

1 Q. So you went -- you went to other folks to
2 talk about who to hire and then Schiff came up --

3 A. Yes.

4 Q. -- as a potential?

5 A. Yes.

6 Q. In your discussions with Mr. Maiman, did
7 he ever suggest -- you know, did he ever say something
8 like, you know, I've worked with these guys but you
9 should do your own research about them or --

10 A. Oh, yes. Absolutely. Mr. Maiman is an
11 individual of the highest integrity. He's a straight
12 arrow engineer and he's -- he just -- he was giving me
13 the advice from a long friendship.

14 But there was no mandate, there was no --
15 he suggested the idea and the concept, he said, You
16 ought to meet these guys. And it wasn't just me. It
17 was senior leadership team, it was our chairman, it
18 was our CFO, it was our head of generation. I mean we
19 all -- I don't -- I didn't do this independently and
20 unilaterally. I mean we -- we got together.

21 And as you pointed out, they're
22 expensive. And I can tell you that that was always in
23 our mind. And there wasn't a year that went by --
24 maybe even a month early on -- that we didn't
25 challenge our own assumption about that. We

1 probably -- we didn't accept -- we didn't internalize
2 in our minds probably the total cost of this back in
3 2005. We probably thought we could do with less.

4 As things emerged, as disputes arose, as
5 commercial issues grew, you know their work grew. The
6 scope didn't change, but the amount that went on went
7 on. But we --

8 Q. Would you --

9 A. -- we vetted this with them, their value
10 regularly.

11 Q. What -- what did you think you were going
12 to have to ch-- spend on this -- whoever entity would
13 be at the time you made the decision that you needed
14 to have somebody?

15 A. I suspect we didn't really have a -- a
16 good clear picture. They gave us a number that
17 probably was closer to where we are today than I might
18 have thought or we might have thought. We might have
19 said, you know, we think we can do it for less.

20 Q. I understand. I want to -- and you're
21 talking specifically about Schiff. I want -- I want
22 to kind of move back a little bit because I'm trying
23 to figure out -- I'm trying to figure out why there
24 wasn't a competitive process. I'm trying to figure
25 out why there didn't appear to be a negotiation on --

1 on rates.

2 So let me -- what I'm trying to figure
3 out is you -- so when you made this decision to hire
4 an outside person, you had to have said, Okay, we
5 think it's going to cost us X amount of money in order
6 to hire an outside person, whoever that may be. Did
7 you ever have that generic discussion or was it just,
8 Schiff is telling us that it's going to cost this
9 much, that's an acceptable figure to us?

10 A. They presented numbers and our general
11 counsel explored and -- and looked around a good bit.
12 We looked at comparable firms. In fact, at one point
13 down the road I know Mr. Riggins and our assistant
14 general counsel, Mr. Reynolds, who sat with the Schiff
15 people from day one up at the site, their offices were
16 right next to each other, the three of us went up to
17 Chicago to interview with Duane Morris that was
18 somewhere in some of Staff documents. They purported
19 to have similar skills.

20 And -- and as we vetted them, they had
21 attorneys, yes, who would work from a distance and on
22 contractual issues, but they didn't have the -- the
23 robust mixture that -- that Schiff offered that had --
24 had them on the ground watching and documenting the
25 commercial issues and the way we were doing it. And

1 it's a very -- I think it's a very small subset of
2 attorneys that do this kind of stuff.

3 Q. So you didn't have a formal RFP process,
4 but you did have dog and pony shows --

5 A. Yes.

6 Q. -- essentially?

7 A. Yes.

8 Q. That's what we always refer to them as.

9 A. Yes.

10 Q. So -- and -- and did you have -- how many
11 dog and pony shows did you have? Did you just have
12 the two?

13 A. We did --

14 Q. Or did you have more than that?

15 A. It was a small number, but I mean it
16 isn't that we didn't think about, for example, Kansas
17 City firms. Okay, they have construction law
18 practices. What do those look like? What are the
19 skill-sets in there? And -- and we -- we did that at
20 the beginning, but we did it kind of regularly over
21 the course of the project.

22 And as I say, understanding these firms,
23 understanding how these commercial -- these firms are
24 pretty litigious. They go into these contracts
25 expecting to do legal battle down the road.

1 Q. Right.

2 A. And we had negotiated a very tough price
3 with Alstom. They -- they're licking their wounds yet
4 from this project. And so we were fully prepared that
5 we were going to have to defend ourselves in this.

6 And, in fact, with the help of
7 Mr. Roberts, we built a mediation strategy that we got
8 them to agree to using Jonathan Marks, who's world
9 renowned as a large complex construction mediator.
10 And -- and as a result, these big settlements that we
11 did cleared all previous claims. I have one claim
12 left right now for about a couple million dollars and
13 that's it in this entire project.

14 Q. So -- so -- and I -- and I -- I
15 understand that you think that the value at the end of
16 the day was -- was right. But I still am a little
17 bit -- so -- so you did the dog and pony shows and
18 then you were -- you decided that Schiff were --
19 were -- was the place to go ultimately. And -- and --
20 and you bring up an interesting point about how you
21 negotiated a really tough -- tough deal with this
22 other vendor. To the extent --

23 A. Using Schiff.

24 Q. Using Schiff. But to the extent that you
25 can tell me that doesn't violate privilege, were you

1 involved in the negotiation with the contract with
2 Schiff or did you leave that to Mr. Riggins?

3 A. I left it to Mr. Riggins.

4 Q. Did you give -- to the extent that you
5 can give me that doesn't violate any privilege, did
6 you give Mr. Riggins any direction on what to do to
7 negotiate that?

8 A. No, I did not.

9 Q. So you never said to him, you know,
10 Let's -- let's try to get volume discounts, let's try
11 to -- let's try to get Kansas City rates instead of
12 Chicago rates, let's be really tight on -- that we use
13 lower-year attorneys and -- and paralegals for the
14 stuff that can be done that way and let's -- let's do
15 that? You never did any of that stuff to Mr. Riggins?

16 A. I -- I didn't do that with Mr. Riggins.
17 And I -- I'm under the impression and I've checked
18 with some colleagues who use these guys similarly in
19 the industry who are on my side of the fence and they
20 may be unique, but they -- they don't seem to have to
21 negotiate rates in the unique niche that they've --
22 they've got.

23 And -- and yet we did things -- for
24 example, they don't travel on us. I know you said a
25 half an hour at the airport, but we have a lot of

1 travel back and forth with these guys. We -- we -- we
2 do not pay them for their travel, which I think is
3 unique. And we have frozen their rates since the
4 beginning of 2009.

5 And, you know, I mean I understand what
6 you're saying and we've had them managed -- they do
7 not run wild. As I said, we had our assistant general
8 counsel --

9 Q. well --

10 A. -- seated with them.

11 Q. -- you didn't have a single time entry,
12 from what I can tell, requested to be written down
13 from the company out of the \$20 million. So you
14 obviously thought they were doing a good job.

15 A. well --

16 Q. I'm not saying that's inappropriate. I'm
17 just saying you obviously thought what they were doing
18 was value -- value based.

19 A. I -- I will tell you that -- and I'm sure
20 Mr. Roberts can speak for himself. I'm sure he'll
21 look forward to talking with you. But there was a
22 pretty rigorous line-by-line review of their work.
23 And while we may not have pushed something out, I
24 think -- I think there's a -- a reasonable amount of
25 money that was not paid through either his review or

1 ours in a detailed discussion that -- that occurred
2 every -- every time they dropped the bill on us.

3 Q. Well, maybe that was based on
4 Mr. Roberts' review because so far the testimony
5 hasn't -- hasn't --

6 A. No.

7 Q. -- demonstrated that the company did
8 anything. And -- and, you know, look. I'm -- there's
9 no zealot like the converted. I've spent some time in
10 some big law firms and have had calls from general
11 counsels and had some -- those strict bill reviews.
12 So I just -- that's why I'm asking the question and
13 figuring out.

14 And if that is the case -- and
15 Mr. Roberts can certainly testify to that and -- and
16 you didn't -- did you review any invoices yourself?

17 A. I would see them, but I would rely on a
18 team to review these. I mean --

19 Q. You would get the recommendation and
20 basically sign off on the recommendation?

21 A. Right.

22 Q. Okay.

23 A. And actually Mr. Riggins signed off on
24 the bills, but I did see them and we would talk about
25 them.

1 Q. Okay. All right. Now, this -- I don't
2 know what this was -- this is -- was marked. This is
3 the -- the last one I think that you got, which is the
4 redacted budget. And I'm only using it for purposes
5 of the date. Did -- did -- when Mr. Milne was -- when
6 you requested, as you testified earlier, that he join
7 the Schiff team --

8 A. Maiman.

9 Q. Maiman. Sorry. Did he -- had he left
10 Commonwealth Edison already or was he essentially
11 hired away to join the team?

12 A. He was retired and was doing consulting
13 work in the industry.

14 Q. Okay.

15 A. And that's how he got up to OPG and --
16 and wound up in parallel with Schiff.

17 Q. Great. Okay. That was just a factual
18 issue that -- that I wanted to know.

19 was one of the factors for hiring a law
20 firm like this that would also do project manager --
21 management that you would be able to at some point
22 assert attorney/client privilege?

23 A. No. That was -- you know, that's not --
24 not an unintelligent thing to do, but as I said to you
25 before, my primary focus was on the commercial

1 strategy here where the big dollars were.

2 As it turned out, the documentation that
3 we had to do commercially serves us very well in the
4 regulatory framework. Because I mean, you've heard
5 criticism about Wolf Creek and there wasn't a record
6 anywhere. We had made a major commitment with the
7 Comprehensive Energy Plan with this Commission and the
8 Kansas Commission and we had partners who -- who
9 became our partners because of this regulatory
10 process. We were getting plenty of scrutiny and I
11 wanted to make sure that we were on the table and that
12 we documented what we did.

13 And I think we've done a job like nobody
14 else has done in this state with regard to
15 documentation. It turned out to be very valuable to
16 us in this process because over five years, memories
17 become short and lots of things happen. And -- and
18 that documentation that helped us commercially be
19 powerful I think is also the -- the same -- exact same
20 material we've been reporting on monthly to the
21 Commission Staffs and we've brought forth in these
22 proceedings.

23 Q. This is again a factual question and you
24 may not know the answer. I don't want anyone to read
25 into it. Is the cost of the Pegasus assessment being

1 requested to be recovered through -- through the rate
2 case or a portion?

3 A. I don't -- I don't know. I don't know.

4 Q. Okay. Fair enough. I didn't know either
5 so that's why --

6 A. I'm not sure.

7 Q. I'm sure someone --

8 A. I think someone -- I'm sure Mr. Blanc can
9 answer that.

10 Q. With -- with the potential of stealing
11 some of Commissioner Kenney's thunder, I want to speak
12 about this line of inquiry on the gifts. What was the
13 Newport trip?

14 A. They -- Alstom for its clients and
15 potential clients annually has a -- they hold a
16 conference up there. And for some reason, that's
17 their thing. It's -- you know, it's old mansions and
18 sailboats and -- but they have it in that environment
19 and -- but they bring everybody in and have -- it's
20 for a weekend, it's a Friday, Saturday, Sunday.

21 And -- and you come in and there's a day
22 of meetings and then there's a dinner and one day of,
23 you know, sailing and -- and it's an interaction
24 thing. They do it with clients regularly. And that
25 was one of two in the last five years that I've done.

1 You've heard them both brought out here.

2 Q. Did KCP&L -- KCPL send you on conferences
3 occasionally? If you saw something you wanted to go
4 to if you were speaking, would they pay for you to
5 attend --

6 A. Sure.

7 Q. -- other things?

8 A. And they do.

9 Q. So that's -- that's a common practice
10 that if you're doing somewhere that has a business
11 reason or if you're an invited speaker, they pick
12 up -- pick up that expense?

13 A. Yes.

14 Q. Okay. So you have a gift policy which
15 basically says, you know, you really shouldn't accept
16 gifts from vendors because of the appearance of
17 impropriety. And yet it seemed that that happened on
18 a regular basis. And most of these things were done
19 under a de minimis exception, kind of like that's not
20 really that big of a deal so we're going to let it go
21 by on the gift policy. I mean, isn't -- that's
22 basically what I've heard today. I'll give you a
23 chance to --

24 A. When you say -- I'm a little -- you said
25 they were happening on a regular basis.

1 Q. Well, I should take that back. Gifts --
2 during the pendency of this project, some gifts were
3 accepted from vendors to employees of KCP&L. We heard
4 testimony --

5 A. You're talking about the coats, the
6 jackets?

7 Q. Actually I'm not. I'm talking about --
8 because the coats went mostly to the construction
9 contract employees. Correct? I mean that's what --

10 A. Yeah.

11 Q. -- from what I got, the coats went to --

12 A. Yes, yes.

13 Q. -- the workers --

14 A. Right.

15 Q. -- were not executive folks.

16 But tickets to Chiefs games and Royals
17 games and -- and obviously the Pebble Beach and the
18 Newport, Rhode Island trip.

19 A. Well, I -- in the first place, we would
20 reciprocate. I mean we would -- this was -- we were
21 living with these people for five years. And it's one
22 thing to just go in and, you know, assert the contract
23 and it's another to live with these people and to
24 understand how they tick. So it was mutual.

25 I mean if Tim Curran, who was the head of

1 Alstom, if we would get together for dinner, one time
2 he'd pay, the next time I'd pay.

3 Q. But I don't --

4 A. We'd have them to play golf or they'd
5 have us.

6 Q. I understand. But Alstom -- I don't know
7 what Alstom's policy is in terms of gifts. You
8 have -- KCP&L has a gift policy that says not to
9 accept because it may create an appearance of
10 impropriety.

11 A. Well, and as I said, these are unusual.
12 Two -- two in the five-year period, both approved by
13 my boss for business reasons.

14 Q. I understand. I understand. If they
15 were for business reasons, why didn't KCP&L pay for
16 them? When you have the gift ban, why -- in order to
17 avoid the appearance of impropriety, why didn't KCPL,
18 Power and Light, pay you to go develop that business
19 relationship with Alstom or pay for you to go to that
20 conference?

21 A. Well, we paid for the airfare, obviously
22 that was a part of the thing. And we -- we didn't
23 feel that we were doing anything inappropriate. It
24 certainly didn't affect our negotiations or the way we
25 managed our projects with them. I think it -- I don't

1 think it's an unusual process, at least in our
2 industry.

3 Q. Now, and I think the timing of it just --
4 so I heard the Pebble Beach timing. The Pebble Beach
5 timing was essentially a -- right after the signing of
6 the contract. Right?

7 A. Yes.

8 Q. So it was at the very beginning of the
9 relationship?

10 A. Yes.

11 Q. The contract had already been signed,
12 already been negotiated. When was the Newport trip,
13 do you remember?

14 A. It was probably -- probably the next
15 year.

16 Q. Were the disputes that ultimately were
17 the subject of the settlement happening at the time --

18 A. No.

19 Q. -- at the second trip?

20 A. I think this was ahead of them. I think
21 this was ahead of that. And this is a regular event
22 that they put on. And, you know, I got to meet other
23 people that were doing business with them and -- you
24 know, as well as their own team.

25 Q. I just want to figure out the timing.

1 But that's actually an important point. It wasn't a
2 one-on-one?

3 A. Oh, no.

4 Q. It was -- it was a general conference
5 that they have --

6 A. Thirty or forty other executives from
7 around -- from different companies.

8 Q. Okay. And your testimony is, is that
9 that trip predated any disputes that arose with them?

10 A. Yes.

11 Q. And did -- and was not during the
12 pendency of any negotiation for potential resolution
13 of those claims?

14 A. No.

15 COMMISSIONER GUNN: Okay. All right. I
16 just have one quick -- one other quick question and I
17 -- I don't know if -- it's probably safer because it's
18 about some of the things that are included in this
19 KCP&L exhibit, the one that -- I don't know where it
20 was -- 255, 256, something like that. So it may not
21 be, but I think it's probably just safer to go
22 in-camera.

23 JUDGE PRIDGIN: Bear with me just a
24 moment. We'll go in-camera.

25 COMMISSIONER GUNN: It should be for like

1 five minutes.

2 (REPORTER'S NOTE: At this point, an
3 in-camera session was held, which is contained in
4 volume 22, pages 1454 to 1455 of the transcript.)

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1 COMMISSIONER GUNN: That is all -- oh,
2 wait.

3 JUDGE PRIDGIN: We're back

4 COMMISSIONER GUNN: We're back. Okay.
5 That's all I have for right now. I don't know whether
6 Commissioner Kenney is going to have more or not, but
7 I'm sure there will be plenty of recross and redirect
8 so --

9 JUDGE PRIDGIN: I was going to say, I
10 think Commissioner Kenney will be rejoining us shortly
11 so he may have questions, but in the interest of
12 moving things along, let me see if we have any recross
13 or redirect and then I'll give Commissioner Kenney an
14 opportunity. Mr. Schwarz, recross?

15 MR. SCHWARZ: Yes, I have a bit.

16 WILLIAM DOWNEY testified as follows:

17 RE-CROSS-EXAMINATION BY MR. SCHWARZ:

18 Q. You engaged with Commissioner Jarrett for
19 a bit about the EPC versus multi-prime. You recall
20 that?

21 A. Yes.

22 Q. And you -- you mentioned that Black and
23 Veatch had -- had made a presentation; is that --

24 A. Yes.

25 Q. Did you contact Fluor at that time to --

1 feel them out about -- about an EPC contract?

2 A. I think we had talked to S&L. I don't
3 recall talking to Fluor at the time.

4 Q. Bechtel?

5 A. They were not interested.

6 Q. Washington -- Washington?

7 A. I think they were not interested as well.

8 Q. But you don't have any -- any records of
9 that?

10 A. No. Because they were -- you know, the
11 message we were getting was they -- they had clients
12 they were working with regularly and that's where they
13 were going to be.

14 Q. Do you still have copies of KCP&L 261 and
15 270?

16 A. I'm not sure that I do.

17 Q. All right.

18 A. Oh, here's 261. I do have 261. And 270.

19 Q. Yes. It's the --

20 A. Yes, I have both.

21 Q. Okay. Good. Would you take a look at
22 the second page of 270.

23 A. Yes.

24 Q. Are you with me?

25 A. Yes.

1 Q. The date on that is December 7th of 2005?

2 A. Yes.

3 Q. And it purports to be a -- is any of this
4 HC? It purports to be a budget proposal for comp--
5 Comprehensive Energy Plan project from Schiff Hardin?

6 A. Yes.

7 Q. And if you look at -- toward the end of
8 the first paragraph it says that this proposal
9 includes the services of Tom Maiman?

10 A. Yes.

11 Q. And Meyer Construction Consulting?

12 A. Right.

13 Q. And J. Wilson and Associates?

14 A. Uh-huh.

15 Q. Okay. And, of course, their -- those --
16 the last three that I mentioned -- and Ticktacks, you
17 were here for Mr. Jones's testimony?

18 A. I was.

19 Q. Do you recall he said that he had been
20 working through Ticktacks at that stage?

21 A. I -- I didn't.

22 Q. That's fine. The transcript --

23 A. I just didn't remember the name.

24 Q. The transcript will reflect it.

25 so those would all be for consulting

1 services, would they not?

2 A. Yes.

3 Q. They're not providing any legal services?

4 A. No.

5 Q. No. So that's -- never mind. Strike

6 that.

7 would you look at the last page of

8 Exhibit 261? Is the CBE highly confidential? I

9 thought that we went through it the other day in open

10 session.

11 MR. FISCHER: 2006 CBE?

12 MR. SCHWARZ: Yeah.

13 MR. FISCHER: The details are not.

14 MR. SCHWARZ: Are HC?

15 MR. FISCHER: Not the aggregate.

16 MR. SCHWARZ: Okay. I think we need to

17 go HC if we might.

18 JUDGE PRIDGIN: Just a moment. We'll go

19 in-camera.

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

21 in-camera session was held, which is contained in

22 volume 22, pages 1460 to 1464 of the transcript.)

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1 JUDGE PRIDGIN: All right. Commissioner
2 Kenney, let me see if you have any questions?

3 COMMISSIONER KENNEY: I do.

4 WILLIAM DOWNEY testified as follows:

5 QUESTIONS BY COMMISSIONER KENNEY:

6 Q. And I'm sorry that I had to step out for
7 another meeting, so I apologize. And I'm not going to
8 ask questions that have already been asked hopefully
9 and if I do, I apologize. And if I ask something that
10 was asked while I was gone, just tell me so because I
11 don't want to drag this on any longer than it's
12 already gone.

13 So let me ask first about the settlement
14 with Alstom. And there was testimony that KCP&L would
15 not have been able to -- and I don't know if this is
16 HC or not so you guys -- I'll trust you to tell me if
17 I start to go down some road that's highly
18 confidential.

19 MR. HATFIELD: And, Commissioner, I might
20 just say, Alstom I think we've talked about is an
21 ongoing --

22 COMMISSIONER KENNEY: So maybe any
23 discussion of settlement with the Alstom might in and
24 of itself be HC?

25 MR. HATFIELD: well, it could be. I

1 guess I'm just alerting you to the circumstances. I'm
2 not sure what you're going to ask.

3 COMMISSIONER KENNEY: I'm not going to
4 ask about a document specifically. I'm going to ask
5 about a provision in the agreement with Alstom in the
6 first place. It was a liquidated damages provision.

7 MR. HATFIELD: And I think as long as we
8 stay away from numbers, specific figures, we're okay
9 to stay in public.

10 BY COMMISSIONER KENNEY:

11 Q. well, there was testimony about whether
12 Kansas City Power and Light would have been able to
13 enforce the liquidated damage provision against
14 Alstom. I think that was on Friday. Do you remember
15 that testimony?

16 A. Yes, I do.

17 Q. what was the basis for that advice?
18 well, let me ask who gave that advice, first of all,
19 about whether or not KCP&L would have been able to
20 enforce the liquidated damages provision against
21 Alstom?

22 A. We certainly talked about it with schiff
23 and with our internal team. But probably more
24 importantly, as I had mentioned while you were out,
25 one of the things -- one of the strategies we deployed

1 early on was to identify and agree upon a mediator who
2 would work with us when we were getting into disputes.
3 And I will tell you that this was a very heated
4 argument with Alstom around these issues.

5 Q. Okay.

6 A. And there were things that we needed,
7 there were things they wanted and were -- felt that
8 they had been agreed. Jonathan Marks was the mediator
9 who we brought this in front of. And, you know,
10 Alstom had a pretty big claim. We knew a couple of
11 things. We knew that we, for a variety of reasons,
12 had to extend the schedule for the outage of the --
13 the unit. This was the unit 1 settlement.

14 Q. Okay.

15 A. And it was going to affect their time
16 line and -- and their issues. And they had a date
17 certain without any interim time lines. They were
18 going to claim delays. And we needed to move on, but
19 we felt pretty strongly that, you know, they had
20 some -- some claims.

21 They had to be convinced that we had some
22 important things that we needed. And we actually came
23 out of that mediation without any agreement, but we
24 had a lot of good documentation on our own about what
25 was -- what was going on on their end, what they were

1 doing wrong.

2 And Marks had to go in -- the mediator
3 had to go in and push back on them considerably. So
4 it was -- it was -- still a good bit of time passed
5 following the face-to-face mediations. But we ul--
6 ultimately got them to agree to mutual turnover dates
7 and key dates with that.

8 Subsequently, as we get into the outage,
9 we open the plant up, we discover a major physical
10 problem with a piece of equipment called an
11 economizer, which then took us additional time to do.

12 And then subsequent to that -- and by the
13 way, that was a concurrent delay with their work. We
14 were in the way. We had -- also had put a lot of
15 additional work into the unit that wasn't there when
16 we originally contemplated the agreement with -- with
17 Alstom.

18 So what we got to agree to was a
19 reconfiguration of the dates. And we -- we realigned
20 the LDs to -- to be consistent with the new dates that
21 were also consistent with our own delays that we
22 caused. So we kept the value -- pretty much I think
23 the value was around (Highly Confidential) in LDs. We
24 kept those values --

25 Q. You guys need to go --

1 MR. HATFIELD: You might want to avoid
2 specific numbers.

3 COMMISSIONER KENNEY: Trying to help you
4 guys out here.

5 THE WITNESS: Thank you. I've lost --

6 COMMISSIONER KENNEY: Do you want to go
7 in-camera?

8 MR. HATFIELD: If he'll agree not to say
9 any more specific numbers, we don't need to.

10 COMMISSIONER KENNEY: I don't want it to
11 be because of questions I'm asking. I mean this
12 particular piece -- I'm going to have more questions
13 about this as a result --

14 MR. HATFIELD: I think it might be
15 easier, but if somebody objects -- it might be easier
16 just to go in-camera so we can discuss HC.

17 JUDGE PRIDGIN: I'm hearing no
18 objections, so we'll go HC.

19 (REPORTER'S NOTE: At this point, an
20 in-camera session was held, which is contained in
21 volume 22, pages 1470 to 1488 of the transcript.)

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1 WILLIAM DOWNEY testified as follows:

2 BY COMMISSIONER KENNEY:

3 Q. Oh, one more question. And this is not
4 HC. You said your ethics policy was redrafted in 2008
5 and compared to other utilities in the industry.
6 Is -- is the redrafted version the same as what
7 Mr. Williamson provided to you earlier?

8 A. It was reviewed and I think it was found
9 to be pretty much in line. If there were any changes,
10 they were minor. I don't think -- in fact, I don't
11 recall that there were. We confirmed our -- there
12 might have been -- I don't recall if there -- it was
13 insignificant in terms of the changes.

14 Q. So it's virtually identical --

15 A. Yes.

16 Q. -- if not exactly the same?

17 A. Yes.

18 COMMISSIONER KENNEY: Okay. Thank you.

19 JUDGE PRIDGIN: All right. Thank you.

20 Before we proceed to more recross, let me kind of get
21 an idea how much time. Mr. Schwarz, do you want more
22 recross? Mr. Mills, do you want recross?

23 MR. MILLS: Just a handful OF questions.

24 JUDGE PRIDGIN: Let's take Mr. Mills's
25 recross. And then Mr. Williams, you'll have recross?

1 MR. WILLIAMS: Yes. But not very many
2 questions.

3 JUDGE PRIDGIN: Okay. Depending on the
4 length of Mr. Williams' recross, we may break in the
5 middle or we may proceed until we get to redirect.
6 We've been going for a couple hours. I'm looking for
7 a natural break, so Mr. Mills.

8 MR. MILLS: Okay. Let me confer with
9 KCPL about confidentiality.

10 JUDGE PRIDGIN: Certainly.

11 RECROSS-EXAMINATION BY MR. MILLS:

12 Q. Commissioner Kenney was just asking you
13 some questions about that -- the Pebble Beach trip and
14 the Newport trip. Is it correct that when you were
15 planning the Pebble Beach trip, your wife was planning
16 to attend and for whatever reason ultimately did not
17 go?

18 A. I believe she was invited, but I think
19 we -- in fact, in the -- I didn't remember. The
20 expense report says family medical issue and I don't
21 remember it was either her mother or my mother or
22 father, one of the two or three.

23 Q. So her -- whether or not she was planning
24 to go or not go had nothing to do with the decision
25 for KCP&L to pay your airfare rather than Alstom?

1 A. No.

2 Q. Okay. And let me -- I think Commissioner
3 Kenney was sort of leading up to this so let me just
4 ask it directly. If you had not paid for your own
5 airfare, would that trip have violated KCPL's gift
6 policy?

7 Q. Not necessarily, although I think we
8 discourage that kind of stuff. There was a unique
9 reason for these trips and it was related to the
10 launching of these projects. We don't, as a matter of
11 course, approve these. And you have to get approval
12 in order to do them.

13 Q. So the -- the reason for the trip plays
14 into how much recompense you can accept for a trip
15 like that. Is that part of the policy?

16 A. That's probably a fair statement.

17 Q. Now, with respect to the -- to the
18 Newport trip, when did that happen? That was later
19 than the Pebble Beach trip?

20 A. It followed that. It was probably the
21 next year.

22 Q. Okay. The -- the Pebble Beach trip was
23 tied to signing the EPC contract. Was the Newport
24 trip tied to any particular event?

25 A. It was just getting to meet -- they have

1 this outing annually for the industry, for their
2 customers. And so it was a regularly scheduled event
3 for them and it was a way to meet more of their team
4 and other customers.

5 Q. So going back to your -- your earlier
6 answer about the purpose of the trip playing into
7 what's allowed and what's not allowed, doesn't that
8 make it difficult for the average employee to evaluate
9 whether a gift is appropriate or not?

10 A. I'm not sure that I understand.

11 Q. Well, I think one of the reasons that you
12 said it was okay to go to -- to have Alstom pay for
13 the Pebble Beach trip minus the airfare was because of
14 the purpose of the trip.

15 A. Yes.

16 Q. So if the -- well, let me ask it this
17 way: If the purpose of the trip had simply been for
18 them to give you a golf outing and they promise never
19 to talk any business the entire time, would that trip
20 have been an appropriate gift for you to accept?

21 A. No. Absolutely not.

22 Q. Okay. So --

23 A. The only reason to go would be to talk
24 business.

25 Q. So if that kind of analysis plays into

1 the question of whether a gift violates KCPL's policy,
2 how -- how does the average employee evaluate whether
3 the purpose behind a gift is acceptable and so the
4 gift itself is acceptable?

5 A. Well, in this case if there were any
6 concern, as I did, I went and sat with my boss and
7 reviewed the purpose of the trip, the reason and its
8 appropriateness and fully disclosed what was going on
9 there. And we had that discussion and -- and made a
10 business decision about it.

11 Q. Your boss is the CEO?

12 A. Yes.

13 Q. Doesn't get any higher than that. A
14 lower level employee -- employee going to his
15 supervisor, would the supervisor be able to make that
16 same kind of call?

17 A. Absolutely. That's exactly what we
18 encourage.

19 MR. MILLS: That's all the questions I
20 have.

21 JUDGE PRIDGIN: Mr. Mills, thank you.
22 Mr. Williams, do you have an idea of how long?
23 Instead of interrupting you, I'd like to either let
24 you go --

25 MR. WILLIAMS: I believe I won't have

1 more than half a dozen questions.

2 JUDGE PRIDGIN: Okay. When you're ready,
3 sir.

4 RECROSS-EXAMINATION BY MR. WILLIAMS:

5 Q. Mr. Downey, you remember whenever you
6 were asked -- answering questions posed by
7 Commissioner Jarrett, there was discussion about
8 filing the definitive estimate. Do you recall that?

9 A. Yes.

10 Q. When did Kansas City Power and Light
11 Company file the definitive estimate?

12 A. When you say "filed," filed where?

13 Q. Well, that was my next question, with
14 whom did you file it? What -- what's your
15 understanding of filing the definitive estimate to be?

16 A. Well, our -- our board approved the
17 definitive estimate in its December 2006 board
18 meeting. And I'm trying to remember dates.

19 Q. Was --

20 A. As to when we would have publicly -- I
21 don't know whether we filed an 8-K or -- I don't
22 recall what we did on that. I -- I'm looking at my
23 little cheat sheet for dates.

24 Q. Well, was that what the board approved in
25 December of -- I believe it was '06 -- described as a

1 definitive estimate or was it described as a control
2 budget estimate?

3 A. It would have been described as the
4 control budget estimate.

5 Q. When was the control budget estimate
6 first described by Kansas City Power and Light Company
7 as the definitive estimate?

8 A. I think the confusion on -- on that
9 wording began way back in the regulatory negotiations
10 and continued on for quite a while. Whatever you
11 called it, it was the -- it was the number against
12 which we were going to be tracking the project and --
13 and it was a number that the Staff knew we were going
14 to bring in in December.

15 And -- and I -- you know, the back and
16 forth, Chris Giles probably went through that better
17 than I could and the back and forth on the language.
18 But whatever it was, both sides knew what we were
19 talking about. It was the -- the number that we were
20 going to track against for regulatory purposes for the
21 life of the project.

22 Q. Whenever the -- you had the discussions
23 or the testimony with Commissioner Jarrett on the
24 questions regarding filing the definitive estimate,
25 were you referring to -- did you mean by that or

1 understand that to mean the SEC filings for the
2 control budget estimate?

3 A. I'm sorry. I was looking at the piece of
4 paper trying to find the date.

5 Q. I'm actually trying to get some
6 clarification. Whenever you were testifying in
7 response to Commissioner Jarrett's questions, there
8 was -- the terminology "filed definitive estimate"
9 came up. Whenever you heard that terminology and you
10 were responding, did you understand it and mean it in
11 your response to refer to the filing of SEC -- or SEC
12 filings where the control budget estimate was
13 disclosed?

14 A. I don't remember when I said -- if I said
15 filing, I don't remember what I was referring to, but
16 it would have been the control budget estimate and its
17 public disclosure following -- our board approved it
18 on December 5th. We presented that -- that estimate,
19 whether we call it the definitive estimate or the
20 control budget estimate, we -- we got board approval
21 on December 5th.

22 I know January 22nd, we formally came
23 over here and presented the control budget estimate to
24 the Staff. I -- after that board approval, we would
25 have had to make some sort of official filing I think,

1 but I don't recall it specifically.

2 Q. And the filing you're referring to is an
3 SEC filing?

4 A. would be public disclosure, yeah, from
5 the board decision.

6 Q. I was just trying to clarify.

7 A. Yeah. And I just can't remember.

8 Q. Do you remember when Commissioner Gunn
9 was asking you about how many dog and pony shows you
10 had whenever you were looking at attorneys who might
11 do the work that you ultimately hired Schiff Hardin to
12 do? Do you recall that?

13 A. Yes.

14 Q. And how many dog and pony shows did you
15 have?

16 A. I don't -- as I said, I don't have a
17 specific number. Mr. Riggins had been looking and
18 talking. You know, we know the firms in Kansas City,
19 many of them work for us. He would have explored
20 their ability to do these things. We've -- we've
21 looked that periodically over time. He was looking
22 outside of the Schiff Hardin firm, so they -- I don't
23 remember any specific number.

24 Q. Well, you mentioned Duane Morris and you
25 mentioned Schiff Hardin. Do you recall any others?

1 A. I think we looked at the construction
2 expertise of several firms in Kansas City. I don't --
3 I don't remember exactly which ones.

4 Q. And hopefully one last question. You
5 recall in response to Commissioner Kenney you talked
6 about building relationships in response to his
7 questions regarding your trip to Pebble Beach and
8 Rhode Island?

9 A. Yes.

10 Q. How would you characterize Kansas City
11 Power and Light Company's relationship with the Staff
12 of the Missouri Public Service Commission?

13 A. I -- I would say professional and -- and
14 workman-like. Not without its tensions. We've had a
15 lot of issues in front of this Commission and its
16 Staff over the last five years.

17 Q. And how would you characterize Kansas
18 City Power and Light Company's relationship with its
19 partners in Iatan 2?

20 A. Generally good and reasonable.

21 MR. WILLIAMS: No further questions.

22 JUDGE PRIDGIN: All right. Mr. Williams,
23 thank you. I assume Mr. Fischer or Mr. Hatfield,
24 you'll have quite a bit of redirect?

25 MR. HATFIELD: A little bit.

1 JUDGE PRIDGIN: A little bit. All right.
2 That looks to be a good clue this would be a good time
3 to take a break. Let's reconvene at about ten till
4 4:00. Thank you. We're off the record.

5 (A recess was taken.)

6 JUDGE PRIDGIN: All right. We are back
7 on the record. Mr. Hatfield, before you begin
8 redirect, I think Mr. Mills had asked during the
9 break. I just wanted to be sure -- try to keep
10 everybody apprised of what's going on. I plan
11 on going till roughly about 6:00 or so, taking an
12 evening break for dinner, reconvening at roughly
13 around 7:00 and then going till somewhere in the
14 nine to ten o'clock range. I really don't foresee
15 going any later than 10:00.

16 So anything further from counsel? Any
17 questions or anything further before Mr. Hatfield
18 begins? All right. When you're ready, sir.

19 MR. HATFIELD: Thank you, Judge.

20 REDIRECT EXAMINATION BY MR. HATFIELD:

21 Q. Mr. Downey, we've covered a lot of
22 different testimony here and so I may jump around just
23 a bit, but we had several pieces of discussion
24 concerning what were sometimes referred to as the
25 Alstom settlements. Do you recall that?

1 A. Yes.

2 Q. Now, you covered that, as I understand
3 it, in your pre-filed rebuttal testimony; is that
4 right?

5 A. Yes. That's correct.

6 Q. And if you wouldn't mind turning to
7 page 14 of your rebuttal testimony.

8 A. Yes.

9 Q. Now, is that a discussion of what was
10 referred to earlier as the crane accident settlement?

11 A. Yes, it is.

12 Q. And if the Commission wanted to learn
13 more about that, does that discussion occur on
14 pages 14 through -- well, you tell me. I guess it's
15 about 24 maybe?

16 A. That's correct.

17 Q. And related to that, does your testimony
18 identify other witnesses who have information about
19 the crane accident settlement?

20 A. Yes. I believe Mr. Roberts has
21 additional testimony.

22 Q. And Mr. Roberts has not yet testified; is
23 that right?

24 A. That's correct.

25 Q. And let me direct your attention as well