

1 to pages 24 through 39 -- or let's start with 24.

2 There on 24 is there a -- did you include a heading in  
3 your testimony?

4 A. Yes.

5 Q. On line 9 what does that read?

6 A. July 18, 2008 Alstom Unit 1 Settlement  
7 Agreement.

8 Q. And if the Commission wanted to  
9 understand more of the details about that settlement  
10 agreement, would they refer to pages 24 through 39 of  
11 your rebuttal testimony?

12 A. Yes, that's correct.

13 Q. And then on 39 you've included another  
14 heading on line 4 and what does that say?

15 A. Unit 2 Alstom Settlement.

16 Q. And if the Commission wanted to  
17 understand more about the details of that settlement,  
18 would they refer to page 39 through 47?

19 A. That's correct.

20 Q. Now, you also attached some schedules, I  
21 notice. And could you turn in your direct testimony  
22 to Schedule WHD2010-6? I'm on your rebuttal still.

23 A. The R&O opportunity analysis sheet?

24 Q. Yes. And -- now, you saw some of these  
25 in your direct testimony. And I believe there was

1 Exhibit 254 that was shown to you by Mr. Williams,  
2 which is also entitled a Risk and Opportunity, R&O  
3 Item No. 360. Do you recall that?

4 A. Yes.

5 Q. Do you have Exhibit 254 there in front of  
6 you?

7 A. 25-- 254?

8 Q. I think I've got that right. It's also  
9 the document that you and Commissioner Kenney went  
10 through that contains the PowerPoint presentation.  
11 Might be right here. How about right there  
12 (indicating)?

13 A. Thank you.

14 Q. I guess now you do have it in front of  
15 you?

16 A. I do.

17 Q. All right. So first of all, we sort of  
18 talked about this. Can you just explain, so the  
19 Commission understands what we're looking at in these  
20 exhibits, what are these risk and opportunity analysis  
21 sheets?

22 A. Well, they are just that. They're an  
23 assessment of a situation that ultimately might wind  
24 up as a cost to the project in which there's an  
25 analysis made of it ahead of time to assess potential

1 cost impacts on the project.

2 Q. Okay. So the risk and opportunity  
3 analysis sheets, Exhibits 254 and several schedules,  
4 how do those risk and opportunity analysis  
5 spreadsheets relate to Kansas City Power and Light's  
6 commitment to identify and explain any cost overruns,  
7 if at all?

8 A. Well, they -- they do. They're an early  
9 signal of a potential claim and ultimately -- or a  
10 potential cost. And ultimately we can see through  
11 change orders and purchase orders and -- and such to  
12 the extent to which these become realized. They are  
13 an early warning and a trail and a track that  
14 ultimately you can follow through to see what  
15 occurred.

16 Q. All right. So just to make sure we  
17 understand that, Exhibit 254, you were going through  
18 with Commissioner Kenney that has the PowerPoint, et  
19 cetera?

20 A. Right.

21 Q. Up at the top it says, R&O Item No. 360.  
22 Now, you've seen this document before. I think we  
23 covered that.

24 A. Yes.

25 Q. And it says, Reforecasted costs, 3 point

1 something. I got to take my own advice and not start  
2 saying numbers out loud. Sorry about that.

3           There's a reforecasted cost up there. Is  
4 it your understanding that is the expected cost over  
5 and above the control budget estimate?

6           A.     Yes.

7           Q.     All right. So from that we can  
8 identify -- you tell me. Can we identify how much the  
9 JLG incident is going to cost over and above the  
10 control budget estimate also sometimes referred to as  
11 the definitive estimate from that number there,  
12 reforecasted cost?

13          A.     Well, this -- this suggests that  
14 initiating event that -- the JLG. And this would be a  
15 potential cost for some work that's attendant to that  
16 incident.

17          Q.     Right. So this is the potential cost  
18 over and above?

19          A.     Right.

20          Q.     Okay. Thank you for that clarification.  
21 I should have said it better.

22                 And then it has these reasons down here.  
23 And I remember the other day when you were talking to  
24 Mr. Mills about possible reasons for cost overruns.  
25 Are these similar to the reasons that you discussed

1 with Mr. Mills? You see where I am; price, permit,  
2 regulatory, design maturation?

3 A. Yes.

4 Q. All right. And then there's a section  
5 called Analysis on these. And what -- how does the  
6 analysis relate to the company's commitment to  
7 identify and explain cost overruns?

8 A. Well, I think it very clearly explains  
9 the -- the event that initiated this risk, the  
10 circumstances, efforts that were going to be  
11 undertaken and why and projects then up above what it  
12 might cost. So this is the analysis of the reason  
13 and -- and steps that have to be taken.

14 Q. All right. And you -- you refer to  
15 "projects." So these -- these risk and opportunities  
16 are what would we -- a looking-forward analysis of  
17 potential costs; is that right?

18 A. That's correct.

19 Q. Okay. Let's look at Exhibit 254 a little  
20 bit more. I think you mentioned to Commissioner  
21 Kenney that it explains -- or that it includes both  
22 Alstom's position and KCP&L's position; is that right?

23 A. Yes.

24 Q. If you can kind of flip back into the  
25 PowerPoint presentation just a few pages, do you see

1 some pieces of the PowerPoint that say Alstom at the  
2 bottom?

3 A. Yes.

4 Q. And then if you keep flipping through,  
5 are there other parts of the PowerPoint that do not  
6 say Alstom at the bottom?

7 A. Yes.

8 Q. So are -- are some of those Alstom's  
9 position and some of those Kansas City Power and  
10 Light's position?

11 A. That's correct. They're attached in a  
12 funny way, but yes, that's --

13 Q. Kind of upside down, aren't they?

14 A. Upside down and backward.

15 Q. All right. So -- and these again were  
16 prepared for what -- did you say prepared in  
17 settlement?

18 A. Settlement discussions between Alstom and  
19 Kansas City Power and Light.

20 Q. And I notice Alstom's are not -- here  
21 they are -- or not -- oh, yeah, up at the top it says  
22 for settlement purpose and then on KCP&L's is there  
23 also a designation that it's for settlement purposes?  
24 Maybe at the bottom.

25 A. Yes. On both cases.

1 Q. All right. So if you would turn to the  
2 Alstom portion -- of course, they helpfully did not  
3 number theirs -- oh, no, it is. It's over on the left  
4 side, I guess. You see where I am? It says  
5 December 10, 2007 bottom left and then it will have a  
6 page number.

7 A. Mine are, unfortunately, stapled on the  
8 bottom left.

9 Q. Well, some are, some aren't. Well,  
10 there's a page 2.

11 A. What does it say at the top of page 2?

12 Q. Soil Stabilization Project Overview.

13 A. I'm there, yes. I'm there.

14 Q. So is it -- is this reflecting that  
15 Alstom claimed that they had been delayed by  
16 25 calendar days?

17 A. Yes.

18 Q. And are there other documents if we were  
19 to go through this, which I'd rather not do, that lay  
20 out Alstom's claim that they were delayed?

21 A. Yes.

22 Q. And then if you will go to -- at some  
23 point the page numbering changes and we're into the  
24 KCPL part. There's one that has a picture of  
25 conceptualization of the plant with only one chimney

1 and then you get to page 2, table of contents. Are  
2 you with me? Here's what we'll do.

3 COMMISSIONER KENNEY: This is very  
4 confusing.

5 BY MR. HATFIELD:

6 Q. There's a page labeled Alstom Claims  
7 Assertions.

8 A. Hold on.

9 Q. If you can see behind you. It's got  
10 three things that Alstom's claiming.

11 A. Wait a minute. Is this -- I'm having  
12 trouble finding it.

13 Q. It's written on --

14 MR. WILLIAMS: Are you referring to  
15 page 3?

16 BY MR. HATFIELD:

17 Q. Page 3.

18 A. Page 3 of the KCPL or the Alstom?

19 Q. Yeah. It has an Iatan symbol up at the  
20 top, upper right-hand corner. It's not organized very  
21 well, is it?

22 MR. WILLIAMS: Do you want to borrow  
23 this?

24 MR. HATFIELD: Thank you, Nathan.

25 BY MR. HATFIELD:



1 Q. Here, let me just hand you. We'll get to  
2 the right page. Nathan's helpfully -- just take that.

3 A. Jeez.

4 Q. All right. So on this page, page 3 of  
5 the -- is this a summary of what Alstom's claiming --  
6 or was claiming at the time, I should have said?

7 A. Yes.

8 Q. And so does this accurately summarize  
9 that at the time you were having these settlement  
10 discussions, Alstom was asserting that Kansas City  
11 Power and Light was responsible for the incident and  
12 should pay for half of the costs to repair the crane?

13 A. That's correct.

14 Q. And that the schedule was negatively  
15 impacted and that KCPL is solely responsible for this  
16 delay?

17 A. Yes.

18 Q. And that the erection schedule was  
19 negatively impacted and KCPL is solely responsible for  
20 this delay?

21 A. That's correct.

22 Q. So they said you were responsible and you  
23 said, no, we're not. Right?

24 A. That's correct.

25 Q. And that's how you went into mediation?

1 A. Yes.

2 Q. And that's what these documents reflect  
3 as the positions as you went into mediation?

4 A. That's correct.

5 Q. All right. Thank you. Now, if we could  
6 look at this other -- these other R&Os on your  
7 testimony. Put that one away. I got you confused  
8 enough about page numbers, I think. Now, you had some  
9 discussions with both Mr. Williams I think -- could be  
10 wrong and with Commissioner Kenney about the ALSTOM  
11 settlements. And again just to be clear on this, is  
12 there another witness we haven't heard from yet who  
13 was also involved in the Alstom settlement  
14 discussions?

15 A. Well, Mr. Roberts would have been  
16 involved in the settlement discussions.

17 Q. All right. Now, as relates to your  
18 rebuttal testimony -- oh, I know what we need to do.  
19 Earlier when we were talking through these, you  
20 referred to needing to look at your cheat sheet. Do  
21 you recall that?

22 A. I did.

23 Q. And what is it that you needed to refer  
24 to?

25 A. Well, there are so many dates over the

1 five years, that I asked that a time line of key  
2 events and decisions be put together and -- and that's  
3 what I was referring to.

4 MR. HATFIELD: Judge, may we mark an  
5 exhibit?

6 JUDGE PRIDGIN: You may. I believe I  
7 would be up to 74 for KCP&L.

8 (KCP&L Exhibit No. 74 was marked for  
9 identification.)

10 MR. HATFIELD: Judge, it might help to  
11 have for the Commissioners.

12 BY MR. HATFIELD:

13 Q. So, Mr. Downey, you started to explain,  
14 but what -- what is it you were trying to accomplish  
15 by constructing Exhibit 74 to be created?

16 A. Sort of the life of the project, which  
17 goes back into 2004. There have been many events that  
18 have occurred and I have a bit of difficulty keeping  
19 them all straight. So this at least gives me a  
20 document to try to follow key dates and when things  
21 happened and helps me at least keep -- keep the right  
22 order of things.

23 Q. And so have you had an opportunity to  
24 review Exhibit 6-- 74?

25 JUDGE PRIDGIN: Yes.

1 BY MR. HATFIELD:

2 Q. 74?

3 A. Yes.

4 Q. And does it accurately reflect key dates  
5 that are relevant to the testimony you provided to the  
6 Commission?

7 A. I believe it does.

8 Q. All right. So if you need to refer to  
9 this document, I'm going to ask you a couple  
10 questions. Feel free to just go ahead and refer and  
11 tell us that you're doing so. Because one thing I  
12 wanted to make sure we understood was the -- in  
13 discussing the Alstom settlements, is it correct to  
14 say there's more than one?

15 A. Yes. There were several major ones.

16 Q. All right. And -- and I want to make  
17 sure we kind of get them into some sort of context.  
18 The Alstom -- the crane collapse that we've all  
19 discussed occurred when? We're on page 2 of  
20 Exhibit 74.

21 A. We are. It occurred on May 23rd of 2008.

22 Q. And then there was a -- what we sometimes  
23 call the Alstom unit 1 settlement was when?

24 A. July 15th, 2008.

25 Q. And then quite some time until we got to

1 a next -- what we sometimes call the unit 2  
2 settlement. Right?

3 A. That's correct.

4 Q. And do you recall approximately when that  
5 was or precisely when that was?

6 A. As soon as I can find it, I will. On  
7 November 17th of 2009 we reached agreement with Alstom  
8 on the term sheet for the settlement on unit 2.

9 Q. All right. So different -- different  
10 settlement agreements we were talking about earlier.  
11 There's more than one, in other words?

12 A. Yes.

13 Q. And -- and you've -- now, back to your  
14 direct testimony, you've included testimony on all of  
15 the Alstom settlements and -- and delineated it out  
16 separately in your direct testimony?

17 A. Yes. The unit 1 settlement and the  
18 unit 2 settlement.

19 Q. All right. And then schedule william --  
20 WHD2010-6 is an R&O. Correct?

21 A. Yes.

22 Q. And that has to do with a delay claim; is  
23 that right?

24 A. That's correct.

25 Q. And then schedule WHD2010-6 has to do

1 somewhat with a liquidated damages claim; is that  
2 right?

3 A. The same -- you're referring to the same  
4 R&O? No, a different one.

5 Q. I said 6. There's actually two different  
6 ones that both have 6 on them. So there's 367A -- an  
7 R&O labeled 367A and then another R&O labeled 367B and  
8 they're all part of Exhibit 6 apparently.

9 A. There might even be one labeled C.

10 Q. I believe there is. Let's talk about B  
11 for just a minute if you can get it.

12 A. I've got it.

13 Q. All right. So 367B -- we talked about  
14 before what an R&O is. Right?

15 A. Yes.

16 Q. And so this an analysis of a potential  
17 cost to the project. Right?

18 A. Yes.

19 Q. And by the way, Mr. Schwarz isn't sure  
20 what LDs are, so you might explain that.

21 A. Liquidated damages. These are actual  
22 cash payments for failure to meet certain key --

23 Q. And in fairness to him, I think he knows  
24 what a liquidated damages are. He just didn't know --  
25 sorry, Tim. He wasn't sure what an LD was, so I just

1 wanted to make sure for the record when you say LDs,  
2 you're referring to liquidated --

3 A. Liquidated damages.

4 Q. -- damages; is that right?

5 A. Yes.

6 Q. Yes. All right. So let's talk about  
7 this. You talked with Commissioner Kenney about the  
8 liquidated damages issue a little bit. In the  
9 analysis section there, which I think we talked about  
10 is an attempt to explain the potential cost impact,  
11 there's a two with a parenthesis next to it. Is that  
12 discussing liquidated damages?

13 A. Yes.

14 Q. And it -- I'm going to stop at the right  
15 place. It says, Potential liquidated damages in the  
16 range of -- and then it gives a range -- are believed  
17 due KCPL if Alstom continues to fall further behind  
18 rather than comply with the Tiger Team 1 schedule.

19 Do you see where that is?

20 A. Yes, I do.

21 Q. Now, have you read the Staff's  
22 construction audit and prudence report in this case?

23 A. I have.

24 Q. And they indicate that KCPL should not  
25 have waived or foregone those liquidated damages. And

1 they rely in part on this risk and opportunities  
2 sheet. Is that your understanding?

3 A. Yes.

4 Q. And so when it says that if Alstom  
5 continues to fall farther behind the Tiger Team 1  
6 schedule you might be entitled to liquidated damages,  
7 did Alstom, in fact, continue to fall behind the Tiger  
8 Team 1 schedule?

9 A. No, they did not. In fact, they met the  
10 milestones in the Tiger Team schedule.

11 Q. So based just on this analysis, since  
12 they did not fall behind the Tiger Team 1 schedule,  
13 you weren't entitled to liquidated damages; is that  
14 right?

15 MR. WILLIAMS: Judge, I'm going to object  
16 at this point. I think he's going beyond the cross of  
17 scope and Commissioner questions with this line.

18 JUDGE PRIDGIN: Mr. Hatfield?

19 MR. HATFIELD: I think he and  
20 Commissioner Kenney actually talked at some length and  
21 there was some cross about why did you agree to forego  
22 the LDs. Commissioner Kenney asked him why did you  
23 not collect the LDs or the liq-- liquidated damages.

24 JUDGE PRIDGIN: That's my recollection so  
25 I'll overrule.



1 BY MR. HATFIELD:

2 Q. So under this analysis here, you weren't  
3 entitled to liquidated damages because they did, in  
4 fact, meet the Tiger Team 1 schedule; is that correct?

5 A. That's correct.

6 Q. All right. Now, okay. Now, on these --  
7 let me just finish up on these R&Os briefly, these  
8 risk and opportunity analysis. You -- you -- I think  
9 you were correcting me when I was discussing what they  
10 would be used for. Why were R&Os -- maybe you already  
11 said. Why were R&Os prepared?

12 A. They were prepared as -- as indicators to  
13 the project team and management team that there were  
14 risks out there that were not -- were above and beyond  
15 what we had contemplated in the control budget.

16 Q. All right. And now how did you use R&Os  
17 in your management -- in your role in managing the  
18 project?

19 A. Well, they -- they identified risks to  
20 the project and -- which we looked for mitigation  
21 to -- to minimize those risks or to eliminate them, if  
22 we could. They also gave us signals with regard to  
23 cost reforecasts that we would do periodically through  
24 the course of the project. So they were early warning  
25 signs around costs and schedule for that matter.

1 Q. All right. And let's talk about the  
2 reforecast for a minute. I'm going to take you way  
3 back now, three, four days ago when we started your  
4 questioning. Mr. Mills I think got us all started  
5 with a discussion about the cost overruns and -- and  
6 through some calculations brought you to a number of I  
7 think it was 500 million in cost overruns.

8 A. Right.

9 Q. Do you recall all of that?

10 A. I do.

11 Q. And he asked you if you could explain  
12 that and you gave him some general categories; is that  
13 right?

14 A. I did.

15 Q. Now, at the time you were managing this  
16 project back three years ago, two years ago, et  
17 cetera, what were you using to understand where cost  
18 overruns were occurring and why?

19 A. Well, the cost control system and the  
20 K-Report, the monthly report. I mean we would sit --  
21 I was up there every week we would go through in  
22 detail. But then at the end of the month, we would go  
23 through the K-Report and where we stood. From my  
24 point of view, I didn't need to know everything in  
25 between, but I needed to know the bottom line on where

1 we were heading.

2           And then when the team began to assemble  
3 these risk and opportunity analysis statements, it  
4 took you from looking at what happened last month and  
5 where you were relative to the budget to projecting  
6 forward as to things that might occur, which would  
7 later be confirmed in the -- in the monthly budget  
8 review processes.

9           Q.     Okay. So once that control budget  
10 estimate, definitive estimate you and Mr. Mills talked  
11 about was established, who needed to approve any  
12 expenses over and above that estimate?

13           A.     Well, you can see signature pages on  
14 these. And depending on the dollar value, that  
15 approval would -- would grow from department heads to  
16 Brent to the vice president, to me.

17           Q.     All right. And -- and you talked about  
18 the reforecast. At some point did you look at all the  
19 R&Os in a reforecast format?

20           A.     Yes, we did. I mean, 2008 was the  
21 initial cost reforecast. And it was triggered by the  
22 fact that we were at a -- at a 70 percent engineered  
23 level, but also by these kind of signals from the  
24 project leadership team.

25           Q.     Okay. And so in the reforecast then

1 did -- did -- did you take some action with respect to  
2 the reforecast yourself?

3 A. Well, I personally -- that was about the  
4 time we had -- Mr. Price left and we had an interim of  
5 about three or four months before Mr. Churchman came  
6 on board. And I asked Mr. Easley to take over  
7 day-to-day authority for day-to-day operations in the  
8 construction site. And I personally took  
9 responsibility for making sure this initial reforecast  
10 was appropriate and -- and fully vetted where we were  
11 and what we were going to do.

12 Q. And then did the board at some point  
13 approve reforecast?

14 A. Yes, they did. They -- we -- this  
15 reforecast was done by our own staff. It was vetted  
16 by Schiff Hardin through Dan Meyer who can talk about  
17 these reforecasts in great detail when he's up. We  
18 did our own independent reforecast, Schiff did theirs,  
19 we compared them, we presented them to the oversight  
20 committee, we presented them to senior -- all the  
21 senior management, ultimately to the board in the form  
22 of a single cost estimate, new -- new projected cost  
23 at completion for the --

24 Q. Right. I want to talk about that because  
25 I want to make sure that -- that we let the Commission

1 understand what you were doing as senior management to  
2 understand the budgets. So there was a control budget  
3 estimate approved by the board?

4 A. That's correct.

5 Q. And then in order for expenses to exceed  
6 that estimate, you had to establish a new budget.

7 Correct?

8 A. That's correct.

9 Q. And that was the reforecast process; is  
10 that right?

11 A. Yes.

12 Q. And there were formal documents created  
13 to establish the reforecast budget. Right?

14 A. That's correct.

15 Q. And are those attached to witness Forrest  
16 Archibald's testimony?

17 A. I believe so.

18 Q. And I think we've looked at these once  
19 before, but just to make sure, Iatan 1 and 2 cost  
20 reforecast dated April 25th, 2008. Is that generally  
21 what you've referred to?

22 A. Yes.

23 Q. And now Mr. Mills asked you a little bit  
24 about what led to those -- what led to those overruns  
25 and I think you discussed -- you discussed some of the

1 things that drove those. Did you -- at the time you  
2 were making the decisions, did you have documents in  
3 front of you that identified the drivers for any  
4 expenses over and above the controlled budget  
5 estimate?

6 A. Yes.

7 Q. And at the time did you have documents in  
8 front of you that included specific risk and  
9 opportunity items by dollar amounts that would show  
10 you how -- the amount of additional cost that needed  
11 to be incurred over and above the control budget  
12 estimate?

13 A. That's correct.

14 Q. And it showed you by category such as  
15 indirects or fuel and test run energy. Right?

16 A. That's correct.

17 Q. And at the time did you have in front of  
18 you documents that gave you by percentages where the  
19 cost overruns were occurring?

20 A. Yes.

21 Q. And so at the time you made the decision  
22 to authorize expenses above the control budget  
23 estimate back in 2008, did you know what percentage of  
24 those costs were being caused by, for example, design  
25 maturation?

1 A. Yes. We spent a good bit of time  
2 defining these categories and understanding them.

3 Q. And did you also have in front of you  
4 detailed information about contingency logs and  
5 contingency commitments?

6 A. Yes. These were decisions made  
7 discretely every day by the cost control group and  
8 then ultimately summarized and are part of the whole  
9 story on cost increases.

10 Q. And then attached to those -- that  
11 reforecast you had -- did you have these risk and  
12 opportunity sheets we've been going through?

13 A. Yes.

14 Q. And so the board would see each and every  
15 risk and opportunity sheet?

16 A. At a high level, yes.

17 Q. Well, and that's a good question. So was  
18 every risk and opportunity sheet that was prepared  
19 submitted to the board?

20 A. No.

21 Q. And why was that?

22 A. Well, dollar level, extent of importance  
23 to the overall impact on the project.

24 Q. And were some risk and opportunities  
25 rejected at a level below the board?

1 A. Yes. Yes. Some of these risks never --  
2 the risks never materialized in terms of a cost or --  
3 or, you know, it could go either direction.

4 Q. Okay. And so is it -- is the  
5 reforecast -- well, were there -- was there another  
6 reforecast at some point in the project?

7 A. Yes. There was one done in 2009 when we  
8 were 90 percent engineered.

9 Q. And so once you were going to exceed that  
10 control budget estimate, just so I understand this,  
11 the board would authorize a new budget and then  
12 expenses would occur within that new budget. Right?

13 A. That's correct.

14 Q. And then you couldn't go over that new  
15 budget unless another budget was authorized; is that  
16 right?

17 A. That's correct.

18 Q. So every expense that was made on the  
19 project was approved on a go-forward basis by category  
20 by the board of directors; is that right?

21 A. Well, it was approved in total. The  
22 categories were explained to them, but it was approved  
23 in total.

24 Q. Well, that's a good point. So not just  
25 by category, but -- or wait. What were you --



1 A. Well, you said the board approved by  
2 category.

3 Q. Right. They saw it by category?

4 A. They saw it by category, they approved  
5 the total number.

6 Q. Exactly. They approved the gross amount,  
7 if you will of the budget?

8 A. Right.

9 Q. We've looked at some numbers here --

10 A. Right.

11 Q. -- the overall budget amount?

12 A. Right.

13 Q. But they had these risk and opportunity  
14 sheets as part of the presentation. I guess that's  
15 what I was getting at.

16 A. Well, they -- they might not have this  
17 specific sheet, but they would understand the risks.  
18 We would present the risks.

19 Q. And if we need more detail -- if the  
20 Commission wants more detail about the reforecast  
21 process and how the -- how the board authorized  
22 expenses over the CBE, which witness would that be?

23 A. Mr. Archibald, Mr. Meyer. This document  
24 you've had up on the screen is I'm sure the very same  
25 document that we would have also then brought over and

1 presented to the Staff.

2 Q. And I think we might have covered it,  
3 but -- so just -- if you don't have anything to add,  
4 tell me, but Commissioner Jarrett asked you some  
5 questions about your K filings and -- and I think  
6 there was some discussions about your disclosure, that  
7 the estimates may differ materially. Do you recall  
8 that?

9 A. The SEC disclosures?

10 Q. SEC disclosures.

11 A. Yes.

12 Q. And I guess just generally related to  
13 that, tell us how much management used the control  
14 budget estimate to manage the project.

15 A. Well, I mean every month we were looking  
16 at this. These -- these are stakes in the ground to  
17 which you try to manage to. You set goals, whether  
18 they're financial or otherwise, and you manage to  
19 them. So we would -- we met weekly for the morning on  
20 the project to look at schedule, to look at the  
21 drivers. And then monthly we would get a look at the  
22 K-Report and -- and update that.

23 And then when we got into those cost  
24 reforecasts and in 8 and 9, those were major events  
25 and it gave us a total backward look and forward look

1 and -- and would -- would further reinforce whether we  
2 were on budget or not and where the costs were going  
3 and what was driving them. So that it -- it was the  
4 daily and the weekly and monthly run-up and management  
5 process by which we managed the costs on the project.

6 Q. Okay. Now, you just -- just to make sure  
7 we're on the same page, you just mentioned the  
8 K-Reports. I'm going to show you Forrest Archibald  
9 Exhibit 1. This is a pretty small copy so I'm going  
10 to zoom in a little bit here. This is Forrest  
11 Archibald Exhibit 1. So is this the document you were  
12 just referring to?

13 A. It is.

14 Q. And it's going to be hard for me to --  
15 generally what -- what did this document tell you as  
16 you were managing the process?

17 A. Well, it -- it broke down by significant  
18 categories the spend. This column (indicating) is  
19 actually the control -- the original control budget  
20 estimate going back to December 2006.

21 Q. Labeled up at the top it's referring to  
22 column A?

23 A. It says Control Budget.

24 Q. Let's see if I can do this. Look at  
25 this. So column A is the original control budget of

1 2006?

2 A. And then the next two columns show  
3 adjustments, corporate budget change, internal budget  
4 transfers, bringing us to the current budget which  
5 would be the reforecasted budget so --

6 Q. So without even getting into what the  
7 lines are, so on that line 1 there, the control  
8 budget, your current -- your reforecast actually  
9 dropped that -- that number below the 2006; is that  
10 right?

11 A. This -- are you talking about this number  
12 (indicating)?

13 Q. Yes.

14 A. Well, and it's a category. It's only one  
15 line item of cost.

16 Q. Right. Let me make sure we can look at  
17 this here.

18 A. So -- so that's in the procurement area  
19 and it's mechanical systems and that happens to be the  
20 ash handling system.

21 Q. Well, and actually let's talk about all  
22 of those. So there we've got -- I don't know if we  
23 can read that.

24 MR. HATFIELD: But again, Commissioners,  
25 it's Exhibit 1 to the Forrest Archibald testimony if

1 you want to look at this later as you're reading.

2 BY MR. HATFIELD:

3 Q. We see there an ash handler, a balance of  
4 plant piping and economizer. Right? And then  
5 permanent aux boiler?

6 A. Yes.

7 Q. Are we in the same spot?

8 A. Uh-huh.

9 Q. So can you tell by looking at that which  
10 of those items was in the original control budget  
11 estimate and which were not?

12 A. Yes.

13 Q. Which ones of -- just in the procurement  
14 section, were not included in the control budget?

15 A. The ash handling system and the balance  
16 of plant piping were in the original budget, and the  
17 economizer and the permanent aux boiler were not.

18 Q. I think it's obvious, but how can you  
19 tell that?

20 A. Well, these two have numbers and these  
21 don't (indicating).

22 Q. All right. So then you can tell that --  
23 can you tell that at some point those items were  
24 authorized?

25 A. Well, this would indicate corporate

1 budget changes on the economizer, for example  
2 (indicating).

3 Q. Okay.

4 A. And it would relate to the date on the  
5 monthly budget.

6 Q. So if a cost overrun is a cost in excess  
7 of the control budget estimate, can you tell -- can  
8 you identify by looking at this where a cost overrun  
9 occurs?

10 A. Yes. You can identify it pretty much by  
11 systems and -- you have to then go to the detail to  
12 get to the R&O, the analysis sheets and the change  
13 orders and work orders. But this is a road map to any  
14 costs in excess of the original control budget  
15 estimate.

16 Q. And -- and so in identifying it there,  
17 can you -- can you go all the way down through and --  
18 I'm not asking you to do it right now, but is it  
19 possible to go all the way down through and identify  
20 from this one sheet, the K-1 Report where cost  
21 overruns were occurring?

22 A. Absolutely.

23 Q. And how often did you get this document?

24 A. Monthly.

25 Q. All right. And then for -- I think you

1 said it, but for the explanation of why those cost  
2 overruns were occurring, where would you look?

3 A. You would -- you would have to go and --  
4 you'd have to go into the -- the change orders,  
5 purchase orders, the contingency log where we  
6 allocated contingency if we -- we overran.

7 And then you could go to the -- the  
8 original R&Os or subsequent to the first reforecast,  
9 we then developed a more extensive system called --  
10 which we call cost portfolios where you could look at  
11 those in detail as we did the reforecasts. And they  
12 would track these categories in more detail and look  
13 forward again too.

14 Q. So as the president and COO, I assume you  
15 weren't going through every change order. What --  
16 what document did you use to explain a cost overrun?

17 A. Well, this document. And we would vet  
18 this with the -- the Staff and -- in the weekly  
19 meetings, but we would bring it forward to the  
20 executive oversight committee as well monthly.

21 Q. And did you require the project team to  
22 explain cost overruns to you?

23 A. Absolutely.

24 Q. And -- and how did you require them to do  
25 that? What process did you use?

1           A.     Well, we used those reporting meetings,  
2 either the weekly ones or -- and then we would ask for  
3 major explanations in the executive oversight. We  
4 wouldn't try to go through every -- every one of them,  
5 but we'd look at the big picture.

6           Q.     And did they document their explanations  
7 in those meetings?

8           A.     They -- we knew the source documents for  
9 these, yes. I mean it was -- this was a systematic  
10 process that we set up so that we would, first of all,  
11 have the right process in place, and then use it and  
12 do the analysis which led to actions and decisions.  
13 I mean, it was -- there was -- this was a very  
14 rigorous process set up at the very beginning.

15                     And then, of course, we were reporting  
16 not only to ourselves and to our board, but to all of  
17 the external audiences; our partners, the Commission  
18 Staff. This information was provided I believe  
19 month-- I think the K-Reports were provided monthly  
20 and certainly then this was summarized at a high level  
21 in the quarterly reports.

22           Q.     So last question on this. So then as the  
23 president of Kansas City Power and Light, were you  
24 able to identify and explain the cost overruns on the  
25 Iatan projects?



1 A. Yes.

2 Q. Now, let me ask you just a couple of  
3 clean-up questions. Commissioner Jarrett also asked  
4 you a little bit about the decision to use multi-prime  
5 versus EPC. Do you recall that?

6 A. I do.

7 Q. And if Commissioner Jarrett wanted to  
8 learn more about that process, is that explained in  
9 your direct testimony?

10 A. Yes.

11 Q. Would you turn to page 55 of your  
12 rebuttal testimony, please. Beginning with a question  
13 I believe on line 14 there, do you discuss the  
14 decision to use multi-prime approach as --

15 A. You said rebuttal. You meant direct  
16 testimony?

17 Q. No, I think I meant rebuttal. Page 55,  
18 line 14, Mr. Drabinski appears to be saying.

19 A. Yes.

20 Q. Yes.

21 A. Okay.

22 Q. So beginning on line 14 there, do you  
23 discuss the decision to use a multi-prime rather than  
24 contracting with a single vendor for EPC?

25 A. Yes.

1 Q. And does that discussion go on through  
2 page 61 of your direct testimony?

3 MR. WILLIAMS: That would be rebuttal,  
4 wouldn't it?

5 BY MR. HATFIELD:

6 Q. Rebuttal. See you got me doing it. Your  
7 rebuttal testimony?

8 A. Yes.

9 Q. Thank you. And is there another -- I may  
10 have already asked you this. Is there another witness  
11 coming up who could also discuss the decision to use  
12 multi-prime?

13 A. Mr. Roberts.

14 Q. All right. And also attached to your --  
15 you also had a discussion I think maybe with  
16 Commissioner Gunn, but I can't recall, about -- how do  
17 we say it -- what I'm going to call pulsing the market  
18 or looking around to see if there were EPC contractors  
19 available. Do you recall that?

20 A. I do.

21 Q. Might have been with Mr. Schwarz  
22 actually. Can you look at Schedule 10 of your  
23 rebuttal testimony. And it's only one page so don't  
24 miss it.

25 A. That's correct. I've got it.

1 Q. Okay. Can you explain for the Commission  
2 a little bit what the purpose of Schedule 10 is?

3 A. Well, this reflects a memo from Steve  
4 Jones who was heading purchasing at the time. It's  
5 dated May 24th, 2006. And it discusses a phone  
6 conversation he had with the head of marketing for The  
7 Washington Group, one of the large vendors; in fact, I  
8 believe as was mentioned.

9 And it was the basis for some of the  
10 comments that I made that said basically it was a  
11 heated market and The Washington Group was doing  
12 business with their close allies and relationships  
13 that already existed and that we were going to be  
14 challenged trying to find interest for the balance of  
15 plant construction for Iatan 2 given the overheated  
16 market.

17 Q. Okay. And when was this memo prepared?

18 A. Well, it's dated May 24th, 2006. They  
19 declined interest in -- in -- in this conversation and  
20 we were asking them if they would be interested in  
21 working with us.

22 Q. Well, and now I've got something just --  
23 I don't remember what the context is exactly, but you  
24 had a discussion about the board minutes that  
25 contained the control budget estimate for 2006. And I

1 think you said perhaps to Mr. Schwarz that you had  
2 some -- I wrote down trouble with the number for  
3 Schiff Hardin?

4 A. Yes.

5 Q. And is there another witness still  
6 scheduled to testify who could provide some more  
7 detail about the control budget estimate for Schiff  
8 Hardin?

9 A. Yes. Forrest Archibald, who's in charge  
10 of our cost area, who's -- will be a witness and who  
11 had similar trouble with that number.

12 Q. There's a pen up here somebody got from a  
13 vendor that doesn't work. So I don't know if that's a  
14 violation of policy or -- I just want to disclose, put  
15 it right there.

16 A. Okay. I guess -- other detail -- you and  
17 Mr. Williams had a discussion about the filing of the  
18 control budget estimate or the definitive estimate and  
19 I don't recall whether you said filing or not, but  
20 whether you did, I want to be clear on something. Was  
21 there ever a filing -- formal filing with the Missouri  
22 Public Service Commission where you said --

23 A. No.

24 Q. -- we're filing our budget?

25 A. If I used filing, it certainly wasn't in

1 a regulatory sense. I did say that we presented the  
2 control budget estimate to the Staff Jan-- in  
3 January -- January 22nd of 2007.

4 Q. All right. But there was no formal  
5 filing --

6 A. Not that I'm --

7 Q. -- in the sense of a regulatory filing  
8 with the Commission?

9 A. Not that I'm aware of.

10 Q. Okay. All right. I know you want to  
11 spend some more time talking about gift policy and  
12 Schiff Hardin so -- somebody, I believe it was  
13 Commissioner Gunn, asked you about coming up with the  
14 idea to hire Schiff. Do you -- who came up with that  
15 idea and you explained that.

16 A. Yes.

17 Q. Do you -- were you here the other day  
18 when Mr. Giles testified?

19 A. Yes.

20 Q. And I'm paraphrasing. I remember  
21 Mr. Giles saying that in the old days, you said to the  
22 construction guys, Go build a project. And whatever  
23 it came back at, that's what it was and you hoped you  
24 could recover your cost. Is that your understanding  
25 of how the industry used to work?

1 A. Pretty much.

2 Q. And I remember him saying, Mr. Downey  
3 didn't want that to happen. He wanted to manage the  
4 process actively.

5 A. That's correct.

6 Q. And is that -- have you already explained  
7 to the Commission that -- that that was the purpose of  
8 having independent oversight?

9 A. I -- I made that attempt to explain that.

10 Q. Well, we won't have you do it again. But  
11 in some of the -- you used the word "independent" a  
12 couple of times "independent entity." And I think  
13 Commissioner Gunn used it as well. I notice that in  
14 some of Staff's testimony, maybe it's in Mr. Hyneman's  
15 testimony, he has concerns with the use of the word  
16 "independent."

17 So just to be clear -- and I think we've  
18 done it, but can you explain for us what you mean when  
19 you say Schiff provided independent analysis?

20 A. Well, they -- they -- they clearly still  
21 work for the company, but they have a separate track  
22 and separate voice up to senior management. If you're  
23 a part of the line organization, which I've referred  
24 to and you report up through the project executives,  
25 you are not independent -- you do not have an

1 independent track of reporting to senior management.

2 You report up through your corporate vice president.

3 In the case of Schiff, we specifically  
4 provided for an independent reporting track up to  
5 senior management so that we could hear from multiple  
6 voices and multiple views of how the project was  
7 progressing, different point of views on issues that  
8 were under discussion or debate.

9 When we got into very difficult  
10 decisions, management is making decisions in the face  
11 of uncertainty and the more information you can  
12 provide and the more points of view you can get on --  
13 on an issue, the more probability you have of reducing  
14 the uncertainty when you do have to make decisions.

15 Q. So was Schiff independent of the project  
16 team then?

17 A. They had the ability to report separately  
18 from the project team. They worked very closely with  
19 the project team. They were an ally, they were on the  
20 ground every day, but they did have the ability to go  
21 around the senior project executives to senior  
22 management of the company. That's not an easy thing  
23 to manage, it's quite challenging, but very essential  
24 and I think fairly common in business today.

25 Q. And so did you set it up that way on

1 purpose?

2 A. Yes. Absolutely.

3 Q. All right. Now, Commissioner Gunn I also  
4 believe asked you a little bit about competitive  
5 process, rate negotiation, et cetera. Did -- Schiff  
6 Hardin had a written contract; isn't that right?

7 A. They did. They had an initial letter of  
8 engagement, but then in 2007 I think beginning of the  
9 year we had a written contract.

10 Q. And I believe the -- there's a copy of a  
11 contract at least attached to Staff witness Hyneman's  
12 testimony. Do you recall that?

13 A. I believe so.

14 Q. And that document indicates that Schiff  
15 was agreeing to charge only its regularly -- regular  
16 hourly rates. Was that your understanding of what you  
17 were charged?

18 A. Yes.

19 Q. Make sure I don't have any more on that.  
20 All right. Okay. Let's talk briefly about -- we're  
21 almost done, believe it or not -- about the gift  
22 policy or the code of conduct. And I want to -- I  
23 want to try to clarify something. Luckily for me,  
24 Commissioner Gunn's not in the room. Commissioner  
25 Gunn said there's an outright ban on gifts. That's a



1 line he used. Is that true?

2 A. No, it's not true. And I didn't quite  
3 have the policy in total memory and it was refreshed  
4 for me. No, there -- gifts are contemplated, nominal  
5 value. And when you talk about sports events, there's  
6 a particular carve-out that allows those events to  
7 occur. And an encouragement of reciprocity. And in  
8 the case of travel, as we talked about in the events,  
9 it -- it is either we pay our own way or we have the  
10 approval of the president of the company or higher.

11 Q. So does -- talk about reciprocity for a  
12 minute. I -- I had a little trouble understanding  
13 that. So does Kansas City Power and Light have events  
14 where it invites vendors?

15 A. Yes.

16 Q. And you pay for those?

17 A. That's correct.

18 Q. All right. And -- so we've got the  
19 policy I think in evidence, but just to make sure, you  
20 were saying that sporting events are acceptable under  
21 the policy?

22 A. Yes.

23 Q. And then let me -- let me read you a  
24 portion here that I think is related to the discussion  
25 we had about your personal travel. The policy, as I

1 understand it, says, Invitations to functions that  
2 involve travel or overnight stays that are in the best  
3 interest of the company will either be paid for by the  
4 company or be approved in advance by the president of  
5 the applicable company.

6           And is that the section you were saying  
7 you believe you did comply with?

8           A.     Yes.

9           Q.     And you did that by obtaining approval of  
10 the president of the applicable company?

11          A.     Our chairman.

12          Q.     All right.

13          A.     I would approve people below me, but he  
14 and I are the only two that can approve those trips.

15          Q.     Now, kind of going backwards here, but --  
16 early in the discussion I think it may have been with  
17 Mr. Schwarz, you were asked about personnel analysis  
18 or a year-end review. Do you recall that?

19          A.     I do.

20          Q.     And just to give that context, can you  
21 tell the Commission, was that a regular process at  
22 Kansas City Power and Light to do reviews of  
23 management employees?

24          A.     Yes. It is a regular process for all of  
25 our management employees. We do a mid-year and then a

1 year-end review for all management employees.

2 Q. And why do you do that?

3 A. It's a very proactive way to deal with  
4 our people. We set goals, we have expectations and  
5 we -- of our management people and we follow up in a  
6 regular consistent way to talk with them about their  
7 performance, to talk about areas of -- of -- that --  
8 where they're doing well and areas for improvement.  
9 When we have challenges with people, we set up action  
10 plans which they have to develop themselves for  
11 self-improvement. And it -- it's just a regular  
12 systematic way in which we manage our people --

13 Q. Okay.

14 A. -- and grow them.

15 Q. Thank you. And do you -- okay. I think  
16 the document we looked at was marked as 73-HC. I  
17 don't guess you have that there. It's an evaluation  
18 of Mr. Grimwade.

19 A. I don't believe I have it.

20 Q. Okay. Now, I think you went through that  
21 with Mr. Williams perhaps and you read some sections  
22 of it. How many years of -- of evaluations of  
23 Mr. Grimwade does that document actually contain?

24 A. This is one year from January 1 of 2006  
25 to December 31st of 2006.

1 Q. And let's stay with that one, but if you  
2 go on back, I think there's some other documents I  
3 want to ask you about.

4 MR. HATFIELD: Yeah, I guess I do have a  
5 specific question we need to go in-camera for.

6 JUDGE PRIDGIN: All right. Just a  
7 moment, please.

8 (REPORTER'S NOTE: At this point, an  
9 in-camera session was held, which is contained in  
10 volume 22, pages 1545 to 1548 of the transcript.)

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1 JUDGE PRIDGIN: You're welcome. We are  
2 back in public forum.

3 WILLIAM DOWNEY testified as follows:

4 BY MR. HATFIELD:

5 Q. So now again, trying to revert back into  
6 next week -- next week -- last week, you were asked  
7 some questions about the PEP -- actually maybe that  
8 was this morning. Seems like last week. About the  
9 PEP and the criteria for success in the PEP. Do you  
10 recall that?

11 A. I do.

12 Q. And do you have a copy of the PEP still  
13 up there in front of you?

14 A. I don't think so.

15 Q. All right. I believe it's Exhibit 251.

16 A. Wait. I think I do.

17 Q. And this is the one that has page numbers  
18 down at the bottom.

19 A. Right.

20 Q. They're sort of in a -- right. So we  
21 were talking about -- well, first of all, this  
22 document was created when?

23 A. Well, this was issued June of 2007.

24 Q. And do we have that on -- is that on your  
25 time line? We -- I don't know that it is.

1 A. No. I --

2 Q. But it would come in on page 2 somewhere  
3 there?

4 A. Right.

5 Q. Where you're --

6 A. Right.

7 Q. Okay. And -- and you had some questions,  
8 I believe -- yes, from Mr. Williams it was this  
9 morning -- about page 15 and 16 regarding success  
10 criteria. Would you turn to page 17, please?

11 A. Yes.

12 Q. And tell us what page 17 is.

13 A. This is a -- a risk matrix that talks  
14 about the threats to the project, the risks involved  
15 as a result of those threats and then mitigation steps  
16 that can be taken around those threats and risks.

17 Q. And so what's the point of preparing a  
18 threat risk mitigation matrix before you even start  
19 the project?

20 A. To identify areas that have probable risk  
21 and to establish plans and -- and programs and  
22 initiatives to mitigate them.

23 Q. And so does the mitigation over there  
24 then explain things you can do to attempt to minimize  
25 threats to success? Is that fair to say?

1 A. Yes, it is.

2 Q. And did Kansas City Power and Light  
3 follow the mitigation plans there?

4 A. We did.

5 MR. HATFIELD: I have no further  
6 questions, Judge.

7 JUDGE PRIDGIN: All right. Thank you  
8 very much. Mr. Downey, thank you, sir. You may step  
9 down.

10 Anything further from counsel before we  
11 go on to Mr. Drabinski?

12 MR. FISCHER: Judge, could I request  
13 about a five-minute break to change out counsel table  
14 here and move some documents?

15 MR. SCHWARZ: I need to move some  
16 documents too.

17 JUDGE PRIDGIN: That will be fine. Let's  
18 go off the record. We'll take about ten minutes  
19 actually. We'll come back after 10 after 5:00.

20 (A recess was taken.)

21 JUDGE PRIDGIN: All right. We're back on  
22 the record. All right. Mr. Drabinski has taken the  
23 stand. I need to administer an oath. Is there  
24 anything further from counsel before I swear him in?

25 MR. FISCHER: Yes, Judge. Before we go