

1 Commissioner.

2 COMMISSIONER KENNEY: Well, I just want to  
3 talk about the date of execution of the contract.

4 MR. FISCHER: That's fine.

5 COMMISSIONER KENNEY: So I don't think that's  
6 too controversial.

7 BY COMMISSIONER KENNEY:

8 Q. The date of execution is January 17, 2007, but  
9 all the discussions we've been having indicate that Schiff  
10 was hired in 2005 or 2006.

11 Are you aware of another contract for legal  
12 services that was executed prior to the one that I'm looking  
13 at?

14 A. No, I'm not aware of -- of either, actually.  
15 I'm not aware of the contract, the one you're referring to.  
16 But Mr. -- Schiff Hardin was actually hired in August of 2005  
17 and had started work in August 2005. I don't know, and  
18 Mr. Downey or Mr. Roberts could better give you dates.

19 Q. Okay. Fair enough. But as far as you know,  
20 they were hired in August '05?

21 A. Yes. They were -- I know for a fact they were  
22 working on the project in August of '05.

23 Q. Okay. Now, you discussed earlier the whole  
24 conversation about the control budget estimate as you  
25 understood it and its relationship to the definitive estimate

1 and your understanding of the control budget estimate of 2006  
2 was intended to be the definitive estimate against which cost  
3 overruns would be measured, correct?

4 A. Correct. Yes, sir.

5 Q. And you mentioned a conversation in which you  
6 went back to Staff and said, you know, I don't want anybody  
7 to think we're trying to pull the wool over anybody's eyes or  
8 pull a fast one. Here's my understanding of what definitive  
9 estimate means. I have since come to learn that it's a term  
10 of art that has a different meaning in the industry and you  
11 attempted to clear that up with Staff. Is that a fair  
12 summary of your testimony?

13 A. Yes. That's exactly what I did.

14 Q. And you said Mr. Featherstone was present at  
15 that discussion, right?

16 A. Yes, he was.

17 Q. And you may have said this, I just missed it.  
18 whom else from our Staff would have been present during the  
19 discussion, that specific discussion?

20 A. Anyone attending the -- the budget meeting  
21 and -- there were signup sheets in those meetings that we  
22 could probably get and verify exactly, but based on the  
23 timing of events at that time, Mr. Henderson would have been  
24 there, Mr. Warren Wood. I don't know -- I'm very -- well, I  
25 don't know Mr. Schallenberg was in that meeting or not. I

1 don't believe Mr. Hyneman was because Mr. Hyneman didn't come  
2 on to the project until '09.

3 MR. FISCHER: Judge, can I approach the  
4 witness with an exhibit that's been introduced in the case  
5 that does have the signup sheet on the cost control meeting?

6 JUDGE PRIDGIN: You may.

7 COMMISSIONER KENNEY: Is that the July 11,  
8 2006, meeting, Mr. Fischer?

9 MR. FISCHER: Maybe this is not the same  
10 meeting then. I'm sorry. I apologize. I thought that was  
11 the meeting he was discussing.

12 COMMISSIONER KENNEY: That's what I want to  
13 ask.

14 BY COMMISSIONER KENNEY:

15 Q. Is that the meeting you're referring to,  
16 Mr. Giles, or is this a different meeting?

17 A. No. This would have been -- not when we  
18 presented the --

19 Q. The cost control system?

20 A. Right. But when we actually presented the  
21 control budget estimate, and that meeting occurred in January  
22 of 2007.

23 MR. FISCHER: I'm sorry. We don't have a  
24 signup sheet for that.

25 THE WITNESS: But I know Mr. Henderson,

1 Mr. Warren Wood, Mr. Dave Elliott, Mr. Cary Featherstone were  
2 all in that meeting.

3 BY COMMISSIONER KENNEY:

4 Q. And it's your recollection that a signup sheet  
5 does exist for that meeting?

6 A. Yes. Staff typically always has a signup  
7 sheet and, I assume, keeps those signup sheets.

8 Q. Okay. What is your -- what is your  
9 understanding of the significance of the definitive estimate  
10 being based upon the 2006 control budget estimate?

11 A. I don't think it has any significance. I  
12 don't think it -- what -- what the -- what the document was  
13 intended to do was to say when are you going to start  
14 tracking costs, and the way the document in Q was set up, we  
15 called that -- we would track costs above the definitive  
16 estimate, and it doesn't matter what you call it. We ended  
17 up calling it the control budget estimate, but it was the  
18 first budget we presented to Staff, and it was the budget we  
19 always tracked costs to throughout the life of the project.

20 Q. So the significance of it is the timing at  
21 which Kansas City Power & Light began tracking costs?

22 A. Yes.

23 Q. Not necessarily the dollar amount?

24 A. Correct.

25 Q. Okay. Is it fair to say that it was always

1 understood that that budget would increase because only 20  
2 to 25 percent of the engineering had been completed at that  
3 point?

4 A. I wouldn't personally characterize it as  
5 saying we knew the budget would increase. I think the -- we  
6 knew it was 20 to 25 percent engineered at that time. We  
7 knew we needed to do a reforecast when it was further  
8 engineered. I personally can't say that I anticipated it  
9 would increase, but we would look at it.

10 Q. Okay. Did you think it wouldn't increase?

11 A. My -- my expectations were it was much more  
12 likely to increase than anything. And basically, it's  
13 because we were 20 to 25 percent engineered. The market was  
14 very competitive and very at risk for price increases, and  
15 I -- I would expect it to have gone up. But I -- I can't say  
16 that it was not the best estimate we could come up with at  
17 the time. The control budget estimate was a very thorough  
18 and very much vetted and reviewed budget with a contingency.

19 So on the -- on the basis of all the  
20 information we had at the time, we felt it was a good budget  
21 but recognized that we would need to relook when the project  
22 was closer to 70 percent engineered.

23 Q. And then there was another forecast done in  
24 April of 2010 when it was about 90 percent engineered or  
25 almost to completion?

1 A. Yes. There was actually a -- a reforecast  
2 done in the summer of 2009.

3 Q. Okay.

4 A. And that was to -- when the project was 90  
5 percent engineered, that particular budget didn't change the  
6 total cost. It came in the same and -- which is not  
7 surprising. We've gone from 70 to 90 percent, and a year  
8 later the budget was still good at 1.901. Then we did an  
9 estimate at completion in November 2010 that brought it up  
10 to 1.948.

11 Q. Gotcha. I want to talk a little bit about  
12 the -- and I don't remember who you had this conversation  
13 with, but you were discussing -- I think it was with  
14 Ms. Ott -- the discussion of the invoices from Schiff.

15 Do you remember having a discussion regarding  
16 the invoices you received from Schiff Hardin?

17 A. I do, yes.

18 Q. Were you a part of the process of reviewing  
19 those invoices before they got paid?

20 A. No, I was not involved at all with invoice  
21 review of Schiff.

22 Q. Okay. There was some discussion regarding  
23 whether Kansas City Power & Light would be requesting the  
24 costs of the May 23rd, 2008, crane accident. Do you recall  
25 that discussion?

1 A. Yes, I do.

2 Q. What is KCP&L's position as you understand it  
3 to be today?

4 A. As I understand it today, they're -- and I can  
5 say this potentially because I'm not sure. My understanding  
6 is there is some potential costs that KCP&L may incur as a  
7 result of some sort of insurance dispute.

8 Q. Is this highly confidential information since  
9 it's an ongoing commercial dispute?

10 A. I think it probably is.

11 JUDGE PRIDGIN: Counsel, can you verify?

12 MR. FISCHER: Yes, sir.

13 (REPORTER'S NOTE: At this point, an in-camera  
14 session was held, which is contained in Volume 20, pages 1128  
15 to 1130 of the transcript.)

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1 CHRIS GILES testified as follows:

2 BY COMMISSIONER KENNEY:

3 Q. I just want to make sure that we all are  
4 defining our terms the same way. So the comprehensive energy  
5 plan and the stip in that case was the same thing?

6 A. Yes. The way that -- the way I used to  
7 characterize it and still do is the comprehensive energy plan  
8 was the -- the investment in the five-year business plan for  
9 KCP&L. The regulatory plan enabled us to implement it.

10 Q. Gotcha. Okay. But all that's embodied in  
11 that stipulation and agreement from the 2005 case?

12 A. Yes.

13 Q. Were you involved directly with the  
14 negotiation of that stipulation and agreement?

15 A. Yes, I was.

16 Q. And then let me ask you this question, then.  
17 If you know, you know; and if you don't, that's okay. Who  
18 typically would take the first stab at drafting that  
19 document? Would it be our staff, would it be Kansas City  
20 Power & Light or one of the other parties?

21 Do you know who actually sat down at the word  
22 processor and cranked out the first draft of the stipulation  
23 and agreement?

24 A. I believe the -- you know, maybe the very  
25 first draft, I recall, was drafted by KCP&L.



1 Q. Okay.

2 A. But to give you an idea of how that process  
3 went, we actually got in a room together, KCP&L staff, all  
4 the other parties that were involved, put it up on a -- I  
5 guess it's called an ELMO, and actually wrote that document  
6 together page-by-page all the way down to punctuations and  
7 language. So however it started out, it was definitely a  
8 group effort when it was completed.

9 Q. Well -- so let me make sure I understand you.  
10 The first draft was drafted by Kansas City Power & Light, and  
11 that was put up on an ELMO and you-all went page-by-page,  
12 line-by-line?

13 A. Yes. And that occurred over a period of days.

14 Q. Several days?

15 A. Yes.

16 Q. Were you present at all those drafting  
17 sessions?

18 A. Yes, I was.

19 Q. Let me -- do you have a copy of the plan?

20 A. I do not in front of me.

21 COMMISSIONER KENNEY: Can somebody provide it  
22 to Mr. Giles, please.

23 MR. FISCHER: Yes, sir.

24 JUDGE PRIDGIN: Mr. Fischer is getting it.

25 BY COMMISSIONER KENNEY:

1 Q. Let's look at Paragraph Q on page 28, Roman  
2 numeral three, capital B, number one, Paragraph Q, the --  
3 what is now becoming the infamous cost control process for  
4 construction expenditures paragraph.

5 A. Yes, I see it.

6 Q. Who drafted that particular paragraph? Would  
7 that have been in the initial draft that Kansas City Power &  
8 Light drafted?

9 A. I believe so, yes.

10 Q. Okay. And I'm really getting into the weeds  
11 here. Do you know specifically who at Kansas City Power &  
12 Light would have drafted the first draft?

13 A. Probably Mr. Fischer.

14 Q. Okay. All right. Do you know if that  
15 paragraph changed at all substantively -- well, not even  
16 substantive. I don't want to qualify it.

17 Do you know if that paragraph changed at all  
18 from how it was presented in the very first draft, drafted by  
19 Mr. Fischer until the ultimate draft that was signed by the  
20 parties, if you know?

21 A. The only thing I can say is I would not  
22 anticipate it had changed at all because we did not have any  
23 discussion on this paragraph at all. This was the least  
24 discussed topic of many topics in this -- in this drafting.  
25 It was not a concern. It did not appear to be a concern to

1 anyone.

2 Q. That's funny how these things turn out, that  
3 the least discussed paragraph is now morphed into one of the  
4 most discussed paragraphs.

5 A. You're exactly right. And, you know, and that  
6 really goes to the heart of the argument because --

7 Q. Yes, it does.

8 A. -- had we known, I think we would have spent  
9 more time defining these terms.

10 Q. My thoughts exactly. So there was -- and this  
11 is probably redundant, but I just want to be clear.

12 It was never discussed how cost overruns would  
13 be identified and explained?

14 A. Never.

15 Q. Are you aware of whether there is any  
16 construction industry standard for identifying and explaining  
17 cost overruns?

18 A. No, I'm not aware of any. Mr. Meyer may have  
19 a better idea, but I know Mr. Meyer in his testimony has said  
20 that KCP&L's is in the top 25 percent of the industry.

21 Q. Kansas City Power & Light -- I'm sorry, Kansas  
22 City Power & Light what?

23 A. Cost control system.

24 Q. Oh. And, similarly, the phrase "definitive  
25 estimate" was never discussed and what that meant?

1 A. No, not at all. I know at the time that  
2 phrase was used in the Wolf Creek order, but I also know that  
3 the Kansas statute currently has a definition of definitive  
4 estimate, and that definition, as clearly as it defines it,  
5 is the original estimate. But no, we --

6 Q. That's defined in the Kansas order or Kansas  
7 statute?

8 A. Kansas statute.

9 Q. Before or after this agreement was entered  
10 into?

11 A. That would have been before this agreement.

12 Q. But it was never discussed that the intention  
13 would be to have that definition apply to this phrase in this  
14 document, right?

15 A. No, not at all. It wasn't discussed at all.

16 Q. All right. Okay. You said that Kansas City  
17 Power & Light's cost control system is ranked in the top 25  
18 percent, and that's Mr. Meyer's testimony?

19 A. Yes.

20 Q. It's ranked by what entity or whom?

21 A. I think that was Mr. Meyer's opinion rather  
22 than --

23 Q. Oh.

24 A. He's indicating that, of all the systems he's  
25 seen, he would rank it within the top 25.

1 Q. Oh, I see. Okay. Were you involved in the  
2 drafting of the comprehensive energy plan, construction  
3 projects, cost control system?

4 A. Yes.

5 Q. And were you involved in that -- go ahead, I'm  
6 sorry.

7 A. My involvement was really instructions as to  
8 what -- what I expected in my review of the final product. I  
9 didn't work day-to-day on putting it together.

10 Q. Were you at the July 11th, 2006, meeting when  
11 this was presented to Staff for the first time?

12 A. I was not in that particular meeting. Mr. Tim  
13 Rush, who reported to me at the time, led that meeting.

14 Q. Okay.

15 A. I believe I had some other commitment.

16 Q. And that's the meeting for which we do have  
17 the sign-in sheet, right?

18 A. Yes.

19 Q. Okay. Give me just a second here. Okay.  
20 Just so I'm clear on a couple of things, we were talking  
21 about the engineering, procurement, construction contracts  
22 for the boiler in the AQCS.

23 That was the only portion of the project that  
24 had an EPC, correct?

25 A. Yes. The balance of plant was not an EPC. It

1 was what would be called a construction contract. Burns &  
2 McDonnell did the engineering, and Kiewit did the execution  
3 and construction.

4 Q. Okay. And you guys did the procurement?

5 A. Yes. There were -- I believe Kiewit did do  
6 some procurement as well in the DOP, but KCP&L had already  
7 procured most of the primary equipment.

8 Q. Now, I think I read testimony somewhere that  
9 Kansas City Power & Light hadn't embarked on a construction  
10 project of this size since the Wolf Creek plant, and then  
11 maybe the rebuilding of Hawthorn 5 was close but not exactly  
12 as large. Is that your recollection?

13 A. Yes.

14 Q. Do you recall -- well, and let me backup. And  
15 there was also some testimony that Ernst & Young did an audit  
16 of the relationship among the various contractors, and there  
17 was also an entity called Strategic Talent Solutions that did  
18 an assessment of the relationship between the contractors.  
19 Do you remember that?

20 A. Yes.

21 Q. Are you aware of whether outside auditors or  
22 consultants were brought in on the Wolf Creek project to  
23 assess the relationship between the parties?

24 A. I don't recall whether they were brought in  
25 for that purpose or not. I know there was a significant

1 amount of turnover in KCP&L's internal audit group itself  
2 during that case.

3 Q. Okay. Do you know if it's standard to pay  
4 outside consultants to assess the relationship among  
5 contractors on projects of this size, if you know?

6 A. I don't really know, but I could say that  
7 Ernst & Young was really KCP&L -- was supplementing KCP&L's  
8 own internal audit group. Our internal audit group at that  
9 time didn't have the construction background and resources,  
10 so Ernst & Young wasn't really there other than to supplement  
11 KCP&L's own internal auditing group. With the Strategic  
12 Talent Solutions group, they had been on KCP&L's list of  
13 doing environment or leadership profiles and 360 feedback  
14 type things for human resources long before the project  
15 began.

16 Q. Oh, I see.

17 A. So it was -- it wasn't like Strategic Talent  
18 Solutions, we went and hired them for this purpose. They  
19 were always already onsite and doing work for KCP&L. So  
20 when -- when the executives discovered that, not  
21 surprisingly, you've got a lot of people working together for  
22 the first time in a lot of different cultural backgrounds,  
23 there might be some tensions, and STS was instructed to do  
24 this study to go see what could be improved.

25 COMMISSIONER KENNEY: Gotcha. Thank you for

1 your time, sir. I don't have any other questions.

2 JUDGE PRIDGIN: Commissioner Kenney, thank  
3 you. I don't have any questions either. This looks to be a  
4 pretty natural break to break for lunch. Is there anything  
5 further from counsel before we adjourn for lunch? All right.  
6 We will stay in recess until 1:45. I'll see if we have  
7 anything further from counsel, and then we will resume  
8 Mr. Giles's examination. Thank you.

9 COMMISSIONER KENNEY: Judge, real quick. I  
10 asked about this -- this can or cannot be -- I don't think it  
11 needs to be on the record.

12 (An off-the-record discussion was held.)

13 JUDGE PRIDGIN: Good afternoon. We are back  
14 on the record. When we adjourned for lunch, I believe bench  
15 questions were finished for Mr. Giles and we are back for  
16 recross-examination. Is there anything from counsel before  
17 we begin? Recross, Mr. Schwarz?

18 MR. SCHWARZ: Yes.

19 JUDGE PRIDGIN: When you're ready, sir.

20 MR. SCHWARZ: Thank you.

21 JUDGE PRIDGIN: Mr. Schwarz, this is HC,  
22 correct, that you're putting on the board? It's not being  
23 broadcast, that's why I'm asking.

24 MR. SCHWARZ: I'm not going to put it on the  
25 board. There's no Commissioners, I'm not sure they can read



1 it anyway.

2   RE CROSS-EXAMINATION

3 QUESTIONS BY MR. SCHWARZ:

4                 Q.        Good afternoon, Mr. Giles.

5                 A.        Good afternoon.

6                 Q.        You talked at length about the control budget  
7 estimate, did you not?

8                 A.        I did.

9                 Q.        And I've handed you what is the control budget  
10 estimate, have I not?

11                A.        Um.

12                Q.        Let me represent that it is. Take a look at  
13 it and see if you're familiar with that.

14                A.        Yes, there are four columns on this and the  
15 last column is titled December '06 control budget estimate.

16                Q.        Okay. Would you take a look at number -- down  
17 the left-hand side, there are numbers numbering the groupings  
18 of the cost estimates. Would you take a look at number  
19 seven, and the one, two, three, four -- fifth, sixth and  
20 seventh items down, "escalation for labor, non-boiler APC,"  
21 "escalation materials, non-boiler APC" and "escalation  
22 indirects;" is that correct?

23                A.        Correct.

24                Q.        And if you go over to the CBE column, it  
25 indicates that those are all included, does it not?

1 A. Yes.

2 Q. Likewise, if you look at number eight on  
3 owners's indirects under -- it's the second line from the  
4 bottom, it says "Escalation on indirects," does it not?

5 A. Yes.

6 Q. And that, too, is included in the right-hand  
7 column?

8 A. Yes.

9 Q. And then line number ten is "project costs  
10 without contingency and financing?"

11 A. Correct.

12 Q. And the total of that is 1 billion, 465  
13 million?

14 A. Yes.

15 Q. Okay. So if you add up all those costs  
16 including the expected escalation of those costs, in December  
17 of '06 you come up with 1.465 billion; is that correct?

18 A. Yes, excluding contingency.

19 Q. Excluding contingencies and financing?

20 A. Correct.

21 Q. A non-trivial item?

22 A. Correct.

23 Q. And there has been much testimony that at the  
24 time of this December '06 control budget estimate, there was  
25 already a billion dollars under contract on the project, do

1 you recall that?

2 A. I believe that's correct.

3 Q. So that would suggest that maybe 465 million  
4 was still on contract?

5 A. Correct.

6 Q. Okay. And if you go just below that, you have  
7 an owner's contingency of a 145 million and a low probability  
8 high impact contingency of 75 million, correct?

9 A. Correct.

10 Q. That totals 220 million?

11 A. Yes.

12 Q. And that's additional contingencies over the  
13 project costs including the expected escalations?

14 A. Yes.

15 Q. And I want to continue from over here, if I  
16 may. And these figures would have been vetted by Schiff  
17 Hardin? Schiff Hardin was on board at this stage?

18 A. Yes.

19 Q. And Burns & McDonnell?

20 A. They provided input, yes.

21 Q. And the executive oversight committee?

22 A. Yes.

23 Q. And the project team?

24 A. Correct.

25 Q. You suggested in one of your answers to one of

1 the Commissioner's questions that Mr. Jones had talked to  
2 five or six possible EPC contractors. Do you recall that?

3 A. I do.

4 Q. Are you aware that Mr. Jones only identified a  
5 single EPC contractor in his testimony of Washington Mutual  
6 that he had spoken to?

7 A. I discussed two different queries by Mr. Jones  
8 and the query that I was referring to, I saw an e-mail where  
9 he had contacted more than one.

10 Q. Okay.

11 MR. SCHWARZ: I think that's all that I have.

12 JUDGE PRIDGIN: Mr. Schwarz, thank you. Mr.  
13 Mills?

14 RE-CROSS-EXAMINATION

15 QUESTIONS BY MR. MILLS:

16 Q. The two -- just to follow-up, the two  
17 different sets of inquiries about EPCs, the first one was  
18 about an EPC for the entire project, correct?

19 A. Correct.

20 Q. Is it your testimony that for that one,  
21 Mr. Jones talked to five or six contractors or for the second  
22 one?

23 A. My understanding, it was for the first one.

24 Q. Okay. Now one of the questions that you had,  
25 I believe it was from Commissioner Gunn, had to do with the K

1 reports. When did the K reports start being produced?

2 A. Would have been first quarter after the  
3 control budget.

4 Q. Okay. I thought you had testimony that there  
5 were some in early 2006?

6 A. There were K reports for other projects, but I  
7 don't believe there was one for Iatan --

8 Q. Okay.

9 A. -- until the control budget was established.

10 Q. Because by definition, the K reports track  
11 changes from the control budget?

12 A. Correct.

13 Q. Okay. Now you had a number of questions about  
14 the Schiff Hardin expenses, and with respect to charging to  
15 plant as opposed to expense in this rate case expense, did  
16 KCP&L take the same approach in Missouri as it did in Kansas?

17 A. To the best of my knowledge, yes.

18 Q. In response to one of the Commissioner's  
19 questions, you made reference to a project leader who doesn't  
20 tell you what you need to know until it's too late. Do you  
21 recall that?

22 A. I do.

23 Q. Did a situation like that ever arise on the  
24 Iatan projects?

25 A. No. I believe I was referring to other

1 projects, past projects where that could happen.

2 Q. Has it ever happened in your experience at  
3 KCP&L?

4 A. I wasn't nearly as involved with the other  
5 projects as this one, but, you know, subject to saying I'm  
6 speculating, I'm sure it happened on at least Wolf Creek.

7 Q. Now with respect to the definitive estimate as  
8 that term is used in the CEP, isn't the significance for  
9 calling for a definitive estimate in the CEP that the parties  
10 thought a definitive estimate would be an accurate estimate  
11 and early in the process?

12 A. No, that was not discussed at all.

13 Q. So how do you know what the other parties  
14 thought it meant?

15 A. I don't. I know it was not discussed and I  
16 know it's not what I took it to mean.

17 Q. Okay. You took it to mean something other  
18 than what the industry standard definition is; is that  
19 correct?

20 A. No, at that time I didn't even know what the  
21 industry standard was.

22 Q. Do you now?

23 A. Yes.

24 Q. And at the time that you drafted the CEP, did  
25 you take it to mean something other than what the industry

1 standard you have later learned?

2 A. Yes.

3 Q. Okay. So with respect to your understanding  
4 of the use of the term "definitive estimate" in the CEP, it  
5 was your understanding that that meant that you'd come up  
6 with a pretty good budget within six months of the deadline.

7 A. It was my understanding we would come up with  
8 the best budget we could within that six-month period and  
9 that would be what we tracked to for the project, yes, that's  
10 correct.

11 Q. Now you had some questions, I believe they  
12 were from Commissioner Kenny, about the actual drafting  
13 process of the CEP. Were either Bob Schallenberg or Cary  
14 Featherstone present during some or all of those drafting  
15 sessions?

16 A. Yes.

17 Q. Both of them?

18 A. I am not sure about Mr. Featherstone, but I  
19 recall Mr. Schallenberg being at every meeting, yes.

20 Q. Now you were also asked some questions about  
21 the cost control document that was provided to the parties in  
22 July of 2006. Do you recall that?

23 A. I do.

24 Q. Was that document provided to the parties  
25 significantly in advance of the July 11, 2006 meeting?

1 A. I don't recall.

2 Q. Is it possible it was provided to parties at  
3 the meeting?

4 A. I don't have any knowledge or recollection  
5 when it was provided.

6 Q. You don't have any memory of sending it out in  
7 the advance of the meeting?

8 A. No.

9 Q. Okay. If it had been provided either at or  
10 shortly before the meeting, would that perhaps explain the  
11 lack of immediate feedback?

12 A. I don't know that I've said there was any lack  
13 of immediate feedback.

14 Q. It's a fairly lengthy document, is it not?

15 A. It is.

16 Q. Fair amount of detail, correct?

17 A. Very thorough.

18 MR. MILLS: That's all I have. Thank you.

19 JUDGE PRIDGIN: Mr. Mills, thank you.

20 Ms. Ott?

21 RE-CROSS-EXAMINATION

22 QUESTIONS BY MS. OTT:

23 Q. Mr. Giles, going back to the definitive  
24 estimate, did Schiff Hardin ever define "definitive estimate"  
25 for you?



1 A. I believe I testified that Mr. Meyer, who is a  
2 subcontractor to Schiff, was the individual that first  
3 pointed out to me that in the industry, here is what a  
4 definitive estimate typically represents, so yes, Mr. Meyer  
5 was the individual that pointed that out to me.

6 Q. Did any employee of Schiff Hardin, not a  
7 contractor of Schiff Hardin, ever define what definitive  
8 estimate meant to you?

9 A. No.

10 Q. Okay.

11 A. Mr. Meyer.

12 Q. But he's a contractor, he's not an actual  
13 employee of Schiff Hardin?

14 A. Correct.

15 Q. Now did the control budget have contingencies  
16 because the project wasn't significantly engineered?

17 A. That would be one of the reasons, yes.

18 Q. You were talking about the quarterly reports.  
19 who developed the reports that you provided during those  
20 quarterly meetings?

21 A. The contents of the report were a shared  
22 responsibility of various individuals on the project  
23 leadership team and their subordinates. They would do a  
24 draft of the -- of the report. The report would be reviewed  
25 by myself, Schiff Hardin -- a number of people. And

1 ultimately, it was reviewed by Mr. Downey as well before it  
2 was transmitted.

3 Q. So KCP&L employees did the first draft of  
4 those reports?

5 A. Yes.

6 Q. Okay. With Commissioner Gunn, you had some  
7 discussions with change orders and Mr. Elliott. Have you  
8 ever seen Mr. Elliott sponsor an adjustment in a case?

9 A. I don't know.

10 Q. Have you ever seen Mr. Elliott sponsor a  
11 disallowance in a case?

12 A. I don't know.

13 Q. Now, you also with Mr. -- Commissioner Gunn  
14 spoke of the controlled budget estimate. Did that control  
15 budget estimate include \$40 million for unit trains,  
16 railcars?

17 A. Yes, it did, 37 million.

18 Q. Did -- and KCP&L decided not to obtain those  
19 railcars, correct?

20 A. Not to own the railcars. Our decision in  
21 economic evaluation indicated it would be more cost effective  
22 to lease them.

23 Q. Did KCP&L ever adjust this control budget  
24 estimate to not reflect the purchase of those railcars?

25 A. No.

1 Q. Now, going back to Mr. Elliott, did he ever  
2 inform you that he did not look at the cost of the -- of  
3 Iatan?

4 A. Not me personally. I understand he did inform  
5 Mr. Davis of that, but he never discussed it with me  
6 directly.

7 Q. With Commissioner Jarrett, you were having  
8 some discussions about Mr. Drabinski and Burns & Mc, and  
9 there wasn't any discovery issues at the KCC. Did KCP&L  
10 prevent Mr. Drabinski from meeting with Burns & Mc?

11 A. No.

12 Q. Were you aware of any other parties in the  
13 Kansas rate case that had concerns about information being  
14 withheld about Schiff Hardin?

15 A. Not that I'm aware of.

16 Q. Now, you were having conversations about  
17 Mr. Maiman and Mr. Downey and Schiff Hardin, how that  
18 relationship was established. And I just want to be clear.  
19 Mr. Downey and Mr. Maiman were contacts or former co-workers  
20 from Commonwealth Edison, correct?

21 A. Mr. Maiman and who did you say?

22 Q. Mr. Downey.

23 A. That's my understanding, yes.

24 Q. And then Maiman is the one who recommended  
25 Mr. Downey to you at Schiff Hardin?

1 A. That's my understanding. Mr. Downey will  
2 follow me, he's probably better to answer that, but that's my  
3 understanding.

4 Q. And Mr. Maiman is a contractor for Schiff?

5 A. I don't know that he was at that time or not.  
6 And he's not today. He was at some point. Mr. Downey can  
7 give you more detail.

8 Q. Okay. Going back to the control budget  
9 estimate that was drafted when it was 20 to 25 percent  
10 engineered. Wasn't the point of the contingency within that  
11 control budget to capture the increases that would go above  
12 and beyond the control budget estimate?

13 A. Yes.

14 Q. Now, you were also discussing that you  
15 expected there to be budget increases with the project. So  
16 when you were talking about "expected," are you talking about  
17 expected over the 200 -- 200 million contingency or was that  
18 meant to be you expected increases because of the  
19 contingency -- there was a contingency built in?

20 A. I think that was in response to a question  
21 from, I believe, Commissioner Gunn, and I believe my response  
22 was that the control budget estimate was the best estimate we  
23 had at the time. And including the contingency, I didn't  
24 think it was accurate to say that we didn't believe that was  
25 a good budget. Mr. Gunn inquired whether I expected it to go

1 up. I believe my response was I would expect it to go up, if  
2 anything.

3 Q. Above the contingency?

4 A. Above the 1.685 total budget.

5 Q. So you didn't think the amount built in for  
6 the contingency was adequate to recover what you thought the  
7 cost of the plant would be?

8 A. At the time -- as I stated, at the time we did  
9 the budget, we thought we had a good budget. And I was  
10 responding to his question in retrospect. And given that the  
11 commodity market was increasing beyond what we had  
12 anticipated in the control budget, I would have expected the  
13 budget to go up rather than down.

14 Q. You were also having some conversations where  
15 you and Mr. Featherstone had worked on Wolf Creek together  
16 and had some concerns with the reconciliation packages. And  
17 then you were talking about the drafting of the CEP. Did you  
18 have any discussions with Mr. Featherstone prior to, I  
19 believe you said Mr. Fischer drafted the CEP, that -- about  
20 what should be contained within that document?

21 A. Well, the only discussions we had were as I --  
22 as I've testified. We both wanted some language that we  
23 would have a cost control system that explained overruns and  
24 we put the language in and that was the end of the  
25 discussion. It didn't last more than five minutes.

1 Q. Was that prior, though, to Mr. Fischer  
2 drafting -- taking the first draft?

3 A. Yes.

4 Q. Okay. Going back to the crane accident and  
5 you said that the only thing would be the accrual on the  
6 books. Did KCP&L pay Schiff and Packer Engineering any money  
7 related to the crane accident?

8 A. I believe we did.

9 Q. Do you know how much money that was?

10 A. No. I don't know if it got charged to the  
11 project or not.

12 Q. You were also discussing EPC and multi-prime,  
13 and you stated that the only EPC was the boiler in the AQCS.  
14 Do you know if the Pullman Power had an EPC for the chimney?

15 A. I don't know if Pullman was an EPC. I know  
16 subsequent to my testimony, it's been pointed out to me that  
17 there were smaller EPC contracts other than Alstom on the  
18 project. I was focused mainly on the large ones.

19 MS. OTT: I have nothing further.

20 JUDGE PRIDGIN: Ms. Ott, thank you. Redirect?

21 MR. FISCHER: Thank you, Judge.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MR. FISCHER:

24 Q. Mr. Giles, I think I'd like to begin with  
25 where we began, the regulatory plan itself. There were a lot

1 of questions about that. Could you give a little more  
2 background on how that regulatory plan came to be, since  
3 you're the primary witness that was there?

4 A. Sure. The regulatory plan was the culmination  
5 of a long process that KCP&L undertook beginning in  
6 late-2003, early-2004. KCP&L actually developed a tentative  
7 comprehensive energy plan, a five-year plan based on input  
8 from a variety of stakeholders, consumers, commissions,  
9 regulatory staffs, the public in general.

10 Once that preliminary CEP, or comprehensive  
11 energy plan, had been developed, I did a presentation along  
12 with John Grimwade in April, 2004, to the Commissioners in an  
13 open agenda session. And in that presentation, I indicated  
14 that in order for KCP&L to move forward with any of these  
15 projects, we needed a collaboration with the Staff, the OPC,  
16 and any other public that would be interested in joining  
17 that. I believe it was in May of 2004, the Commission opened  
18 a workshop docket.

19 At the same time, the Kansas Commission also  
20 opened a workshop docket. And it was the expectation that  
21 during these collaborations, we would be able to come to an  
22 agreement in a stipulation, in separate agreements, one for  
23 Missouri and one for Kansas, that would enable the KCP&L to  
24 move forward and actually implement and execute the  
25 comprehensive energy plan. We began that process after the

1 Commission's Order, which was sometime in May or June of '04,  
2 and we did not culminate that process with an agreement in  
3 Missouri until I believe it was May of '08. In Kansas, it  
4 was August, '08.

5                   And then subsequent to that agreement, we had  
6 an amended agreement in Missouri to reflect any items the  
7 Missouri parties wanted to pick out of the Kansas agreement.  
8 So the final amended agreement, I believe, was in August  
9 of '08.

10           Q.       The actual drafting of that particular  
11 agreement was of interest to one of the Commissioners. Do  
12 you recall how long it took for us to get to a final draft of  
13 that agreement?

14           A.       Yes, it took -- it took probably six months of  
15 collaboration to even get to the point where we could begin  
16 to draft the agreement. It took another three months to  
17 actually draft the agreement.

18           Q.       Do you recall the original piece of paper that  
19 we looked at was pretty thin?

20           A.       Yes, it was very thin. We worked day after  
21 day and after a certain period of time, we all sat in the  
22 same -- we decided we had to speed this up. We all got in  
23 the same room, got it on an ELMO and went line-by-line for a  
24 period of days on the language.

25           Q.       And nights, if I recall?



1 A. Yes, late into the evening.

2 Q. What were some of the provisions that were  
3 added that we hadn't thought about? Do you recall some of  
4 those?

5 A. Some of them, for instance, that the parties  
6 requested, no, we would not be able to use a rider, a single  
7 issue rate-making item that came out of the Senate Bill 379,  
8 I think it was -- or 179, I can't recall -- but we would not  
9 be able to use that until the year 2015. There were other  
10 provisions such as the amortization, the rate case schedule.  
11 We had programs for demand-side management, we had  
12 transmission and distribution projects. There were a number  
13 of provisions both the company received -- as I would  
14 characterize it, benefits to the company and benefits to the  
15 parties.

16 Q. There were a number of appendices that were  
17 added later on, not the original draft; is that right?

18 A. Correct. We -- we had appendices that  
19 discussed pension trackers, amortization, credit metrics,  
20 financing, credit rating, rate freeze with both a moratorium  
21 on a rate reduction and a limit to the number of cases we  
22 could file and what time period. It was a pretty exhaustive,  
23 difficult negotiation.

24 Q. And I believe you indicated you had  
25 discussions with one of the Staff people about that, what

1 became Paragraph Q; is that right?

2 A. Yes. That language was added based on a  
3 conversation Mr. Featherstone and I had had and it was the  
4 least talked about issue anywhere in the document.

5 Q. Would that have been likely one that was added  
6 on the ELMO while we were talking those nights?

7 A. No, I believe it was in the document very  
8 early on.

9 Q. Okay. And we were doing this in what year,  
10 what year were we drafting?

11 A. We were drafting this document in 2005, in the  
12 March, April time frame.

13 Q. And then after that stipulation was actually  
14 signed, were there -- were there further hearings or  
15 proceedings to consider it?

16 A. Yes, the stipulation was done unanimous. And  
17 in terms of we didn't know what parties were interested that  
18 had not participated, for instance, and I believe a couple of  
19 parties requested a hearing. The Commission ordered a  
20 hearing on the stipulation and agreement and I don't recall  
21 all the parties, but I believe Sierra Club may have been one  
22 that wanted that hearing. The hearing was held. The  
23 Commission ultimately approved the agreement.

24 Q. Do you recall if any -- if that order got  
25 appealed?

1 A. I do recall the order was appealed. I don't  
2 recall which party appealed, but I recall all the appeals  
3 were -- were not granted.

4 Q. Well, it sounds like a big effort. Why did  
5 KCP&L go through all that trouble of trying to work out a  
6 regulatory plan?

7 A. Much like the situation KCP&L's in today,  
8 there is no predetermination statute or provision in  
9 Missouri. And used to be in -- the last time we built power  
10 plants, both Iatan 1 and Wolf Creek, utilities typically made  
11 the decision based on their resource needs, plan the  
12 capacity, built it, and then filed a rate case to recover the  
13 costs.

14 In the environment that KCP&L was operating in  
15 in 2004, that's not -- that was not possible to do. Credit  
16 rating agencies, investors have a much more visible presence  
17 with utilities. And to announce a major project, let alone a  
18 comprehensive energy plant project of the magnitude and the  
19 dollars KCP&L had planned, absent some assurance that the  
20 prudence of going forward was supported, we would have been  
21 downgraded by our credit rating agencies and potentially  
22 downgraded below investment grade.

23 Q. To your knowledge, had the Commission  
24 previously approved such a comprehensive regulatory plan?

25 A. No. We were the first to have such an

1 approval in Missouri and Kansas, and to my knowledge, the  
2 first in the country to have such a plan. We actually --  
3 KCP&L actually won an award from the Edison Electric  
4 Institute for this innovative approach to regulatory.

5 Q. Was this a collaborative approach with a lot  
6 of different parties of the Commission?

7 A. It was a collaborative approach and obviously  
8 KCP&L could not have obtained what it needed without the  
9 support and cooperation of the Commission Staff, consumer  
10 counsels, and other parties.

11 Q. Was a similar effort going on in Kansas at the  
12 same time?

13 A. Yes, a parallel effort was ongoing in Kansas  
14 and initially the workshop collaborations were held jointly  
15 until we got far enough down the -- the path that we were  
16 negotiating individual agreements. At that time, the  
17 meetings broke up to separate collaboration; one with  
18 Missouri, one with Kansas.

19 Q. Was there a provision in the Missouri  
20 regulatory plan that parties could bring back provisions from  
21 the Kansas regulatory plan if they found it desirable?

22 A. Yes. The agreement that was struck in  
23 Missouri -- since we were in continuing discussions with  
24 Kansas -- the parties wanted what was termed or most favored  
25 "nation clause," which essentially said that once we approve

1 this agreement or the Commission approves it, if Kansas  
2 approves a different agreement, we have the ability to read  
3 through that agreement and take any provision out of it that  
4 we deem should be in the Missouri agreement.

5 Q. were there also provisions about joint owners  
6 in the regulatory plan in Missouri?

7 A. Yes, there were. There was -- at that time,  
8 many individual utility companies and cooperatives were  
9 interested in coal capacity, and particularly in Iatan 2. We  
10 had a variety of partners that would have taken various  
11 shares. And in that agreement, we identified the partners  
12 and the shares based on a, at that time, I believe  
13 800-megawatt unit.

14 And subsequently, when we became aware of  
15 another party interested, we expanded that to a 50 -- an  
16 850-megawatt unit and added another partner that was not part  
17 of the Missouri list but became a part of the Kansas, which  
18 was KEPCO.

19 Q. There was discussion about the concept of  
20 transparency. What does that mean to you?

21 A. What transparency means to me, and it was  
22 inherent in my mind at the time of the 2005 agreement and  
23 throughout the construction of the project is that KCP&L  
24 would provide ongoing contemporaneous data to the parties, to  
25 the Staff as the project was developed and executed so that

1 they knew every decision we were making, when we made it, why  
2 we made it. And any cost increase in the scheduled  
3 deviations were documented and Staff had access to all of  
4 those thought processes and decisions.

5 Q. Were those provided to the signatory parties  
6 in Missouri on a quarterly basis?

7 A. Yes, we used the quarterly reports to inform  
8 all the parties and we subsequently followed up with a  
9 face-to-face meeting with all the parties that chose to  
10 attend. And in those meetings, we not only went through the  
11 quarterly report but gave a realtime update as of that very  
12 morning of any activities, problems, issues, cost of the  
13 plant.

14 MR. FISCHER: Judge, I'd like to have an  
15 exhibit marked.

16 JUDGE PRIDGIN: Do you have a number?

17 MR. FISCHER: Is it 71 or is it -- it would be  
18 a -- I guess still an HC exhibit.

19 JUDGE PRIDGIN: I'm not showing a 71, but I  
20 could be wrong. Mr. Fischer, I think this is 70.

21 (Exhibit No. 70-HC was marked for  
22 identification by the Court Reporter.)

23 BY MR. FISCHER:

24 Q. Mr. Giles, would you take a look at what has  
25 been marked as Exhibit 70-HC and describe what that is?

1           A.       This is the strategic infrastructure  
2 investment status report, 2006, dated April 28th, 2006, in  
3 Case No. EO-2005-0329 and this is the quarterly report that I  
4 was referring to. This would be the first quarter it was  
5 prepared, which was as it indicates, 2006, first quarter.

6           Q.       Were you involved in the preparation of this  
7 document?

8           A.       Yes, I was.

9           Q.       What kind of information is included in this  
10 document, if you could summarize in a high level?

11          A.       There is an introduction in this particular  
12 one and that may have been because it was the first  
13 exhaustive summary. It details the wind project status,  
14 actual plant expenditures, wind project schedule, bid  
15 specifications, contracts, transmission studies,  
16 interconnection agreement. It does a similar for the La  
17 Cygne SER project, which was active at that time. Describes  
18 in detail the bid specifications, contractor selection  
19 evaluation, milestone project schedule.

20                    There are exhibits attached that show  
21 projected and actual expenditures through the quarter and the  
22 variance and percent, various A -- B&W Babcock Wilcox  
23 critical path project schedule, summary of activities. Then  
24 we begin with the Iatan project status update, describes  
25 Unit 2, steam turbine and generator, requests for proposal

1 that went to GE, Mitsubishi, Siemens and Toyota, updates the  
2 status of the Unit 2 boiler and SER system, unit 12 AQCS  
3 systems. Again, bid specifications, project permits, summary  
4 of actual planned expenditures, milestone schedule, and then  
5 that's followed with the same type of review for the T and D  
6 projects and --

7 Q. I notice there on Page 33 as an Exhibit A.  
8 what does that relate to?

9 A. Exhibit A is the pro -- Iatan project cost  
10 summary. This precedes the control budget development, so  
11 basically what is shown here is the KCP&L costs to date,  
12 engineering services, and legal and financial services. It  
13 shows in this first quarterly report the total expenditures  
14 were about \$8.1 million.

15 MR. FISCHER: Judge, I'd move for the  
16 admission of 70-HC.

17 JUDGE PRIDGIN: 70-HC is offered, any  
18 objections? Hearing none, 70HC is admitted, and that's KCP&L  
19 70HC.

20 (Exhibit No. 70-HC was received into  
21 evidence.)

22 BY MR. FISCHER:

23 Q. Mr. Giles, were there other quarterly reports  
24 that were filed -- excuse me, that were distributed to the  
25 signatory parties along the way?



1 A. Yes, this same format was used and a report  
2 was prepared and provided to all the parties each and every  
3 quarter. I believe the December, 2010 report is being worked  
4 on as we speak.

5 Q. would -- would this document show the  
6 evolution of the project, the schedules, the costs, and all  
7 the essential information that you provided to the signatory  
8 parties?

9 A. Yes.

10 MR. FISCHER: Judge, I'd ask that we reserve  
11 another exhibit, 71. We'd like to -- I don't have copies  
12 yet, but I'd like to reserve an exhibit to introduce into the  
13 record, the other exhibit -- the other quarterly reports that  
14 were provided.

15 JUDGE PRIDGIN: And I'm sorry, those would be  
16 all of the remaining quarterly reports?

17 MR. FISCHER: There would be 23 others, I  
18 guess.

19 JUDGE PRIDGIN: Okay. Thank you.

20 BY MR. FISCHER:

21 Q. And would you -- would you be involved in the  
22 preparation of those other quarterly reports?

23 A. Yes, I have reviewed and been involved in each  
24 report since this first one to the last one that's being  
25 worked on right now. I should also point out that in

1 addition to these reports, when we met with the parties  
2 quarterly, we provided them the latest schedule for the  
3 project, level one schedule and we also provided them the  
4 most recent cost data that we had available.

5 Q. That would be the K report?

6 A. Yes.

7 Q. And that schedule document was a large  
8 document, wasn't it, that had the critical path and a lot of  
9 the information on it?

10 A. Yes.

11 Q. Okay. Was any of this done in the spirit of  
12 transparency?

13 A. Absolutely. It was all done in the spirit of  
14 transparency and it was the company's objective -- KCP&L's  
15 objective and my personal objective that that's how we set  
16 the process up and that's how we were going to do it. And  
17 it's exactly what we did.

18 Q. There were some questions on cross-examination  
19 about that topic and the withholding of information, I  
20 believe. When KCP&L asserted its legal privilege related to  
21 attorney-client information, was that an indication of the  
22 lack of transparency?

23 A. No, not at all. It's -- there was nothing in  
24 the agreement and nothing to my knowledge in the vein of  
25 transparency that obligates the company to give up its legal

1 rights under -- under either.

2 Q. Did the Commission hold a proceeding that  
3 ended up with an order that addressed whether KCP&L was being  
4 unreasonable in withholding documents from the Staff as  
5 related to the Iatan audits?

6 A. Yes. That hearing was held, I believe in  
7 April of 2009 -- or pardon me, 2010. I'm getting my years  
8 mixed up here. And it was a direct result of a response  
9 KCP&L had made to the Commission Staff's December 31, 2009,  
10 audit report. And in that report, Staff made allegations  
11 that they could not complete their audit, one, because of  
12 withheld documents; and two, because the cost control system  
13 somehow was inadequate. So KCP&L responded to that and the  
14 Commission held a hearing.

15 The Commission found that KCP&L had not been  
16 withholding documents and upheld the Commission's position.  
17 At that time, the Commission did not rule on whether the  
18 cost -- the -- not the class --

19 Q. Cost control?

20 A. -- the cost control system was appropriate or  
21 not, therefore, Staff has continued to assert that.

22 Q. At the time of that hearing, what was your  
23 impression of where -- or slightly before that hearing in the  
24 depositions that occurred, what was your impression of where  
25 the audit status -- what was the audit status? what was your

1 impression?

2 A. Well, the -- the audit did not actually begin,  
3 my understanding, on Unit 1 until after the rate case was  
4 concluded. I'm aware from depositions Mr. Hyneman joined  
5 that audit effort in August of '08. When the audit report  
6 was issued in December 31, 2009, other than various expense  
7 reports, mileage charges of that nature, give some  
8 gratuities, the audit staff had not completed what I would  
9 call a prudence audit.

10 Q. Had you seen Mr. Elliott involved out in the  
11 plant before that time?

12 A. Yes, Mr. Elliott was onsite in early '07 and I  
13 believe he had at least monthly site visits. And he was well  
14 aware of daily, if not weekly, activities at the plant.

15 Q. What was your impression of what Mr. Elliott  
16 was doing during that period?

17 A. Up until the time the Staff filed its  
18 testimony in the last rate case, ER-0089, which I think was  
19 in February of 2008, I may be wrong on my date. But in any  
20 event, my understanding was Dave Elliott was actually up at  
21 the site doing what I anticipated when I drafted the  
22 regulatory plan. He was going to follow this project from  
23 its inception and was going to be onsite looking at the  
24 documents and reviewing those documents and seeing how the  
25 company was running the project and what kind of decisions it

1 was making and whether those decisions were explained or not.

2 Q. Did Mr. Elliott generally attend the quarterly  
3 meetings that we held in Jefferson City as well?

4 A. Yes, he did.

5 Q. There was some discussion, I think, with one  
6 of the Commissioners and we were looking for an attendance  
7 sheet about a meeting where you talked about the -- the  
8 reforecast process.

9 A. Yes.

10 MR. FISCHER: I'd like to have an exhibit  
11 marked.

12 JUDGE PRIDGIN: I believe we're up to 72?

13 (Exhibit No. 72 was marked for identification  
14 by the Court Reporter.)

15 BY MR. FISCHER:

16 Q. Mr. Giles, will you take a moment to look at  
17 what this document is?

18 A. Yes. This is the document that details the  
19 presentation outline to the regulatory plan signatories on  
20 January 22nd, 2007, and this would have been the meeting that  
21 we presented the cost estimate for Iatan 2. And the  
22 particulars on this is an introduction by myself; status  
23 update Iatan 2 and Iatan 1 was Brent Davis; level 1 and 3  
24 schedules cost control system, Terry Foster; cost estimate  
25 Iatan 2, and this was the December '06 estimate, Davis; cost

1 control system La Cygne, John Grimwade. And attached to this  
2 is a sign-up sheet.

3 This is the meeting I referred to when I  
4 explained to the Commission Staff and the other parties all  
5 the people that attended this meeting, that KCP&L was using  
6 this control budget estimate to track costs. And as part of  
7 its regulatory plan stipulation and agreement, this is the  
8 budget that is referred to as the definitive estimate.

9 Q. I may have misspoke whenever I asked about  
10 that. It's not the reforecast meeting, it's the original  
11 meeting?

12 A. This is the original control budget meeting.

13 Q. And is Mr. Dave Elliott's name listed on the  
14 attendance list?

15 A. Yes, Mr. Elliott, Mr. Warren Wood, Mr. Bob  
16 Schallenberg, Mr. Wess Henderson, Ms. Lena Mantle are the  
17 attendees I see from Staff, and also Mr. Warren Wood from  
18 Staff at that time. Mike Taylor, who's an engineer that  
19 works with Mr. Elliott. I believe that's all the Staff  
20 personnel.

21 MR. FISCHER: I'd move for the admission of  
22 the exhibit.

23 JUDGE PRIDGIN: 72 has been offered, any  
24 objections? Hearing none, 72 is admitted.

25 (Exhibit No. 72 was received into evidence.)

1 BY MR. FISCHER:

2 Q. Mr. Giles, I believe you had some questions  
3 about the -- what the EOC does from the Commission --  
4 Commissioners?

5 A. Yes, I did.

6 Q. Could you explain or elaborate upon what  
7 the -- what the EOC's involvement was in reviewing the  
8 particular costs in the CBE or the process generally?

9 A. In general, the EOC did not run the project.  
10 The project leadership team and the -- whether it was the  
11 senior director or vice-president of construction would run  
12 the project. In the EOC meetings, there was always an update  
13 and identification of potential risks, cost increases,  
14 schedule deviations, plus everything else that was going very  
15 well with the project and the status update. The EOC did not  
16 approve or disapprove of routine management decisions at the  
17 site. It was kept apprised and any decisions it made were  
18 very substantial strategic type decisions.

19 Q. I think there was some questions about Schiff  
20 Hardin in that process and whether what the expectations were  
21 in terms of total budget. A \$20 million expenditure on a \$2  
22 billion project would be approximately what percent?

23 A. One percent.

24 Q. would you expect if you didn't have the  
25 expertise of a Schiff Hardin or someone similar to that, that

1 costs could have gone up by more than one percent?

2 MR. MILLS: I object, calls for speculation.

3 JUDGE PRIDGIN: Mr. Fischer?

4 BY MR. FISCHER:

5 Q. Well, based on -- based on your experience at  
6 the -- at Iatan 1 and 2, do you have an opinion about whether  
7 it was important to have proper management in place?

8 A. Absolutely. The value Schiff team -- Schiff  
9 Hardin's team brought to the project saved the company and  
10 its customers well over, in my opinion, what we paid for  
11 their services. At the time we hired Schiff Hardin and  
12 included their fees in costs under control budget, as I  
13 testified earlier, I believe it was between \$5 and \$10  
14 million. And after -- in hindsight, would we have gone out  
15 for an RFP, we probably should have and would today. On the  
16 other hand, do I think we would have still hired Schiff  
17 Hardin? Absolutely.

18 Q. The company's cost control system that we've  
19 been talking about, is that the same cost control system  
20 that's used in Kansas?

21 A. It's the same system in Kansas, it's the same  
22 system we used for each CEP project, including the wind  
23 project, the SER project at La Cygne.

24 Q. Did Mr. Drabinski at the KCC proceeding use  
25 this cost control system to your knowledge?



1 A. Yes, he did.

2 Q. You were asked a question by -- by Ms. Ott  
3 about whether you disagreed with Walt Drabinski. Do you  
4 remember that question?

5 A. I do.

6 Q. And I believe you said you did; is that  
7 correct?

8 A. I do disagree with his conclusions.

9 Q. Would you explain why you disagree?

10 A. Mr. Drabinski did not conduct a, what I would  
11 call a prudence audit and what our experts have described as  
12 a prudence audit. Mr. Drabinski took what he describes  
13 himself as a holistic approach and basically by using certain  
14 information early on in the project, early audit reports,  
15 early project conclusions or risks that were identified, he'd  
16 take some of those risks as absolutes that they happened when  
17 I know in fact the risk never materialized and the company  
18 mitigated many of those risks, if not all of them.

19 So Mr. Drabinski would take an audit finding,  
20 for instance, and say, well, this must have cost some money,  
21 has no basis to support that. He did not identify imprudent  
22 decisions and follow-through to the next step and identify  
23 the consequences of those decisions.

24 Q. Is that -- do you have an understanding of  
25 what Missouri law requires at all on the two-step process?

1 A. Yes, I have read Mr. Blanc's testimony and I  
2 am -- I understand the two-step process and agree with what  
3 Mr. Blanc had written.

4 Q. Okay. Do you have other -- other comments  
5 about Mr. Drabinski and why he was wrong?

6 A. Mr. Drabinski ignores and totally obscures  
7 substantial information the company has provided to him in  
8 assessing his disallowance. For instance, he believes,  
9 evidently, that the project definition report set the cost  
10 for the plant. He believes that the schedule, even, that  
11 was --

12 MR. SCHWARZ: I'm going to object at this  
13 stage as calling for speculation. What Mr. Drabinski  
14 believes is reflected in his testimony and the Commission is  
15 certainly encouraged to read that. And the speculations of  
16 Mr. Giles as to what Mr. Drabinski may or may not mean or  
17 understand by the words he's written is nothing more than  
18 speculation.

19 MR. FISCHER: Let me rephrase the question.

20 BY MR. FISCHER:

21 Q. Mr. Giles, will you explain why you believe  
22 Mr. Drabinski's analysis is incorrect?

23 A. Yes. Mr. Drabinski ignores facts that have  
24 been provided to him by the company, that the -- for  
25 instance, the project definition report was nothing more than

1 a conceptual coal plant that was used in the very initial  
2 resource analysis back in 2004 conducted by KCP&L to  
3 determine whether the CEP should contain a coal plant. That  
4 was never a budget for the plant.

5           The schedule contained in that document was  
6 never a schedule that was contemplated or ever could have  
7 been obtained because the schedule actually had construction  
8 starting before we had a regulatory plan that would allow us  
9 to start construction. So that's just one example. But  
10 overall, Mr. Drabinski doesn't have an imprudent  
11 decision-making and a nexus to connect costs to that decision  
12 anywhere in his report or his testimony.

13           Q.       And I believe your surrebuttal testimony goes  
14 into that in some more depth, does it not?

15           A.       Yes, it does.

16           Q.       You were also asked a question, I believe,  
17 regarding whether you disagreed with the Staff's adjustments.  
18 Do you recall that question?

19           A.       I do.

20           Q.       I know you don't address every Staff  
21 adjustment in your testimony, but do you have some that you  
22 would like to elaborate on why you disagree?

23           A.       Well, the -- first of all, the idea that any  
24 costs that exceeded the control budget estimate is certainly  
25 unfounded based on the -- Staff's allegation that they could

1 not track the costs, or as they specifically state, KCP&L did  
2 not explain the cost overruns. That's simply incorrect. It  
3 has been provided to Staff, all the documents that do contain  
4 those explanations, including the key document, the  
5 reforecast document that led up to the May of '08 budget  
6 number of 1.09 billion. So that particular adjustment is  
7 totally without merit.

8 Q. Mr. Giles, before you go on to the next point,  
9 have you ever seen an adjustment in your 35 years with KCP&L?

10 A. Yes, 35 years, I've never seen a  
11 recommendation to disallow all costs above the control budget  
12 estimate --

13 Q. Okay.

14 A. -- in any proceeding.

15 Q. Go right ahead.

16 A. The adjustment Staff proposes for the Alstom  
17 settlement has no basis. Obviously in my mind, Mr. Elliott  
18 examined that construction and what -- what was occurring  
19 during that time. He had the basis and the knowledge to make  
20 such a recommendation, which he did not. I don't believe the  
21 Staff auditors and accountants took the time and effort to  
22 figure out exactly what that settlement was about.

23 Q. Now you're talking about the Alstom Unit 1  
24 settlement; is that right?

25 A. That's correct.

1 Q. And that's about two-thirds of their  
2 adjustments on Unit 1; is that right?

3 A. That's correct. Another related adjustment is  
4 Staff proposes to impose LDs, liquidated damages, that it  
5 proposes KCP&L could have received from Alstom, had it asked  
6 for them, when in fact, they make no determination that the  
7 LD clauses would ever have been hit. That's another example.  
8 In fact, there's extensive company testimony on those two  
9 issues that identify that one, the LDs could not be  
10 implemented, and two, the value of that settlement was worth  
11 more than the settlement payment.

12 Another one as an example, Staff is proposing  
13 to disallow mileage charges to the site of KCP&L employees  
14 that actually were transferred to the site or volunteered for  
15 such and primary location of their homes was in the Kansas  
16 City area. And obviously to me, it is patently unfair to  
17 require an employee that lives in Independence, Missouri to  
18 relocate for five years to Iatan and not pay them mileage to  
19 drive that distance.

20 Q. Did you see a lot of data requests on that  
21 topic in the audit?

22 A. In the Iatan 1 and Iatan 2 audits, we were  
23 immersed in data requests related to mileage charges. Staff  
24 requested every log at the gate to Iatan, to check whether  
25 individuals were actually at the site when they drove to the

1 site. We have many of those. Similar data requests for  
2 Burns & McDonnell employees who were under a separate  
3 contract --

4 Q. Ms. Ott asked you about that, I think she  
5 suggested you initially withheld that information. Do you  
6 remember that conversation?

7 A. I do.

8 Q. Can you describe what they were asking for  
9 that you had a question about?

10 A. Yes. Under the terms of Burns & McDonnell's  
11 contract, they would pay their employees mileage if they  
12 weren't already on a per diem to travel to the Iatan site.  
13 What staff was requesting the company provide was the home  
14 address of every Burns & McDonnell employee that traveled to  
15 the site.

16 Q. Did they want that on a monthly basis?

17 A. Yes.

18 Q. And why did they want that?

19 A. I can only suppose they wanted to check to see  
20 if the mileage from, say, Overland Park to the Iatan site  
21 was, in fact, 50 miles versus 45 or 55.

22 Q. Do you have any idea how many documents you  
23 provided in relationship to mileage issues?

24 A. Thousands.

25 Q. Well that brings up a question. How many

1 documents would you have to review to understand the cost  
2 control system?

3 A. It would be less than a thousand would be my  
4 guess. Change orders, recommendation to award, purchase  
5 orders, contingency log. Maybe a large three-ring binder,  
6 three or four of those would all be required.

7 Q. Is that what Mr. Drabinski would have  
8 reviewed?

9 A. Yes. We provided Staff over 1,200 expense  
10 reports of individuals. So we have provided thousands and  
11 thousands and thousands of documents to the Staff. Whether  
12 they looked at them all, I can't say. But it would  
13 certainly -- the documents they were needing to look at that  
14 were provided to do their audit is substantially less than  
15 what they have been provided.

16 Q. There was also a question I believe from Staff  
17 regarding whether you adjusted the CBE to take out railcars,  
18 do you recall that?

19 A. I do.

20 Q. Did you adjust the CBE for any reason?

21 A. Absolutely no reasons. We did not adjust it.  
22 We felt like our agreement was to track costs to that budget.

23 Q. Increases and decreases?

24 A. Increases and decreases, and that's what we  
25 did.

1 Q. And then when the company did the reforecast,  
2 did you continue to track it to, what?

3 A. We tracked both to the control budget estimate  
4 and the reforecasted budget estimate because that's how we  
5 were managing the project. We managed the project and we  
6 provided all the data that we used to manage the project to  
7 the staff and tracked to both budgets.

8 MR. FISCHER: Thank you very much, Mr. Giles.  
9 I appreciate your patience.

10 JUDGE PRIDGIN: Mr. Fischer, thank you. Mr.  
11 Giles, thank you. You may step down. This looks to be a  
12 convenient time as any to break. If I'm not mistaken, Mr.  
13 Downey will be the next witness?

14 MR. FISCHER: Yes.

15 JUDGE PRIDGIN: All right. Anything further  
16 from counsel before we break?

17 MS. OTT: Yes, I'm not sure if I offered  
18 Exhibit 252 into the record. If I didn't, I'd like to do it  
19 at this time.

20 JUDGE PRIDGIN: I show that you did not. 252  
21 has been offered. Any objections? Hearing none --

22 MR. STEINER: what exhibit is that?

23 JUDGE PRIDGIN: I'm sorry, 252 has been  
24 offered. That's the e-mail.

25 MR. SCHWARZ: Before we break, I would like to