?

4 A. No.

5 Q. Do you know if Kansas City Power and
6 Light Company ever sought to hire Mr. Lafleur?

7 A. As I say, I don't -- I can't say we
8 didn't, but I don't remember who Mr. Lafleur is.

9 Q. So as far as you know right now, no?

10 A. I -- I don't know. I don't know who he
11 is.

12 MR. WILLIAMS: Judge, may I approach?

13 JUDGE PRIDGIN: You may. You may
14 approach.

15 MR. WILLIAMS: Thank you.

16 BY MR. WILLIAMS:

17 Q. Mr. Downey, I'm handing you a document.
18 Would you take a look at it?

19 A. Yes.

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. What is it?

23 A. It's a -- an agenda for the December 17,
24 2010 CEP oversight committee meeting along with the --
25 and then minutes for that meeting.

1 Q. Could you turn to the first sentence of
2 the third paragraph under the heading Iatan Unit 2
3 Update?

4 A. Uh-huh.

5 Q. And do you see that there's a statement,
6 Iatan 2 will be fully dispatchable as of December 31,
7 2010?

8 A. Yes.

9 Q. What does that mean?

10 A. I believe it probably -- I'm -- I'm -- I
11 guess I'm guessing a little bit. I think it has to do
12 with the commercial resolution of all the final
13 testing that Alstom was required to do. I think we're
14 done-done with commercial testing.

15 MR. WILLIAMS: Judge, I'd like to have
16 another exhibit marked, please.

17 JUDGE PRIDGIN: By my notes, it would be
18 270.

19 (KCP&L Exhibit No. 270 was marked for
20 identification.)

21 MR. HATFIELD: It's okay, we can mark it
22 again as far as I'm concerned. It may be duplicative
23 of another exhibit we already have.

24 MR. WILLIAMS: I don't know.

25 JUDGE PRIDGIN: I see no harm. If it's

1 marked more than once, I see no harm.

2 MR. WILLIAMS: May I approach?

3 JUDGE PRIDGIN: You may.

4 BY MR. WILLIAMS:

5 Q. Mr. Downey, I'm handing you what's been
6 marked for identification as KCP&L Exhibit 270.

7 A. Yes.

8 Q. Have you seen that letter before?

9 A. Yes.

10 Q. And are you familiar with that letter?

11 A. Yes.

12 Q. And what's included with that letter?

13 A. A redacted memo to me from Ken Roberts
14 dated December 7, 2005 concerning a budget proposal
15 for their work for the Comprehensive Energy Plan.

16 Q. Well, the copy you have is redacted, is
17 it not?

18 A. Yes.

19 Q. Are you familiar with that memorandum?

20 A. Yes.

21 Q. Have you had an opportunity to read the
22 first paragraph of that memorandum?

23 A. The memorandum from Mr. Roberts?

24 Q. Yes.

25 A. Yes.

1 Q. Who is Ticktacks, Inc.?

2 A. I don't know.

3 Q. Do you know if Ticktacks, Inc. performed
4 any work on the Iatan construction project?

5 A. They never surfaced in my vision in the
6 five years. I don't know who they are.

7 Q. And what is the memorandum regarding?

8 A. I believe it was Schiff's estimate --
9 effort at the time to identify the possible costs of
10 their services over the five-year period.

11 Q. And is it not true that -- according to
12 the letter that is -- this memorandum is attached to
13 the information and that memorandum was not provided
14 due to the assertion of attorney/client privilege?

15 A. That's what it says.

16 Q. Do you know why Kansas City Power and
17 Light Company decided to assert the attorney/client
18 privilege and not provide that information?

19 A. Apparently our attorneys felt that it was
20 within the bounds of attorney/client privilege. I
21 actually don't -- I'm not even certain what the
22 outcome of this was and whether Judge Stearley ruled
23 on this or not.

24 Q. It wasn't a decision you made though?

25 A. No.

1 Q. Do you know if this memorandum covers the
2 entirety of Schiff's budget for project oversight at
3 the time it was issued?

4 A. It was -- it was their proposal. I don't
5 know that it was their -- our budget. It was probably
6 their proposal. I doubt that it was our budget.

7 Q. Well, doesn't it say immediately
8 preceding the redacted portion, In preparing this
9 budget?

10 A. Well, that -- that's the word he used,
11 but it's -- it's their proposal. It's not our budget.

12 Q. Well, is it a proposal that Kansas City
13 Power and Light Company accepted?

14 A. Probably not in total.

15 Q. And do you know if this memorandum was
16 only for Iatan construction project oversight or if it
17 was broader than that?

18 A. By "broader" do you mean the full range
19 of things we've talked about?

20 Q. Yes. That it might include legal
21 services or something --

22 A. Yes. Yes.

23 Q. Is there a distinction between project
24 oversight and legal services?

25 A. Well, I -- I would probably make a

1 distinction, but in any event, it's lawyers who are --
2 who are doing it.

3 Q. Are you a member of Kansas City Power and
4 Light Company's board of directors?

5 A. Yes, I am.

6 MR. WILLIAMS: Judge, at this time I'd
7 like to offer KC-- or Exhibit KCP&L 270.

8 JUDGE PRIDGIN: KCP&L 270 has been
9 offered. Any objections?

10 MR. HATFIELD: No objection.

11 JUDGE PRIDGIN: 270 is admitted.

12 (KCP&L Exhibit No. 270 was received into
13 evidence.)

14 MR. WILLIAMS: Judge, at this time I'd
15 also like to offer Exhibit No. KCP&L 262.

16 JUDGE PRIDGIN: KCPL 262 is offered. Any
17 objections?

18 MR. HATFIELD: Wait. What was 262 again?
19 The code of conduct, no objection.

20 JUDGE PRIDGIN: 262 is admitted.

21 (KCP&L Exhibit No. 262 was received into
22 evidence.)

23 MR. WILLIAMS: I'd also like to offer at
24 this time Exhibit No. KCP&L 261-HC.

25 JUDGE PRIDGIN: I show that 261-HC has

1 been offered and admitted, but I'll -- I could be
2 wrong. Let me ask the parties if they have any
3 objections?

4 MR. HATFIELD: Yeah, we have no objection
5 on that.

6 JUDGE PRIDGIN: 261-HC is admitted.
7 (KCP&L Exhibit No. 261-HC was received
8 into evidence.)

9 MR. WILLIAMS: Judge, do you show whether
10 or not KCP&L 255-HC has been admitted?

11 JUDGE PRIDGIN: I do not show it has been
12 offered or admitted.

13 MR. WILLIAMS: At this time I'd like to
14 offer KCP&L 255-HC.

15 JUDGE PRIDGIN: KCP&L 255-HC is offered.
16 Any objection?

17 MR. HATFIELD: That is the DR response
18 from Mr. Riggins and Mr. Schallenberg?

19 MR. WILLIAMS: The informal request.

20 MR. HATFIELD: Informal request. Yeah,
21 no objection.

22 JUDGE PRIDGIN: 255-HC is admitted.
23 (KCP&L Exhibit No. 255-HC was received
24 into evidence.)

25 MR. WILLIAMS: I'd also like to offer at

1 this time Exhibit KCP&L 266.

2 JUDGE PRIDGIN: Any objections? Hearing
3 none, KCP&L 266 is admitted.

4 (KCP&L Exhibit No. 266 was received into
5 evidence.)

6 MR. WILLIAMS: I'd like to offer at this
7 time KCP&L Exhibit 267.

8 JUDGE PRIDGIN: Objections?

9 MR. HATFIELD: Is 267 the e-mail with
10 Mister -- the guy the witness doesn't know who he is?
11 That's Price e-mail. No objection.

12 JUDGE PRIDGIN: 267 -- excuse me, KCP&L
13 267 is admitted.

14 (KCP&L Exhibit No. 267 was received into
15 evidence.)

16 MR. WILLIAMS: I'd also like to offer at
17 this time Exhibit No. KCP&L 268.

18 JUDGE PRIDGIN: Any objections?

19 MR. HATFIELD: Is that the oversight
20 committee minutes?

21 JUDGE PRIDGIN: Yes.

22 MR. HATFIELD: No objection.

23 JUDGE PRIDGIN: KCP&L 268 is admitted.

24 (KCP&L Exhibit No. 268 was received into
25 evidence.)

1 MR. WILLIAMS: And I don't recall what
2 KCP&L 265 is, but I don't show it offered or admitted.

3 JUDGE PRIDGIN: I think we may have
4 skipped that one. I don't show anything for 265.

5 MR. WILLIAMS: Well, all right. I'm not
6 going to offer KCP&L 269 so I believe I'm done with
7 this witness at this time, Judge.

8 JUDGE PRIDGIN: Mr. Williams, thank you.
9 Let me see if we have bench questions. Commissioner
10 Jarrett?

11 COMMISSIONER JARRETT: Yes. Good
12 afternoon, Mr. Downey.

13 THE WITNESS: Good afternoon,
14 Commissioner.

15 COMMISSIONER JARRETT: I think I have one
16 or two questions regarding 255-HC so I think we need
17 to go in-camera.

18 JUDGE PRIDGIN: We'll go in-camera. And
19 let me verify from counsel. Is there anyone in the
20 room who needs to leave before we go into HC?

21 (REPORTER'S NOTE: At this point, an
22 in-camera session was held, which is contained in
23 volume 22, pages 1419 to 1423 of the transcript.)

24
25

1 JUDGE PRIDGIN: All right. We are back
2 in public forum.

3 WILLIAM DOWNEY testified as follows:

4 BY COMMISSIONER JARRETT:

5 Q. All right. Mr. Downey, I want to ask a
6 couple of questions about the issue of KCP&L deciding
7 to go with the multi-prime method versus an EPC
8 method. Can you summarize for me HOW KCP&L looked
9 at -- looked at these two options?

10 A. We would have gone at that time with any
11 option that guaranteed us the best path to success.
12 We brought Burns and McDonnell and Black and Veatch in
13 and had them do significant presentations. We also
14 had involved both of them in engineering work with
15 regard to the project.

16 So Burns and Mac, you know, was -- was
17 doing things, but Black and Veatch was also designing
18 the specs on the boiler and the air quality control
19 equipment and we got the both of them engaged so we
20 had some competition. In 2005, I told our board that
21 we were open to any -- any form.

22 When we -- we listened to both of them,
23 Burns and McDonnell advocated a multi-prime approach
24 and had a path forward to meet the June 2010 date,
25 which was important to us and our partners. I mean,

1 we were building this plant based on load forecasts
2 and we're -- where our load would be in 2010 given
3 what we knew at that point in time. And so this was a
4 base load plant. Our partners needed and required it
5 in 2010 at that time based on their planning
6 requirements. We all did. And it was an important
7 resource for the region. So 2010 was important to all
8 of us.

9 Burn -- Black and Veatch came in and they
10 were very much more in the camp of an EPC, but the way
11 they described it at that time given the market
12 conditions at the time, they said, well, you'd have to
13 select us, we don't know what it will cost. It will
14 probably be at least a year before we could tell you
15 that and we'd have to do a lot of the major purchasing
16 if -- if we indeed could do a fixed price.

17 They'd had some challenges on fixed price
18 EPCs and we were headed into a very heated market
19 where risk was growing. And they wanted us to hire
20 them up front without a guarantee on, you know, any
21 price estimate without -- and they wanted us to commit
22 to them, but we wouldn't know schedule, and we
23 wouldn't have a cost estimate for at least a year.

24 And that to me, was sort of talking
25 around it. And an EPC doesn't mean you get a

1 guaranteed price necessarily. It just means you've
2 got a single entity involved, but -- you know, often
3 it does mean a guaranteed price. So there's was a
4 very squishy offer without any commitment to the
5 dates. And I -- I wouldn't know a price for another
6 year. And that we found unacceptable.

7 And it's consistent with what you've
8 heard other witnesses say where that -- the market was
9 heating up, people were beginning to jump into the
10 ordering of coal plants and it was -- and big vendors
11 and contractors and engineers were only going to work
12 for people they'd already done business for. It was a
13 very tough market to -- it was a seller's market at
14 the time.

15 And so we evaluated all of those things
16 and made the commitment to the multi-prime because at
17 the time given the conditions and given the proposals
18 we were hearing, that made the most sense in terms of
19 meeting the objectives that we -- we -- we had.

20 Q. So at that point when you were -- when
21 you were trying to decide between an EPC approach or a
22 multi-prime approach, did you feel like the only
23 option -- viable option you had was the multi-prime
24 approach?

25 A. Yes. We had big vendors saying that they

1 were only going to work with the people they were
2 currently working with. We pulsed them, there was a
3 singular lack of interest in a fixed price.

4 As -- as I think one of our previous
5 witnesses said, our -- our negotiation with Alstom in
6 getting that fixed price on the \$700-plus million
7 boiler AQ -- that was an EPC. That was probably the
8 last one done in the industry at that point in time.
9 And it was a very challenging negotiation and there
10 was a lot of risk in it for them.

11 Q. All right. Mr. Downey, I don't have any
12 further questions. Thank you for your testimony.
13 Appreciate it.

14 A. Thank you.

15 JUDGE PRIDGIN: Commissioner Jarrett,
16 thank you. Commissioner Gunn?

17 QUESTIONS BY COMMISSIONER GUNN:

18 Q. Yeah. I only have about six or seven
19 hours so it shouldn't be that bad. I want to start
20 off with the EOC. Was the EOC a new creation
21 specifically for this project?

22 A. Yes, it was.

23 Q. Had you used an EOC at any point in the
24 past or anything like it in the past?

25 A. Not that I'm familiar with. I joined the

1 company in 2000 and I had not seen it before. And we
2 did create it because of what I said before, you know,
3 we have 3,000 in regular employees. Now we've got
4 this project that's going to have 3- to 4,000 people
5 working on it kind of as an independent offshoot. How
6 do you stay engaged as a management team -- upper
7 level management team in that kind of effort?

8 I've witnessed and seen many large
9 projects like this where the project organization
10 begins to feel like it's its own separate company and
11 they go off and do things and make decisions and it's
12 only later that senior management finds out some very
13 bad thing has happened. So we wanted to create a
14 structure that -- that insisted on transparency and
15 disclosure and gave senior management a window into
16 what was going on on a regular basis.

17 Q. Who -- who set the agenda for the EOC
18 meetings?

19 A. Once we established the charter, we asked
20 the leadership of the project leadership team to set
21 that agenda. They would -- the head of the project,
22 whether it was Dave Price or Brent, would typically
23 give me a draft of the agenda half the time and, you
24 know, anything else you would like in it or -- that or
25 during the meetings, the oversight committee would

1 suggest future topics for the agenda if they were
2 interested in a particular area. But generally it was
3 the leadership team that drafted the agenda.

4 Q. And then you could add or subtract --

5 A. Yes.

6 Q. -- based on that?

7 A. Right.

8 Q. Did you do that on a frequent basis or
9 was the draft agenda generally accepted as -- as the
10 agenda of the EOC?

11 A. No. I think we had back and forth and
12 there would be things added or subtracted depending
13 on -- you know, as the project flowed, different
14 things came into view and they would be the -- the hot
15 topics of the period.

16 Q. And at what point -- just to go back,
17 what point was the EOC fully implemented? What -- do
18 you remember the date?

19 A. It's in my -- well, we chartered
20 following E and Y's recommendation. We had been
21 meeting since late 2005.

22 Q. As --

23 A. Informally.

24 Q. Informally?

25 A. And then when E and Y came in, in my

1 testimony I have the charter -- and I should know.

2 It's right here.

3 Q. If it's in there, I can -- I can find it.

4 A. I'm right there. So we officially
5 chartered it February 2nd, 2007 but we had been
6 meeting. And it was -- you know, we hadn't really
7 thought about the formalization of it, but we were
8 meeting weekly initially and then moved to monthly.

9 MR. HATFIELD: Judge, if I might, the
10 charter is Schedule WHD2010-1 to Mr. Downey's
11 testimony.

12 JUDGE PRIDGIN: Mr. Hatfield, thank you.

13 COMMISSIONER GUNN: Thank you.

14 BY COMMISSIONER GUNN:

15 Q. Was the issue of the cost control system
16 brought up at the EOC meeting?

17 A. Yes. Because the cost control system
18 really got set up in 2006. Early on it was one of
19 the -- the primal documents that we needed in
20 structure and process because we were -- soon we were
21 going to start contracting and spending money and
22 making commitments so we needed to have that in place.
23 And -- and we were -- needed that to track to the
24 control budget estimate that we had set up and -- in
25 December of 2006.

1 Q. So on an informal basis, cost control
2 system was post the EEOC, but it was probably
3 pre-formal charter if you were talking about it in
4 2006?

5 A. I'm trying to remember my dates. I -- I
6 would -- we started providing the Commission
7 April 15th, 2006 with information. So the cost
8 control system would have been ahead of that. would
9 have -- we would have been getting it in line in early
10 2006.

11 Q. All right. I want to -- thank you.

12 A. Here -- I'm sorry. 7/11. So July 11th,
13 2006 we formally present the cost control system to
14 the Missouri Public Service Commission Staff. But
15 we -- we were creating it earlier in that year.

16 Q. But that -- but that 2006 date still
17 predated the formal chartering of the EOC?

18 A. Yes. Yes.

19 Q. But did not predate the informal
20 meetings --

21 A. No.

22 Q. -- that took place?

23 A. Absolutely not.

24 Q. And was part of that EOC developed
25 through an informal EOC process?

1 A. We -- we actually had created it and were
2 meeting, but we hadn't papered it.

3 Q. Okay. You're talking about the EOC?

4 A. The EOC.

5 Q. Well, let me ask you -- the question I
6 wanted to focus on was the cost control system. So
7 did -- did that informal EOC process -- is that what
8 led to the development of the cost control system or
9 was it developed separately, brought to the EOC and
10 essentially approved and signed off by this group on
11 an informal basis and then implemented?

12 A. I believe Steve Jones talked about the
13 development of that. He was heavily involved in it.
14 And it was the early procurement process then
15 following the December 2006 control budget estimate.
16 It was to track to that. So it was in place. And we
17 were -- we were hearing monthly numbers. It's just
18 that we had not formalized the EOC in terms of
19 paperwork, but we were meeting.

20 Q. Thank you. I'm going to move onto -- to
21 some discussions about Schiff Hardin.

22 A. Uh-huh.

23 Q. At what -- whose idea was it or where did
24 the idea come from that you needed this independent
25 administrator, if you will, both from a legal

1 standpoint and from a project management standpoint,
2 that that was necessary for the project?

3 A. I will tell you -- and I feel badly about
4 the way this has been laid out and we could have -- we
5 could have done a better job of documenting this one
6 and I take personal responsibility for that.

7 But I had a lot to do with it. I'd been
8 involved in -- Commonwealth Edison built eight
9 1,000-megawatt nuclear units during the '70s and I was
10 personally involved. I wasn't in a leadership role,
11 but I had that indelibly fixed in my brain.

12 And when we were going to build this big
13 project, I had some of the concerns I talked about.
14 And they probably gelled in some of those
15 conversations I had with Mr. Maiman who himself had
16 enough scars from previous large construction projects
17 to understand that I had a great deal of respect for
18 his capabilities and experience.

19 So I think, you know, you go to and
20 listen to people you learn over 30 or 40 years know
21 what they're talking about. And so the idea came
22 there. And what particularly intrigued me -- because
23 I'd seen the big lawsuits and fights -- commercial
24 fights that emanate from these big projects -- was the
25 concept of trying to be proactive and to get on top of

1 those and be prepared for them. We were going into
2 this -- we hadn't built anything in 25 years.

3 This game is pretty sophisticated. Big
4 construction contract disputes get incredibly messy.
5 And if you don't have the fact base to make the
6 arguments, you're -- you're behind the eight ball.
7 And so I looked at this initially primarily as a
8 commercial strategy for us vis-a-vis these big
9 contractors.

10 Q. What year -- what year would that have
11 been in that you made the determination --

12 A. 2005.

13 Q. Okay.

14 A. And I will tell you that with our
15 operating people, this was not terribly popular. I
16 mean our industry's replete with project's gone astray
17 and senior management saying, gee, we didn't know
18 anything that was happening and then firing the
19 executive in charge, you know, because they didn't pay
20 attention to it.

21 That's what I was trying to avoid when
22 we -- when we were doing this. And I wanted to have
23 the documentation, know what was going on in the
24 field, track it to the commercial strategy. And
25 Schiff had often been brought in around the country at

1 the end when it was ugly and had defended, you know,
2 and been involved in claims with contractors. What
3 they proposed to us was to come in up front to get a
4 very transparent system to be able to anticipate these
5 issues and solve them up front.

6 Q. I'm going to get to that in a second, so
7 let's -- let's -- let's go back though. So in 2005
8 you made the determination that some independent
9 entity needed to come in to modify this pro-- project.
10 Correct?

11 A. Yes.

12 Q. And then you have -- and that cu-- came
13 out of conversations with Mr. Maiman?

14 A. Yes.

15 Q. And did Mr. Maiman have a pre-existing
16 relationship with Schiff that he had -- he had used
17 them before, he had retained them before?

18 A. They had been used at Commonwealth Edison
19 in some commercial battles previously. He had
20 independently been hired by OPG, at least that's my
21 understanding of it, and was working up there and
22 parallel with Schiff. They knew each other from the
23 industry.

24 Q. Right.

25 A. But were separate at that point. And

1 Schiff's original proposal did not include Mr. Maiman.

2 It was -- it was at my insistence that --

3 Q. I'll get to that. I'm just trying to get
4 the time line correct.

5 A. Right.

6 Q. So did -- did -- had Mr. Maiman worked
7 with Mr. Roberts previously directly?

8 A. For him? Or --

9 Q. In any capacity?

10 A. I believe they had worked together, but I
11 don't -- I don't know specifically.

12 Q. All right. In your conversation -- so --
13 so was -- when you had your discussions with
14 Mr. Maiman, was there agreement that Schiff would be
15 the one person you would go to or were there
16 conversations and said, we need to have an independent
17 person, let's try to find that right -- the right
18 person? Or was it more, Schiff is -- is -- is the
19 guys, we've worked with them, we know them, they're
20 really the guys we need to go out and hire?

21 A. No. It -- there was no pre-agreement.
22 These were general discussions and the concept. He --
23 he obviously knew and recommended Schiff, but there
24 was no mandate of anything. And, in fact, the Schiff
25 discussions started without any role from Mr. Maiman.