

1 Q. Do you know if there are any other law firms  
2 that specialize in construction law?

3 A. I know of one, but I'm not -- I'm not familiar  
4 with really how much of a specialty construction law is. I  
5 know I'm trying to think of their name. Duane Morris was  
6 affiliated or hired Pegasus, so I know they have some  
7 expertise specialty in construction, but that's the limit of  
8 my knowledge.

9 Q. Did you ever do analysis to determine whether  
10 there are other law firms that have construction law groups  
11 or --

12 A. I didn't, no.

13 Q. Okay. Let's go to page 4 of your rebuttal.

14 A. Okay.

15 Q. Here you state the cost overruns for Iatan 1,  
16 starting -- it's around line 21 going over to the next page.

17 A. I assume -- yes, go ahead.

18 Q. Do you see that?

19 A. Yes.

20 Q. Do you know what that number is on a  
21 percentage basis for Iatan 1?

22 A. Are you asking what was the increase from the  
23 control budget to the reforecasted budget as a percent?

24 Q. I'm asking what percentage of the cost  
25 overruns is on a percentage basis?

1 A. Well, as I stated, KCP&L used the difference  
2 between the control budget and the final actual or this case  
3 what's referred to in my testimony as a -- is the May of '08  
4 forecast, 376 million compared to 484 million. That  
5 difference is about 28 percent, I believe.

6 Q. Do you know what the labor market was in 2009  
7 and 2010?

8 A. The labor -- the extent of my knowledge, the  
9 labor market was more labor was available in '9 and '10 than  
10 was in '6 and '7.

11 Q. Do you know anything about 2008?

12 A. Well, as the economy recessed, my presumption  
13 and my observation with the project is that labor  
14 availability was not an issue.

15 Q. Okay. So at any point did the rates go down  
16 to reflect this -- or labor rates decrease reflect the  
17 availability of more employees available?

18 A. I don't know.

19 Q. Do you know if KCP&L had any reduction in  
20 labor rates to reflect the recession?

21 A. The Iatan 1 and 2 projects were union projects  
22 and paid union wages, so it's unlikely that, to the best of  
23 my knowledge, that a union would reduce their union labor  
24 rates depending on the economy.

25 Q. So if they were using union rates, then their

1 rates would have only increased every year throughout the  
2 project?

3 A. I don't know that. It would be whatever the  
4 union rate was at the time the union performed the work. I  
5 don't follow the labor union's rates.

6 Q. Let's go to page 18 of your direct.

7 A. Okay.

8 Q. There is a Q and A that says at line 16:  
9 "Were any of the increases of the Iatan 2 project costs the  
10 result of management imprudence by KCP&L?" And you say, "Not  
11 to my knowledge, no."

12 A. Are we at direct?

13 Q. Yes.

14 A. And page again?

15 Q. 18.

16 A. Line, please.

17 Q. Line 16.

18 A. Okay. I see it. Thank you.

19 Q. So is it your testimony that you disagree with  
20 all of the recommendations on Mr. Walt Drabinski?

21 A. Absolutely.

22 Q. How about, do you disagree with all of the  
23 recommended prudence adjustments from KCP&L's witness, Dr.  
24 Chris Nielsen?

25 A. It's KCP&L's position that they do disagree

1 with Mr. Nielsen and Mr. Davis has testimony on -- to that  
2 effect. I do not testify on --

3 Q. So you don't have an opinion on that?

4 A. No.

5 Q. And so, then, you also disagree with all of  
6 the adjustments made by Staff?

7 A. Yes.

8 Q. Let's go to page 22 of your direct.

9 A. Okay.

10 Q. Here, there are risks that KCP&L identified on  
11 the Iatan project, correct?

12 A. That's correct.

13 Q. And in the section for Alstom on this -- we  
14 need to go in-camera.

15 JUDGE PRIDGIN: Thank you. One moment,  
16 please.

17 (REPORTER'S NOTE: At this point, an in-camera  
18 session was held, which is contained in Volume 20, pages 1070  
19 to 1073 of the transcript.)

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1 JUDGE PRIDGIN: Let me interrupt just briefly,  
2 make sure Commissioners in St. Louis are able to participate.  
3 Commissioner Gunn, Commissioner Kenney?

4 COMMISSIONER GUNN: (Inaudible.)

5 JUDGE PRIDGIN: Commissioner Gunn, I'm sorry,  
6 we didn't hear you. Commission Kenney?

7 COMMISSIONER GUNN: We're here. Can you hear  
8 us?

9 JUDGE PRIDGIN: Very good. Thank you.

10 COMMISSION GUNN: Thank you.

11 JUDGE PRIDGIN: Ms. Ott, before we resume, can  
12 I inquire roughly how much more cross you think you'll have  
13 on Mr. Giles? I'm trying to determine when to break.

14 MS. OTT: We probably should take a break.

15 JUDGE PRIDGIN: I'm showing 10:30. Let's  
16 resume at 10:45. Thank you. We are off the record.

17 (A break was held.)

18 JUDGE PRIDGIN: All right. We are back on the  
19 record. Before Ms. Ott resumes cross-examination of  
20 Mr. Giles, I just wanted to inform the parties, because we  
21 have a point-to-point connection with St. Louis now, even  
22 though we are, say, in intermission or recess and I've muted  
23 the webcast, the people at point-to-point in St. Louis can  
24 still hear you. So if there's something you don't want the  
25 folks in St. Louis to hear, you'll -- it would be safer if

1 you left the room.

2                   And in all honesty, it's probably simply safer  
3 that you leave the room anyway just in case I make an error  
4 with the technology, or like this morning we have some sort  
5 of problem with the connection. It's probably just simply a  
6 safer practice to just simply watch what you say in this room  
7 and just assume it's being broadcast to the public.

8                   Anything further before we resume  
9 cross-examination? All right. Mr. Giles, you are still  
10 under oath, sir, and Ms. Ott, when you're ready.

11 CHRIS GILES testified as follows:

12 BY MS. OTT:

13           Q.       I'm not sure if I told you to go to page 6 of  
14 your rebuttal or not, so if we could turn to page 6, line 20.

15           A.       Okay.

16           Q.       And you state that the decision to fast track  
17 was made on the basis of our quality expert advice from our  
18 external advisors. Who are these advisors you're speaking  
19 of?

20           A.       I would say Burns & McDonnell and Schiff  
21 Hardin.

22           Q.       And you state that the decision to fast track  
23 was done to meet KCP&L's early schedule milestones, correct?  
24 You see how the sentence extends?

25           A.       Yes.

1 Q. why was it so important to meet these  
2 milestones?

3 A. The early milestones, as Mr. Bell testified  
4 yesterday, those are on the critical path for the project.  
5 So it was necessary to have foundations in place in order to  
6 begin structural steel erection on the boiler.

7 Q. Was KCP&L willing to incur additional costs  
8 just to make the June 2010 goal for the completion of  
9 Iatan 2?

10 A. No. In fact, KCP&L had an opportunity to meet  
11 the June 1, 2010, date as late as mid-summer '09. And when  
12 we did the reforecast during that period, we evaluated what  
13 it would cost to meet a June 1, 2010, date and made the  
14 decision to extend the project so that we would not incur  
15 additional costs. And it was a deliberate decision.

16 Q. Would you have had to fast track the project  
17 to meet the June 2010, an additional fast track decision?

18 A. No.

19 Q. Did KCP&L not pursue the wind investment in  
20 the regulatory plan because the market conditions at the time  
21 would not make it a prudent decision?

22 MR. FISCHER: Assumes facts not in evidence  
23 that the wind -- the second wind was part of the regulatory  
24 plan.

25 MS. OTT: I'll lay the foundation.

1 JUDGE PRIDGIN: Thank you.

2 BY MS. OTT:

3 Q. Were you part of the regulatory plan  
4 negotiations?

5 A. Yes.

6 Q. Was there a section in the regulatory plan  
7 related to a wind investment?

8 A. Yes. The regulatory plan contemplated a 100  
9 megawatt wind project to come online in 2008. It was not a  
10 requirement of the regulatory plan. It was an option, and  
11 the agreement was to evaluate whether it was appropriate to  
12 build another hundred megawatts in that time frame. KCP&L  
13 did that evaluation, determined that due to market conditions  
14 it was not prudent to pursue that investment.

15 Q. Thank you. Over the past few days, there have  
16 been a lot of discussion about what a "definitive estimate"  
17 means.

18 A. Yes.

19 Q. What is your definition of definitive  
20 estimate?

21 A. I am glad you asked that because I have been  
22 waiting patiently to answer it.

23 Q. Did you memorize it last night?

24 A. I have to answer that by going back to 2005  
25 when KCP&L, and myself included, were negotiating the



1 regulatory plan and the document that, obviously, was created  
2 as a result of those negotiations. At that time, that  
3 particular topic -- and I know this was a question of at  
4 least Commissioner Kenney -- there was -- that was the least  
5 discussed topic of any item contained in that regulatory  
6 plan, and to explain why that was the case --

7 Q. But I want to know what your definition is. I  
8 don't -- are you trying to give me your definition in 2005 or  
9 what you think the definition is today?

10 A. well, if you would allow me to finish.

11 Q. well, I'm asking for the definition, not  
12 the --

13 A. I don't have a definition today and I didn't  
14 have one then.

15 Q. Okay. Thank you.

16 A. But I'm explaining to you why.

17 Q. I didn't ask why you don't have a definition.  
18 I just want to know what your definition was.

19 A. well, I will correct my testimony.

20 Q. I --

21 A. The definition to me --

22 MS. OTT: Judge, this is not responsive.

23 JUDGE PRIDGIN: Yeah, I'll sustain. I mean,  
24 just try -- I know she's giving you quite a bit of leeway in  
25 asking you to explain, but I think the question was, you

1 know, do you have a definition and then --

2 THE WITNESS: Well, there are -- well --

3 BY MS. OTT:

4 Q. You stated you didn't have an answer.

5 A. In 2005 --

6 MS. OTT: Judge --

7 JUDGE PRIDGIN: Okay. Go back and -- can you  
8 rephrase your question, Ms. Ott?

9 BY MS. OTT:

10 Q. I said, what was your definition of definitive  
11 estimate in 2005? I believe you said you didn't have one and  
12 you don't have one today.

13 A. Well, I was attempting to correct the "have  
14 one today." I don't have one today, but the industry that  
15 Mr. -- has one. I wasn't aware in 2005 of an industry  
16 definition, and I had no definition, and there was not a  
17 definition contained in the regulatory plan.

18 Q. You stated you had been around in rate cases  
19 over several years with KCP&L, correct?

20 A. Yes.

21 Q. Would you have been involved in a rate case  
22 back in 1980 in ER-81-42?

23 A. I believe -- well, I was definitely here and  
24 I'm familiar with that docket number, yes.

25 Q. Do you know who Mr. David McCoy is?

1 A. Mr. McCoy was a long-time employee of KCP&L.

2 Q. I have a copy of Mr. McCoy's direct testimony  
3 from that case. Now, on page 3 of Mr. McCoy's direct  
4 testimony, he defines what a definitive estimate is. Can you  
5 read how Mr. McCoy, back in 1980, defined a definitive  
6 estimate?

7 A. Page 3 of his testimony is actually the  
8 Case No. ER-81-42, definitive estimate, and I don't know that  
9 he's not quoting something here.

10 Q. well, if you don't feel comfortable reading it  
11 --

12 A. I don't feel comfortable reading it because  
13 there's a lot of testimony that precedes this where he  
14 qualifies what this means.

15 MS. OTT: Judge, can I (sic) take  
16 administrative notice of Mr. McCoy's testimony?

17 JUDGE PRIDGIN: That was filed in the docket  
18 that --

19 MS. OTT: In the '81 case. It's a Commission  
20 case.

21 MR. MILLS: Judge, I'm going to object again  
22 because there's, obviously, a lot of testimony there. I have  
23 not had an opportunity to see it. I think part of the  
24 procedure under 536 is that parties have an opportunity to  
25 look at something that the Commission is considering taking

1 official notice of, and there may be, just looking at the  
2 document, it appears to be 50, 60 pages long, and there may  
3 be a great deal of stuff that's irrelevant to this case, and  
4 I object to it both on the basis that I haven't seen it and  
5 on the fact that there may be a great deal of irrelevant  
6 information.

7           If Ms. Ott wants to narrowly focus the portion  
8 with respect to the definitive estimate, I may not have an  
9 objection. But without reviewing the document, I don't know.

10           MS. OTT: well, on page 1, it is a  
11 construction budget manual, and it's citing the construction  
12 budget manual. We can take official notice of the entire  
13 budget manual if that would make everyone happy.

14           MR. FISCHER: I would join Public Counsel in  
15 that objection. It's not an order of the Commission, and I  
16 think certainly that person's not available for  
17 cross-examination.

18           JUDGE PRIDGIN: Well, I'm going to overrule.  
19 I mean, I think Commission can take notice of what has been  
20 filed in its cases. I mean, whether it's -- whether it's  
21 relevant or whether it is persuasive in any way is another  
22 question, but it's notice of what has been filed as testimony  
23 in a prior case in the Commission's records.

24           MR. MILLS: So, Judge, you're not taking this  
25 into this case as evidence; you're simply taking notice that

1 this was filed in a previous case?

2 JUDGE PRIDGIN: That's correct. It hasn't  
3 been offered as evidence. I was asked to take notice.

4 BY MS. OTT:

5 Q. Let's go to page 8 of your rebuttal testimony.  
6 On line 22, you mention the R&Os -- strike that. I've  
7 already covered it.

8 Do you know if the Iatan project team  
9 employees are still making trips to Iatan 2?

10 A. I don't.

11 Q. Do you know if mileage has been charged since  
12 the in-service date for mileage to Iatan 2?

13 A. I don't.

14 Q. Do you know if other expense reports are --  
15 people are submitting under the project after it's been in  
16 service?

17 A. Would you restate?

18 Q. Do you know if there are expense reports still  
19 charged to the Iatan 2 project?

20 A. I don't know.

21 Q. Now, you're familiar with section Q of the  
22 regulatory plan of the stipulation and agreement, correct?

23 A. I believe, if that's the cost control system  
24 language, yes.

25 Q. okay. Is it possible for KCP&L to create a

1 list, whether it be five pages, ten pages, a hundred pages,  
2 that lists all the cost overruns and explains why they were  
3 incurred? It's a yes-or-no question.

4 A. I don't know of any format -- I can't conceive  
5 of a format --

6 Q. So no?

7 A. -- where one could do that.

8 Q. Okay. Okay. I want to go back to something  
9 we were talking earlier when you said that Schiff had some --  
10 Schiff employees were all uniquely experienced.

11 Can you tell me how Ms. Schermer is uniquely  
12 experienced for this project?

13 A. I don't have Ms. Schermer's resume in front of  
14 me. I know Ms. Schermer is a very knowledgeable, very  
15 articulate and thorough attorney regarding contracts,  
16 contract administration and construction projects.

17 Q. So do you know if she's had any experience on  
18 large power plant construction projects before?

19 A. I know Ms. Schermer from my work with her.

20 Q. But you don't know anything about her  
21 credentials?

22 A. I do not.

23 Q. Okay. How about Ms. Okizaki, do you know  
24 anything about her credentials?

25 A. No. I have worked with Ms. Okizaki throughout

1 the life of the project, extremely bright, intelligent  
2 attorney that very much knows the construction industry and  
3 practices in contracts.

4 Q. But you don't know what her experience was  
5 prior to your Iatan 2 project involvement?

6 A. No.

7 Q. Do you know if Ms. Schermer has any prior  
8 experience working on rate cases?

9 A. No.

10 Q. And the only rate case she's worked on with  
11 you is this current rate case?

12 A. I don't know what Ms. Schermer has done in her  
13 past. I know what she did for us on the project.

14 Q. Is she doing rate case work or just  
15 construction -- work related to the construction project?

16 A. She's not doing rate case work that I'm aware  
17 of.

18 Q. So you're not aware if she's billed KCP&L for  
19 doing work on this rate case?

20 A. All of the Schiff Hardin attorneys, as well as  
21 our attorneys, review and comment on testimony, so to the  
22 extent you're terming testimony preparation as rate case  
23 work, then yes, she's done that.

24 Q. So are they billing them to the Iatan project,  
25 or are they billing them to rate case expense?

1 A. My understanding is, if they were working on  
2 testimony, it would be rate case expense.

3 Q. Okay. Now, since you were involved in the  
4 stipulation and agreement to set up the regulatory plan, you  
5 were aware that the construction project was going to be  
6 subject to regulatory review, correct?

7 A. Could you restate that? I'm not sure I  
8 understand the question.

9 Q. Okay. Well, since you were involved from the  
10 beginning of setting up the regulatory plan, you were aware  
11 that the Iatan construction projects would be subject to  
12 regulatory review?

13 A. Yes.

14 Q. Okay. Now, yesterday there was several  
15 comments that your consultants and auditors would give verbal  
16 reports. Wouldn't it be prudent, if you know you're subject  
17 to regulatory review, to have some documentation to support  
18 the assessments given by auditors?

19 A. You'll have to be more specific. I don't  
20 understand.

21 Q. If you know you're subject to regulatory  
22 review, if you know that Staff is going to ask you data  
23 requests and ask for documentation to prove expenses, if  
24 you're going to have expenses charged and there's no  
25 documentation to support it because it was given verbally,



1 you knew you were subject to regulatory review, why wouldn't  
2 you document those conversations or those assessments?

3 A. I'm not aware that KCP&L ever verbally  
4 approved an expense receipt or an expense charge. I'm not --

5 Q. Maybe I'm not being clear. Mr. Davis had  
6 stated that Lawgon or -- for example, would give verbal  
7 reports of their audit and not write -- put something in  
8 writing.

9 So if you know you're subject to regulatory  
10 review, why wouldn't you ask Lawgon or whatever auditor or  
11 assessor, Strategic Talent Solution to document the work they  
12 were doing, knowing you were subject to regulatory review?

13 A. Lawgon did not do an audit.

14 Q. Assessment. I mean, an assessment, an audit,  
15 a review.

16 A. Like I said, Lawgon did not do an audit.

17 Q. But they did an assessment. If they did a  
18 verbal assessment and you knew you were subject to regulatory  
19 review, why wouldn't you have that memorialized in writing?

20 A. I'm not trying to be argumentative with you,  
21 but assessment of what?

22 Q. Did Lawgon do assessments of the project?

23 A. I don't know.

24 Q. Who's Mr. John Grimwade?

25 A. Mr. Grimwade, again, was a long-term employee

1 of KCP&L. He had a variety of roles within the company  
2 during my career there.

3 Q. What was his relationship to the Iatan  
4 construction project?

5 A. Initially, Mr. Grimwade was senior director, I  
6 believe was his title, of construction.

7 Q. Is he currently with KCP&L?

8 A. No, he's not.

9 Q. How about Terry Murphy?

10 A. Terry Murphy reported to John Grimwade early  
11 in the project. I'm not sure what his title was.

12 Q. Is he with KCP&L anymore?

13 A. No.

14 Q. And Bill Riggins, he was general counsel; is  
15 that correct?

16 A. Did you ask me if Bill Riggins was general  
17 counsel?

18 Q. Yes.

19 A. Yes.

20 Q. And he's no longer there anymore?

21 A. No.

22 Q. How about Carl Churchman?

23 A. Carl Churchman was vice-president of  
24 construction. He left the company shortly upon completion of  
25 the construction work.

1 Q. And when was that?

2 A. I believe he left the company mid-summer 2009.

3 Q. And Mr. Jerry Reynolds, he was the attorney in  
4 regards to construction?

5 A. Mr. Reynolds was onsite at the Iatan project  
6 for most of the time the project was progressing, yes.

7 Q. He was an attorney?

8 A. Yes, he was.

9 Q. And he's no longer there?

10 A. No.

11 Q. And Lora Cheatum, what was her role?

12 A. Ms. Cheatum was -- I believe her title was  
13 vice-president of procurement early in the project.

14 Q. And is she an employee of KCP&L?

15 A. No.

16 Q. And Steve Easley, who is Steve Easley?

17 A. Mr. Easley was vice-president, and perhaps his  
18 title was senior vice-president of production, and at one  
19 time production and construction.

20 Q. And he's no longer employed with KCP&L?

21 A. No, he's not.

22 Q. Now, would you say these individuals gained  
23 valuable experience working on the Iatan construction  
24 project?

25 A. I can't speculate to what they gained.

1 Q. Do you know if KCP&L did anything to retain  
2 these employees before they left?

3 A. I know in one particular case, Mr. Churchman,  
4 I know Mr. Downey attempted -- I should say not  
5 Mr. Churchman. It was Mr. Price. Mr. Price was  
6 vice-president of construction, and I know Mr. Downey  
7 attempted to retain  
8 Mr. Price.

9 Q. But you don't know if KCP&L tried to retain  
10 any of the other employees?

11 A. No, I don't know.

12 Q. Let's go to page 13 of your rebuttal, I think.  
13 And you're discussing how many -- the change orders in which  
14 Mr. Elliott reviewed.

15 Now, he only was provided change orders of the  
16 dollar value of \$50,000 or greater?

17 A. That's correct.

18 Q. Okay. How many change orders were there under  
19 the dollar value of \$50,000?

20 A. I don't know.

21 Q. Do you have a guess of how many there would  
22 be?

23 A. No.

24 Q. Do you know if that would be voluminous to  
25 provide to staff?

1 A. I don't know.

2 Q. Do you know who would know that?

3 A. Mr. Archibald.

4 MS. OTT: I don't have any further questions.

5 JUDGE PRIDGIN: Ms. Ott, thank you. Let me  
6 see if we have any bench questions. Commissioner Jarrett?

7 EXAMINATION

8 QUESTIONS BY COMMISSION JARRETT:

9 Q. Yes. Good morning, Mr. Giles.

10 A. Good morning.

11 Q. It's still morning, barely. I want to just  
12 start out, do you still have Exhibit 252? That's that chain  
13 of e-mails that Ms. Ott had given you earlier.

14 A. I do.

15 Q. All right. If you would go down to the bottom  
16 e-mail, which is from Wess Henderson to Bill Downey and Chris  
17 Giles, with a copy to Steve Dottheim, subject Iatan  
18 construction project.

19 A. Yes.

20 Q. And that is addressed to Mr. Downey and you;  
21 is that correct?

22 A. That's correct.

23 Q. And Mr. Henderson indicates that this is a  
24 follow-up on your phone call to Steve Dottheim and myself  
25 last Wednesday, February 20th.

1 Do you recall that February 20th phone call?

2 A. I do. I mean, I recall that we made a phone  
3 call and invited the staff to observe the process, yes.

4 Q. What process was that?

5 A. We were engaged in identifying all of the  
6 costs. At this point in time we knew we had exceeded the  
7 contingency for Unit 1, and the reforecast process was about  
8 to embark for both Unit 1 and Unit 2. Unit 2, by that time  
9 frame, was roughly 70 percent engineered and Unit 1 was 100  
10 percent engineered.

11 So we were embarking upon this critical time  
12 frame where we knew the reforecast would have significant  
13 value to understanding how the costs were progressing and  
14 why. So that -- that's why we made the call.

15 Q. All right. And then Mr. Henderson asked for  
16 more specificity and wanted to know what had changed to have  
17 the staff become more involved. Is your prior answer  
18 basically --

19 A. Basically, that's what I was explaining to  
20 Mr. Henderson was that we were at a critical juncture here  
21 and there would be a lot of significant discussion on cost  
22 and schedule at that point and wanted to make sure they had  
23 the opportunity to understand it.

24 Q. And basically, that is what you put in writing  
25 and responded to Mr. Henderson's e-mail, which is the next

1 e-mail up, dated March 4th -- from 2008, March the 4th, from  
2 you to Mr. Henderson and Bill Downey with a carbon copy to  
3 Steve Dottheim, Bill Riggins and Terry Bassham?

4 A. Yes. That was my written response to inform  
5 Mr. Henderson of -- of why -- it wasn't -- it wasn't that  
6 things had -- it wasn't that we were trying to get Staff more  
7 involved. We were hoping to have Staff involved from the day  
8 one of the project, and Mr. Elliott had been onsite beginning  
9 in about 2007.

10 No one from the auditing or accounting staff  
11 had been onsite or had any discussions with us. So this was  
12 a way -- other than our quarterly meetings, I should say. So  
13 this was our way to say, look, we were at a critical juncture  
14 here. Mr. Elliott's been onsite. We'd like to have the  
15 accounting staff come up as well, or anyone, basically, Staff  
16 wanted to come.

17 Q. All right. And then I think you indicated  
18 that instead of a face-to-face meeting, you had a phone  
19 conference with Mr. Henderson?

20 A. I believe we talked by phone after that. I  
21 somehow got the definite impression Staff would not be taking  
22 us up on our offer, and they did not. We never scheduled a  
23 time for them to come and review anything at that time. As  
24 the work was progressing, they did not attend any of those  
25 sessions.

1 Q. Do you recall, was something said by anyone  
2 from Staff that led you to get that impression?

3 A. I don't recall that -- you know, we had these  
4 quarterly meetings that were ongoing, and I don't remember  
5 if -- perhaps in one of those quarterly meetings it was  
6 brought up and said, well, we're not -- we're not going to do  
7 it, or if it just sort of went away, you know.

8 Q. Okay.

9 A. We were -- we were reporting to Staff every  
10 quarter, and at this particular time frame, we completed --  
11 this was in February/March of '08. We came down and  
12 presented the reforecast in May of '08. So the next meeting  
13 might have been, well, here it is, we're finished with it.

14 Q. Okay. I'm finished with 252, so you can put  
15 that aside.

16 Now, Ms. Ott had asked you several questions  
17 about discovery requests, data requests where she -- her  
18 questions -- several of her questions talked about KCP&L  
19 withholding information.

20 How many rate cases would you say you've been  
21 involved in, in your career, ballpark? I know it's a lot.

22 A. Fifteen, twenty.

23 Q. And as part of your job with KCP&L, would you  
24 normally assist in answering or answering data requests in  
25 rate case discovery?



1 A. Yes.

2 Q. In your experience in those 15 to 20 rate  
3 cases, would it be common for the company to claim  
4 attorney-client privileges on some data requests?

5 A. Yes. It's -- it would be, I believe, in every  
6 case, there's a certain amount of attorney-client privilege  
7 that is -- I don't know the term, but yes.

8 Q. Right. And I know you're not a lawyer, so I'm  
9 not asking for a legal opinion, but just given your  
10 experience in that many rate cases and in answering and  
11 assisting in answering data requests, is it your  
12 understanding that a proper attorney-client privilege claim  
13 is a legitimate response to a discovery request?

14 A. Yes. That's been my experience, and unlike a  
15 lot of the past cases I've been involved with, in this  
16 particular case, one, we had a hearing last April on this  
17 very topic of attorney-client privilege, and the Commission  
18 found in that case that the company was forthcoming.

19 Since that time, we've also had a special  
20 master appointed, and to my knowledge, the special master has  
21 withheld -- or upheld the company's claims most of the time.  
22 There's a few things he's found that we should give up. The  
23 ones that I've observed, as I stated earlier, none of it  
24 would have impacted the Staff's ability to do its audit and  
25 its prudence determination.

1 Q. Right. And I believe the special master  
2 received probably 60 or 70,000 documents from KCP&L. Does  
3 that sound about right to you?

4 A. I would say yes.

5 Q. And did the special master complain that you  
6 didn't give him what you were ordered to give him?

7 A. No, not that I'm aware of.

8 Q. All right. And in your experience in these  
9 rate cases, is it common for there to be discovery disputes  
10 between Staff and the company?

11 A. It's very common. It's very common in  
12 Missouri, yes.

13 Q. And are those usually worked out?

14 A. Yes.

15 Q. All right. Ms. Ott asked you a little bit  
16 about the definitive estimate.

17 A. Yes.

18 Q. I think you were in the middle of explaining  
19 what you believed about the definitive estimate, and so I  
20 will just ask you: Tell me what you want to tell me about  
21 the definitive estimate.

22 A. I'd be glad to. In 2004, 2005 when we were  
23 negotiating the regulatory plan, the stipulation and  
24 agreement, Mr. Featherstone and I had both experienced the  
25 Wolf Creek case, and we had experienced it together.

1 Mr. Featherstone and I had a very brief conversation that  
2 basically said, look, wolf creek did not have documentation.  
3 They did reforecasts that you couldn't document what they  
4 did.

5           At the end of the day, Mr. Featherstone had to  
6 get the company to create what he called these reconciliation  
7 packages, which basically was go back after the fact and  
8 explain everything. He indicated he did not want that in  
9 Iatan 1, and my thought process at that time was I certainly  
10 don't want it either. And what I wanted, my goal was I want  
11 to give you every document, every decision-making process,  
12 everything we do on this project as we are doing it.

13           And we will create a cost control system that  
14 we will manage to -- I mean, that will be our management  
15 day-to-day of this project, and we will explain -- and at the  
16 time it was any cost identified, explain any cost overruns,  
17 at any point in time, whether it's three months after the  
18 project or five years when it's completed, you won't have to  
19 wait until the end. You'll have it every step of the way.

20           So that was the mind-set. And when we  
21 selected the term "definitive estimate," it wasn't defined.  
22 It wasn't even discussed what that meant. To me, what it  
23 meant, we will get you the budget that we're going to manage  
24 to as soon as we decide this is the budget. And we called it  
25 definitive estimate in the document. It could have been

1 called anything. It's the budget we're going to give you to  
2 track to.

3           As we were completing the evaluation and  
4 vetting the control -- what we call the control budget, which  
5 was completed in December of '06, I learned for the first  
6 time from Mr. Meyer, who was helping us with this progress,  
7 with this estimate, he said, you know, Chris, definitive  
8 estimate in the industry is when a project is more like 70  
9 percent engineered. So you got a bit of a problem here.

10           And I said, well, I understand that, but it  
11 doesn't really matter because this is what we're going to  
12 track to, this December '06 control budget that was 20 to 25  
13 percent engineered at that time. And so when we went down to  
14 explain to the Staff and the other parties, we had the  
15 budget, it's now January of '07, right after the board had  
16 approved it, and I said to the Staff, I did not want anyone  
17 thinking we were pulling a fast one, that, hey, now they're  
18 saying the definitive estimate's not going to be known for  
19 two more years. I didn't want that.

20           So I went into that meeting and said, look,  
21 definitive estimate in the industry is later, but I don't  
22 care. Doesn't matter. We're going to track to this budget  
23 I'm handing you, and we're going to call it control budget  
24 estimate, and it's going to be, for purposes of tracking, the  
25 same as the definitive estimate in this document. We went

1 through all that. There was no confusion. Nothing.

2 Q. And who did you go through that with, if you  
3 recall?

4 A. It was everybody that was involved with the  
5 project up to that point. Mr. Henderson would have been  
6 there, Mr. Elliott, Mr. Warren Wood. I don't believe  
7 Mr. Hyneman was there or Mr. Schallenberg.

8 Q. Was Mr. Featherstone?

9 A. Mr. Featherstone was, yes.

10 Q. Okay. Do you recall the questions from  
11 Ms. Ott regarding the fast-tracking?

12 A. Yes.

13 Q. Why did the company decide to use the  
14 fast-tracking method?

15 A. We really didn't have any choice from the  
16 standpoint of meeting a summer even of 2010 timeline. We did  
17 not have -- in order to get an EPC contractor, prepare bids  
18 and get it out on the street and get responses, that would  
19 have taken about a 12-month period. We didn't have time to  
20 do that, so in order to meet the June or summer 2010  
21 deadline, it could be done, but the early -- early  
22 engineering would have to proceed immediately and continue.  
23 For instance, Burns & Mc said we can design the foundations,  
24 get them on schedule, and continue to work on the other items  
25 as you build the foundations.

1                   And I think Mr. Bell, as he testified  
2 yesterday, it's common to do that. I've been working  
3 recently with some more construction projects and -- and the  
4 interesting thing is that, even on an EPC contract -- and I  
5 asked this of Mr. Bell -- aren't they also fast tracked? And  
6 his response was yes, they are all fast tracked because  
7 they're not going to wait a year to start construction. It's  
8 just the normal way you do it today.

9                   Q.       And Ms. Ott also asked you some questions  
10 regarding EPC versus multi-prime methods?

11                  A.       Yes.

12                  Q.       Can you describe the process the company used  
13 to decide which of those methods to use?

14                  A.       Yes. We had a considerable amount of  
15 discussion and right off the -- and one thing that's been a  
16 little bit confusing, I think, is you can do an EPC for the  
17 entire project, you know, it's called a full-wrap EPC,  
18 engineer, procure, construct.

19                         We had no interest from anyone in doing that  
20 kind of a project. So the -- there just wasn't anyone at  
21 that point in time that could do it that would take on that  
22 risk given the market conditions, the lack of having built  
23 coal units for some time. So they kind of all pulled back  
24 and said, well, we're not going to build that.

25                         The next best option for KCP&L, then, was can

1 we get major components of the project under an EPC. And  
2 that's when the company went out and got the bid from Alstom  
3 and others to do the boiler and AQCS equipment for both units  
4 all under an EPC contract and were able to secure that. And  
5 then went out and got the turbine from Toshiba in a process.

6           So what was remaining, then -- and I'm getting  
7 a little more technical than I should, but it's basically the  
8 balance of plant, how do you connect all this stuff together,  
9 you know, the electrical, mechanical, water, all this stuff  
10 that's not part of these packages.

11           And KCP&L had thought we could go out and get  
12 individual packages on, for instance, say we'll get a  
13 mechanical, we'll get an electrical, we'll develop these  
14 packages and put them out for bid. We did not have anyone  
15 interested in EPC for that scope of work, the balance of  
16 plant work. So we were progressing down this path to have  
17 multiple contractors for the balance of plant, and that's  
18 when Kiewit had a job cancel and came in and said, look,  
19 we'll do it for you, we'll take that as basically an EPC and  
20 do all of that balance of plant work.

21           And we were fortunate that Kiewit became  
22 available because we're not even sure, when we hired Kiewit,  
23 that we would have enough competition for those packages  
24 even. So that's -- that's kind of the progression of the  
25 whole contracting strategy.

1 Q. All right. Do you recall how many firms you  
2 contacted about the possibility of entering into an  
3 EPC contract?

4 A. My recollection is that Mr. Jones was the  
5 individual that did that, but there were all of the large  
6 ones. I mean, it was -- which is about five to six. I mean,  
7 there are not a lot of them. Bechtel, Fluor, Washington  
8 Group, Kiewit. All the big ones were contacted.

9 Q. You were here yesterday when I was -- when  
10 Mr. Jones was on the stand --

11 A. Yes.

12 Q. -- were you not? And listened to all of his  
13 testimony?

14 A. I did.

15 Q. I want to ask you about the reporting from  
16 KCP&L to Staff. He indicated you may have some more  
17 information about how that worked. And my understanding is  
18 that there were quarterly reports given to Staff.

19 Those were called -- I can't remember -- K  
20 Reports or something like that?

21 A. Yes. There were -- beginning in, I believe it  
22 was in the first quarter of '06, we started preparing  
23 quarterly -- what we called the quarterly report, and it  
24 included as part of that report the cost portfolio or the K  
25 Report was attached, which is essentially the cost report.



1 So the quarterly report was an extensive narrative of  
2 everything that had happened in that quarter at the project  
3 and everything we projected was going to happen in the future  
4 as far as risks, opportunities, the status of it.

5           There was about a 45-day delay from the end of  
6 the quarter until we got the report prepared and sent to  
7 staff and the other parties. So once we gave them the  
8 report, we had a team of people come to Jefferson City every  
9 quarter to answer questions on that report and at the same  
10 time give all the parties an update since it's now 45 days  
11 later. We would cover that 45 days in that meeting and say,  
12 well, since the report, here's what's happened, whether this  
13 cost went up, this cost went down, we've identified a  
14 potential issue here and here's how we're going to mitigate  
15 it.

16           So that was really, as it turned out, the most  
17 valuable -- to me, the most valuable item discussed in those  
18 meetings was not what we had written, but what had happened  
19 since we had written it. And we spent a lot of time  
20 discussing that.

21           Q. All right. So, for example, using I think one  
22 of Mr. Mills's examples, if a pump had been designed,  
23 engineered and it was put in upside down in the design and it  
24 was discovered and there had to be extra expense incurred in  
25 fixing that, something like that would be in that quarterly

1 report and Staff would be made aware of that?

2 A. Yes.

3 Q. And then I think he also -- Mr. Jones also  
4 said something about there were monthly reports as well?

5 A. Yes. We also prepared monthly status reports  
6 and K Reports. We were not providing that to anyone  
7 throughout the project development and execution, but as part  
8 of the discovery process, Staff requested and got all of  
9 those monthly reports as well.

10 Q. Okay. And I don't know if you may know this  
11 or not, but are you aware that City Utilities of Springfield  
12 is currently constructing a coal-fired generation plant?

13 A. I was not aware of that.

14 Q. I won't ask you about it then.

15 Were you involved in the prudence review in  
16 Kansas Corporation Commission regarding the prudence of the  
17 Iatan project?

18 A. I was, yes.

19 Q. All right. And did Mr. Drabinski, was he the  
20 person hired by the Staff to perform the prudence audit?

21 A. Yes, that's correct.

22 Q. Did you have any big discovery disputes and  
23 trouble over information with him and his Staff?

24 A. None, with him or the KCC Staff themselves.  
25 Mr. Drabinski was a consultant hired by them to -- to do part

1 or all of the prudence review, but they also had a team of  
2 accountants and engineers that we also answered data requests  
3 related to the project, both Unit 1 and Unit 2, and we never  
4 had any disputes regarding discovery.

5 Q. Do you recall, did -- did he ask KCP&L or his  
6 staff ask KCP&L for information on Schiff Hardin and their  
7 legal bills? Did they review those as part of their audit?

8 A. I don't believe Mr. Drabinski did. Whether  
9 their staff did or the accounting staff did or not, I'm not  
10 sure, but I don't believe Mr. Drabinski focused on Schiff  
11 Hardin.

12 Q. Did Mr. Drabinski focus on any gifts or  
13 gratuities that employees might have gotten at KCP&L?

14 A. Nothing, no.

15 COMMISSIONER JARRETT: All right. I don't  
16 have any further questions of Mr. Giles. Thank you.

17 JUDGE PRIDGIN: Commissioner Jarrett, thank  
18 you very much. Commissioner Gunn.

19 EXAMINATION

20 QUESTIONS BY COMMISSIONER GUNN:

21 Q. Hi. Can you hear me okay?

22 A. I can.

23 Q. Great. Thank you. I don't have too many. I  
24 just have a couple. I want to clarify some things.

25 Your explanation between the CBE and the

1 definitive was very helpful, but in terms of the CBE versus  
2 the reforecast, when we're talking about being 15 percent  
3 over, are we talking about the CBE or are we talking about  
4 the reforecast?

5 A. The CBE.

6 Q. Okay. So the 15 percent is the -- is the  
7 reforecast?

8 A. No. The -- if you looked at the -- the CBE  
9 was a 1.685 billion.

10 Q. Okay.

11 A. The current projected estimate at completion  
12 is 1.948 billion.

13 Q. Okay.

14 A. And that difference between the control budget  
15 1.685 and 1.948 is about 15 to 16 percent.

16 Q. Okay.

17 A. The reforecast that was completed in May of  
18 2008 was 1.901 billion, and the difference between that  
19 reforecast and the current estimate at completion, I believe,  
20 is less than two percent.

21 Q. Thank you. That's helpful.

22 I want to talk a little bit about the change  
23 orders with Mr. Elliott.

24 A. Okay.

25 Q. And, in general, has it been -- Staff

1 described kind of this dual process where the engineering was  
2 approved as a change order, which is a separate inquiry from  
3 the financial or auditing function.

4 Has that -- has that been your understanding  
5 about how that process has worked in the past?

6 A. No, not in the past. And I'm going to need to  
7 clarify this a little bit. In the past, Mr. Elliott had done  
8 most of the analysis as far as change orders and anything to  
9 do with the -- what I would call the construction side of the  
10 audit.

11 Now, Mr. Elliott and Mr. Featherstone, who  
12 typically was the primary staff person in the audit or  
13 accounting side, would work and discuss things together and  
14 come up with a recommended disallowance or not. Now, that  
15 doesn't mean they couldn't disagree and doesn't mean  
16 Mr. Featherstone didn't put something in on his own, but they  
17 always worked together and they always talked.

18 what -- what I have observed on this project  
19 is the staff has now defined Mr. Elliott's work as  
20 engineering work. The staff auditors, as a separate cost,  
21 sort of work and never the two shall meet or talk. And that  
22 is what I've observed and based on Mr. Elliott's deposition  
23 is what has occurred on this project. Mr. Elliott --

24 Q. So --

25 A. -- said that he did not talk and staff

1 auditors did not talk to him. My --

2 Q. So previously, it was a joint  
3 recommendation -- any disallowance was a joint recommendation  
4 between engineering and the auditor?

5 A. I have never seen -- I mean, basically, what I  
6 want to explain, I have never seen a disallowance proposal  
7 that was separate, yes. It was a Staff-recommended  
8 disallowance.

9 Q. Have you seen -- I'm sorry, go ahead. Please  
10 go ahead. I'm sorry.

11 A. I just wanted to add that in the -- in the  
12 past, whatever Mr. Elliott had recommended, whether he  
13 recommended a disallowance or not, was what the auditors or  
14 accounting staff adopted. There was -- there was never any  
15 difference.

16 Q. So that was going to be my question -- my next  
17 question. So you have never had an incident where an  
18 engineering change order was accepted by Mr. Elliott and  
19 disallowed by the auditing staff in any previous -- your  
20 experience in any previous project?

21 A. Not that I'm aware of.

22 Q. Okay. Thank you. I want to -- just a quick  
23 question on the EPC that you talked about.

24 Now, you said you contacted -- you went out  
25 and there was no interest on the EPC, and through

1 Commissioner Jarrett's questions, you said you talked to  
2 about five or six companies.

3           was that a formal kind of RFP process, or was  
4 it just an informal picking up the phone, are you-guys  
5 interested in bidding on this?

6           A.       My understanding is that it was picking up the  
7 phone conversation at that point. It never -- and  
8 Mr. Roberts or Mr. Downey may be able to confirm this.  
9 Typically, on a project like the Iatan 1 and 2 project, you  
10 would send out some sort of a request for interest and  
11 qualifications.

12                   In this particular instance, when the -- the  
13 way you get that interest list is to make the phone calls.  
14 So early on, when Mr. Jones and others made the phone calls,  
15 they could not get anyone even interested in an EPC contract  
16 because of the market and the risk that they all perceived  
17 and the fact they hadn't done these for so long was also a  
18 part of it. But to answer your question, I don't believe it  
19 was a formal RFP.

20           Q.       Do you know, did that take place when you were  
21 looking for interest for the entire project as well as when  
22 you had the balance of plant issues, or did it just happen at  
23 the very beginning?

24           A.       There were -- there were two separate calls.  
25 Initially, it was the -- the call to -- for the entire

1 project. Once no interest was there for that, then there was  
2 a second period of, once we went out and said we're going to  
3 go out and do an EPC on the boiler and AQCS. Now let's go  
4 out and see if there's any interest in the balance of plant  
5 as an EPC contract.

6 That was a separate event that occurred later  
7 and was performed by Mr. Jones, and that's when he found  
8 there's no interest, even in the balance of plant piece of  
9 the work, and we didn't have any interest until Kiewit  
10 contacted us and said let's -- we've had a job cancel and  
11 we're looking for work, basically.

12 Q. Okay. All right. I'm going to move on to the  
13 regulatory plan. When you were negotiating the regulatory  
14 plan, was there any understanding reached about how the  
15 adequacy of the cost control plan would be judged?

16 A. Absolutely no discussion whatsoever. There  
17 was no discussion of what definitive estimate was or meant.  
18 There was no discussion of what cost overruns meant, and  
19 there was no discussion of what format or what documents or  
20 what process would be used in the cost control system.

21 Q. Internally to KCP&L, when you were developing  
22 the cost control system, did you have discussions about  
23 adequacy or how you would -- you would present it to the  
24 Commission or the Commission Staff?

25 A. My instructions and conversations with the



1 folks that were working on the cost control system document,  
2 which included Mr. Jones and Schiff Hardin, my instructions  
3 to them was exactly what I was thinking when I signed it --  
4 when we signed agreement, which was I want the Staff to be  
5 able to see every decision and every document and every  
6 decision point we make on this project.

7           So even if -- and the -- and they told me,  
8 well, you know, we're going to put in everything that's --  
9 they entered in the industry. And when I looked at it and  
10 saw that there was reforecast, you know, that typically you  
11 do a reforecast once the unit is closer engineered and I was  
12 told 70 percent, again at 90 percent, and my instructions was  
13 make this system flexible enough that it can cover what we  
14 are going to use to manage this project day-to-day.

15           So that if Staff walks in one day and says, I  
16 want to know where your budget is today and I want to know  
17 what you expect it to be tomorrow and are you going to be  
18 over or are you going to be under, we can answer that  
19 question.

20           Q.       So under that -- you just mentioned that in  
21 the cost control system, you were putting in what you believe  
22 to be industry standards plus things in order to achieve that  
23 transparency?

24           A.       Yes.

25           Q.       How much of that was kind of brand new that

1 had never been seen by the Missouri staff before?

2 A. I believe all of it. And that was one of the  
3 problems we had -- or not a problem. That was one of the  
4 concerns Mr. Featherstone had when we first set out to do the  
5 regulatory plan. The last case that -- the last big project  
6 we had was Wolf Creek, and it had no cost control system at  
7 all.

8 Q. So this -- so as far as you can tell, this was  
9 a brand new from beginning to end? Even though the industry  
10 had used it for Missouri, this was a brand new process?

11 A. Yes.

12 Q. All right. Thank you. I'm going to move on  
13 to Schiff Hardin a little bit. Had you worked with them  
14 before in previous projects?

15 A. No. My first time was this project with the  
16 Iatan Unit 1 and 2.

17 Q. Were you involved in their selection?

18 A. I was involved in a -- in a couple of -- of  
19 ways. One, I was a member of the executive oversight  
20 committee as an officer of the company, and that committee  
21 approved the hiring of Schiff Hardin. I was also involved  
22 working with Mr. Downey very closely, and I recall an  
23 interview we had with Mr. Roberts and Mr. Gould, I believe,  
24 and may have been other Schiff Hardin people.

25 But I -- I fully understood what Mr. Downey

1 was or hoping to accomplish with Schiff Hardin. And based on  
2 my experience with prior construction projects, you know, it  
3 was absolutely necessary to hire someone like Schiff Hardin  
4 for this project given not only relatively inexperienced  
5 senior management with construction but also in knowing how  
6 past construction projects had progressed.

7           And if I may, the way I can explain that, in  
8 past large construction projects, KCP&L -- and I assume this  
9 is probably other utilities as well -- didn't involve their  
10 senior management and definitely someone in my position as  
11 vice-president of regulatory affairs, they weren't involved  
12 in the project. In other words, the -- the construction  
13 group, the senior leadership went off and built it, and you  
14 hoped at the end of the day it came back on schedule and on  
15 budget.

16           And to his credit, Mr. Downey did not want  
17 that to happen on this project. He wanted oversight not only  
18 from himself and the EOC, the officer committee, he wanted an  
19 expert in the industry to come in and also provide that  
20 independent oversight and knowledge of project controls and  
21 costs so that, not only was senior management not ever  
22 surprised, neither would be the regulators because we were  
23 going to maintain that same transparency with them.

24           In past projects, the best way I can describe  
25 it is there were lots of surprises, and no one in today's

1 environment wants a surprise at the end of the day.

2 Q. So would you say you have -- you understood  
3 what Mr. Downey was trying to do, that's what you just  
4 described what he was trying to do?

5 A. Yes. He wanted not only to have oversight  
6 from KCP&L officers; he wanted assistance. And the company  
7 needed assistance from an expert such as Schiff Hardin that  
8 knew the contract law, knew the contractors themselves, had  
9 experience with them so that when Alstom came in and said,  
10 look, here's my story on this, you've got a Schiff Hardin  
11 sitting there saying, look, I know that's not the case.

12 You know, they had that oversight ability to  
13 not only ferret out what the contractors were saying, but to  
14 some extent even our own construction personnel. So it was  
15 sort of an independent. You know, you may have a project  
16 leader out there to protect his own interest, doesn't tell  
17 you everything you need to know until it's too late. And  
18 part of Schiff Hardin's responsibility was to ensure that  
19 didn't happen.

20 Q. So you've made a couple references to experts  
21 like Schiff Hardin or an expert such as Schiff Hardin. What  
22 was the EOC's understanding as to why there was no  
23 competitive process to determine who that expert was going to  
24 be?

25 A. Well, initially, on the decision to hire

1 someone like Schiff Hardin, it was pretty well-described at  
2 the EOC that this was the top firm, this was the firm that  
3 had the contacts with the vendors, had the contacts with the  
4 contractors that was best for the work.

5           At the time that we actually hired Schiff  
6 Hardin, I don't think anyone on the EOC anticipated the scope  
7 of their work as it ended up. So that we -- we at first  
8 expected that this project would not be a \$20 million Schiff  
9 Hardin bill, but more like a, you know, \$10 million Schiff  
10 Hardin bill or even \$5 million at one point when I first was  
11 involved. So there wasn't -- seemed to be a necessity to go  
12 out with an RFP and get bids.

13           As the project progressed and contract work,  
14 contract administration project controls, all of those items  
15 continued to be a focus, you know, basically the Schiff  
16 Hardin bills ended up being larger than what we had  
17 anticipated. Had we known that back in 2005, probably should  
18 have and would have done an RFP.

19           Q.       So who -- who was it that convinced or  
20 educated the EOC that Schiff Hardin was the top firm?

21           A.       I recall that our general counsel was very  
22 involved at that point, Mr. Bill Riggins. Mr. Downey had  
23 considerable contacts with his former employer, Commonwealth  
24 Edison, and his boss there, Mr. Tom Maiman, and I believe  
25 Mr. Maiman, who was very familiar with that end of the

1 business because he had built many more projects at  
2 Commonwealth than KCP&L had. So -- and you can probably get  
3 this better clarified from Mr. Downey when I think he follows  
4 me as a witness.

5 But I think Mr. Downey would tell you that  
6 Mr. Maiman and his knowledge of the industry was largely  
7 based on -- on his decision to hire Schiff.

8 Q. Okay. So Commonwealth Edison had the  
9 experience with Schiff Hardin, Mr. Downey had experience with  
10 Commonwealth Edison, received a referral, then Mr. Downey and  
11 Mr. Riggins told the EOC that Schiff Hardin was the top firm?

12 A. Correct.

13 Q. Okay. Now, so you said that -- that bills  
14 were anticipated to be initially between \$5 million and \$10  
15 million; is that correct?

16 A. Correct.

17 Q. Was that contemplated in the CBE?

18 A. I believe that was in the -- and I can't say  
19 for sure. Mr. Archibald could give you a better number. By  
20 the time we did the CBE, I think the estimate that Schiff had  
21 provided to us was, for both projects, somewhere between 13  
22 and 17 million.

23 Q. Okay. So had Schiff already been hired by the  
24 time that estimate had been given?

25 A. Yes.

1 Q. So they -- so they were -- the EOC said we  
2 think it's going to be \$5 million to \$10 million. You retain  
3 Schiff Hardin, then they give you the estimate of 13 to 17  
4 million, and then you include that in a CBE?

5 A. That's my recollection, yes.

6 Q. Okay. So even though you had a potential \$12  
7 million increase in the budgeting for this, was there any  
8 questioning of that?

9 A. That, I can't -- I don't know.

10 Q. Was there any question and discussion of that  
11 at the EOC?

12 A. Not that I'm aware of.

13 Q. So the EOC had no problem with the difference  
14 of the original estimates and those that were included in the  
15 CBE?

16 A. I don't know that the executive or the  
17 oversight committee had any knowledge of the -- the number of  
18 13 to 17. It was just rolled into the budget in the -- I  
19 mean, no, I don't know of any questions specifically that  
20 said, well, how much of this is Schiff Hardin.

21 Q. Did the EOC review the CBE in detail?

22 A. It did. And, again, Mr. Archibald or  
23 Mr. Downey could give you more specifics, but I don't think  
24 it would have been a line item on the -- on the budget the  
25 EOC was looking at. It would have been in the indirect

1 costs. I could be wrong.

2 Q. So typically, for other vendors, when you have  
3 a \$5 million to \$10 million bill, do you still not go through  
4 a competitive -- any competitive processes in order to  
5 determine who would give you the best product, best service  
6 value?

7 A. I think on services, it's probably reaching  
8 the point where you should probably do an RFP. But I -- I --  
9 I am probably the wrong individual to ask that. It's  
10 probably Forrest or Mr. Downey.

11 Q. Well, let me ask you this: Did the EOC -- was  
12 there any discussion or questions about having a non- --  
13 having a competitive or non-competitive award?

14 A. Not that I recall.

15 Q. Okay. So were there any questions at the  
16 EOC about rates or volume discounts or anything like that  
17 that Schiff Hardin may have been provided?

18 A. No, not that I can recall.

19 Q. Was any direction given to Mr. Downey and  
20 Mr. Riggins from the EOC regarding hiring Schiff Hardin?

21 A. No, other than, you know, the EOC was  
22 comfortable that Schiff Hardin was -- was needed, and would  
23 be an asset. There was not much discussion, if any, on their  
24 individual bills.

25 Q. So let me -- let me ask you this about the



1 EOC: What issues, if any, did they question regarding this  
2 project? I mean, if a \$5 million to \$10 million expenditure  
3 wasn't questioned or didn't have any discussion, what items  
4 actually did have discussions?

5 A. Any items that would be of any significance on  
6 the project, the relationships with the contractors, Alstom,  
7 the settlement with Alstom. Just about any major issue or  
8 concern on the construction side of the -- of the project  
9 would have been discussed, reviewed, and approved by the EOC.  
10 It's not atypical that services type contracts would not be a  
11 focus on a construction project.

12 Q. Was there any -- was there any item brought to  
13 the -- would Mr. Downey typically bring items to the EOC for  
14 approval and discussion?

15 A. Typically, it would be the leadership team of  
16 the project.

17 Q. Was there any -- was there ever an item  
18 brought by the leadership team to the project that was not  
19 approved by the EOC?

20 A. Yes. There were various projects -- you know,  
21 various items or issues that would come before the EOC where  
22 the EOC would instruct the project team to no, we don't --  
23 what you're providing to us is not selling us on this  
24 decision. You need to go back and figure out and do some  
25 more work. And then it would come back and either be

1 approved in a revised format or be done a different way,  
2 perhaps.

3 Q. What types of issues were those?

4 A. Well, one of the main ones I can think of is  
5 later on in the project when we were -- and since this is the  
6 most recent example, when we entered into the startup  
7 process, the startup team and the project leadership team had  
8 a date that they thought they could realistically set for the  
9 project. And that particular date was so far out from where  
10 we were focused, we said no, that's not -- you know, just  
11 telling us to put this date out there and this is where we  
12 think we're going to come in. The EOC ordered the -- or  
13 directed the leadership team to do a risk assessment and that  
14 risk assessment was to be evaluated.

15 Everything that could go wrong in startup and  
16 identify a best case and a most likely case of a worst case  
17 of various items that would delay the startup of the unit.  
18 And rather than just accepting the farthest out date the  
19 startup team had given us, went back and said, look, I want  
20 to know what would cause this delay and what's the  
21 probability of it happening.

22 And so that's -- that's a real good example of  
23 the EOC saying no, we're not going to accept that, and we  
24 want you to come back with a probabilistic risk assessment of  
25 why you think this date could be met and what's the

1 Likelihood of it being met.

2 COMMISSIONER GUNN: Thank you, sir. I think  
3 that's all I have.

4 JUDGE PRIDGIN: Commissioner Gunn, thank you.  
5 Commissioner Kenney?

6 EXAMINATION

7 QUESTIONS BY COMMISSIONER KENNEY:

8 Q. Good morning. We still have five more minutes  
9 into morning, so good morning. How are you?

10 A. Good morning. Fine.

11 Q. Oh, my watch seems to have stopped.

12 JUDGE PRIDGIN: Or perhaps time stopped, I'm  
13 not sure.

14 BY COMMISSIONER KENNEY:

15 Q. All right. Mr. Giles, I won't take up too  
16 much more of your time. I want to start by talking about the  
17 discussion you just had with Commissioner Gunn about the  
18 contract for Schiff's services because I'm a little confused  
19 as to the timing. There's a document that we have that was  
20 attached to somebody's testimony, and it's an HC document,  
21 but it's the contract for legal services between Kansas City  
22 Power & Light and Schiff.

23 Do we need to go in-camera to discuss it?

24 JUDGE PRIDGIN: Counsel?

25 MR. FISCHER: You're fine for now,