

1 it.

2 Q. But where does it say cost overruns?

3 A. That word does not appear, but anything
4 in excess of the control budget estimate, that is how
5 the regulatory plan defines a cost overrun. So by
6 definition, that's a cost overrun.

7 Q. Does -- can you point to where it says it
8 will explain or track cost overruns?

9 A. I mean we can reread the language and
10 I -- I believe it does that. And there's also the
11 final paragraph of that section, which is on the
12 following page, page 9. It says, The project team
13 will periodically update the reforecasted costs,
14 contingency usage, cash flow and monthly budgets.
15 That's tracking project costs to the control budget
16 estimate.

17 Q. Actual costs or project costs -- budgeted
18 costs, sorry?

19 A. It's all part of the same system. You
20 have actual and then forecasted costs. The actual
21 costs you manage as you go, but you also forecast
22 costs to identify potential issues and deal with them
23 as they arise.

24 Q. would you think that a key component of
25 the cost control system in regards to the Kansas City

1 Power and Light regulatory plan would at least
2 describe and explain in the cost control system the
3 cost overruns?

4 A. We talked about this quite a bit this
5 morning. It -- that was a component and it does do
6 that. The commitment in the regulatory plan was to
7 put in a system that identifies and explains cost
8 overruns and the system does just that.

9 Q. Does cost control system mention the
10 regulatory plan?

11 A. I don't know. I can read the document
12 and see if it refers to the regulatory plan. I don't
13 recall that it does, but it -- it satisfies the
14 commitment whether it uses the words "regulatory plan"
15 or not.

16 Q. I mean if the document is attached to
17 testimony, it will speak for itself. You don't need
18 to read through it.

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

21 JUDGE PRIDGIN: All right, Ms. Ott.
22 Thank you. Let me see if we have any Bench questions.
23 Commissioner Jarrett?

24 COMMISSIONER JARRETT: I don't have any
25 questions for Mr. Blanc. Thank you

1 JUDGE PRIDGIN: Thank you. Commissioner
2 Gunn?

3 QUESTIONS BY COMMISSIONER GUNN:

4 Q. I just have a couple. And I apologize if
5 they were -- we were upstairs in agenda so I apologize
6 if they have already been answered. So how was -- how
7 was Schiff Hardin selected or hired? Was it an RFP
8 process or was it a -- these guys are the experts in
9 this?

10 A. It was the latter. There wasn't a formal
11 RFP process, but my understanding -- as I said, I
12 didn't participate in the hiring of the firm but my
13 understanding is basically looked at who could do this
14 kind of work and Schiff Hardin came up as kind of the
15 imminent firm in this area. And as we talked about
16 yesterday, because they already had a team in place
17 and because their approach meshed with our approach.

18 Q. What -- what office did they work out of?
19 Because they don't have an office in Kansas City, do
20 they?

21 A. They do not. They -- a lot of the folks
22 were in Kansas City, but they also worked out of the
23 Chicago office. But in acknowledgment that they were
24 an out-of-town firm, they didn't bill us for travel
25 time. All the time they spent waiting in airports or

1 sitting on planes, we were never billed for that time.
2 And they did that intentionally to level the playing
3 field, so to speak, with local firms.

4 Q. Was there any adjustment to rates to
5 reflect Kansas City rates or were they Chicago rates,
6 do you know?

7 A. I would say they were neither. They were
8 construction expert rates, geographic-- geographically
9 irrelevant.

10 Q. So a paralegal in construction law makes
11 \$230 an hour?

12 A. Well, for -- that's a fair point. For a
13 paralegal service by Kansas City standards, that --
14 that does seem high and that -- that is a Chicago
15 rate.

16 Q. It's pretty high for a Kansas City
17 lawyer. So I mean was -- so when -- were these rates
18 just kind of taken as this is what the rates were or
19 were the rates -- were the rates negotiated?

20 A. Well, the -- first of all, the rates
21 weren't special to KCP&L. And the extent that they
22 were higher than the rates Schiff Hardin is paying
23 their other clients, these are Schiff Hardin rates and
24 the market sets those largely. Market looks at
25 services a law firm can provide and judges if they're

1 worth it or not.

2 Q. But you didn't look at any other law
3 firms through an RFP process, did you?

4 A. Not through an RFP process, but you
5 wouldn't have to do an RFP process to know generally
6 what other firms charge.

7 Q. We're talking about \$20 million.
8 Ultimately you guys paid this law firm \$20 million for
9 the services that they were doing?

10 A. Yeah. And --

11 Q. And there was no -- Let me finish the
12 question.

13 A. You bet.

14 Q. There -- there doesn't appear to be any
15 negotiation on rates, there doesn't appear to be any
16 negotiation on volume discount. You knew how long the
17 project was going to last. There had to be a budget
18 put together for what you were going to pay this
19 entity. And you guys just picked who you thought won
20 it. Now, I'm not saying that that was a bad choice,
21 but I just want to make it -- asking the clear
22 questions.

23 You did not try to negotiate down rates,
24 you did not try to get other firms that -- in -- and
25 there was no competitive process in order to hire the

1 firms. And so let me -- I'll ask that question.
2 There was no competitive process to hire this firm and
3 there was no appearance to negotiate lower rates based
4 on either geographic location or other competitive
5 factors?

6 A. They're just going to have to parse out
7 what I know and I don't know. I do know there was not
8 an RFP process, but because I wasn't involved directly
9 in hiring them or negotiating, I don't know any
10 discussions around discounted rates. I don't know
11 that. But I do know that they didn't charge us for
12 any of their travel time.

13 Q. All right. So even though -- so you
14 don't get -- you don't get paid for sitting a half
15 hour in -- in Midway airport flying to Kansas City,
16 but you're still getting to charge \$230 hour for a
17 paralegal?

18 A. For work that's being performed on the
19 project in support of the project, yeah.

20 Q. Okay. Now, you -- you were directly
21 involved in reviewing some of those invoices. Right?

22 A. Yes, I was particularly with the members
23 of the Schiff Hardin team that I worked directly with.

24 Q. Now, did I hear you right -- and it may
25 have been yesterday that you -- you did not

1 disallow -- let me -- let me ask the question this
2 way: Did you disallow individual time entries that
3 you can recall?

4 A. No. There were times that I had
5 questions just because I wasn't familiar with the work
6 they were doing or why it would take as long as the
7 bill indicated, but I explored that with the lawyer
8 that was actually working with them on that project
9 and those were always resolved.

10 Q. To your --to your knowledge, were any
11 time entries for the entire \$20 million -- because I'm
12 assuming -- well, let me back up. Were all the
13 invoices submitted -- was everything done on a time
14 entry basis? So you received invoices on an hourly
15 basis and time entries for people whether they were
16 lawyers or whether they were other -- other employees?

17 A. Sure. Standard law firm practice, yeah.

18 Q. So there were no flat fees, no just -- if
19 someone acted in a consultant role, project management
20 kind of role, they were -- they were treated as a
21 lawyer, they -- they did -- they billed in certain
22 time increments and presented those time entries to
23 you on the invoices?

24 A. Yeah. As far as I know. Certainly with
25 the respect to the portions of the invoice I was

1 responsible for reviewing, absolutely, time entries.

2 Q. And there was not a single time entry in
3 that entire \$20 million -- or approximately
4 \$20 million that was ever disallowed?

5 A. No. There were ones that arose
6 questions, but those questions were always addressed.

7 Q. And that -- and those were paid?

8 A. Yes.

9 Q. That number paid?

10 A. Sure.

11 Q. So there were no -- not only were there
12 no ones that were disallowed, there were no
13 adjustments to any of the time entries where you
14 looked and said, you know, Really did it take some
15 person nine hours to do this work? And so -- and a
16 lawyer came back and said -- or Schiff came back and
17 said, You know, you're right, it really -- we'll write
18 it down to seven hours. There -- there was none of
19 that that you know of?

20 A. No. Those were the discussions that
21 happened internally, but there was -- I was always
22 comfortable with the explanation I received that, oh,
23 yeah, this came up or it was more complex than they
24 originally thought and that's why it took longer.

25 Q. Right. So no adjustments were made?

1 A. No. Not that I'm aware of, no.

2 Q. And -- and these are fees that you are --
3 that are separate from rate case expense. Right?
4 These will be included in project cost? These would
5 not be considered rate case expense. Correct?

6 A. The vast majority. There would be a very
7 small portion that they've done in support of the rate
8 cases, but that would be an extremely small portion of
9 that number.

10 Q. So there -- they -- they have continued
11 to give support -- is it -- and I don't -- I don't
12 want to get into any privileged information, but is
13 it -- is it legal strategy or is it -- is it gathering
14 information for other --

15 A. A simple example, Ken Roberts is a
16 witness in the case.

17 Q. Okay.

18 A. And that -- that's a rate case expense.
19 His time as a witness in the case.

20 Q. Got it. Okay. I want to go just real
21 quick to the cost control system.

22 A. Okay.

23 Q. To your knowledge, was this developed
24 kind of out of whole cloth or was it a kind of a brand
25 new model for doing cost control system or was it --

1 was it a boilerplate cost control system that was
2 modified for the Iatan plant?

3 A. Sure. There was -- Steve Jones, a
4 witness in this case, was responsible for
5 developing -- developing it and he's probably the best
6 witness to ask. But I think it's probably a little
7 bit of both. My understanding is we didn't start
8 recreating the wheel, but we also developed it to be
9 specific to this project and our commitments under the
10 regulatory plan.

11 Q. And only as to your knowledge, if -- if
12 that cost control system -- if portions of that cost
13 control system had been used before, do you know
14 whether Staff has had -- had ever talked about the
15 adequacy of those portions that were used in previous
16 cases? Only if you know.

17 A. Yeah, I don't remember Staff ever asking
18 questions along those lines is why I'm pausing.

19 Q. Let me ask you this: In -- in -- in
20 your involvement in other rate cases, have you ever
21 had a blanket disallowance, either a percentage or
22 hard dollar number, based upon inadequate cost control
23 systems in -- that you can recall?

24 A. No.

25 Q. To your -- to your knowledge was there

1 ever a line item by line item determination from all
2 the disallowances as to their individual prudence
3 or -- or ever? Or was there -- was there just the
4 blanket disapproval disallowance because of the cost
5 control system inadequacies?

6 A. My experience has been it's been issue by
7 issue, whereas, we describe a decision or act by a
8 decision or act. That it's never been a blanket
9 holistic, whatever word you want to ascribe to it.
10 It's never been that broadly sweeping. It's
11 identifying something specific that was imprudent and
12 then quantifying the impact of that imprudence.

13 Q. Okay. Just to go back -- and I may
14 have -- you -- you were billed on a monthly basis
15 from -- from Schiff?

16 A. That's correct.

17 Q. And so the review process took a month
18 and then was there any lag in payment? Would there --
19 would -- was it a pretty standard review process where
20 you would review them and then they would get out and
21 that happened on a monthly basis?

22 A. Yeah. The -- the review process was very
23 standard. The payment part I don't know just because
24 I don't know how long it took accounting to process
25 and get the -- I don't know -- wire transfer or check

1 out. I just don't know that.

2 Q. So you'd get an invoice and you would
3 review it, send it down to your accounting department
4 saying, Okay to pay and then whatever process they had
5 took however long it took?

6 A. Yes.

7 Q. Okay. And that was done every month or
8 was it -- was -- was there -- were there any delays?

9 A. No. It was done -- in response to
10 receiving the invoices over the five years, I can
11 think of a couple of occasions where maybe two
12 invoices came in together that maybe the first one was
13 running a little late and two months came in together,
14 but that would be the only exception I could think of.

15 Q. Were there -- were there -- there were
16 increased payments at the end of the year where --
17 where you would have certain work that was -- that
18 either because of the KCP&L's books closing or because
19 Schiff Hardin wanting to get end of the year invoices
20 where you would receive maybe two invoices in November
21 or -- or earlier than once a month?

22 A. There were times we received more than
23 one invoice in a month but I don't think that was the
24 reason. I think when we did, it was because it was
25 either separate scopes of work or something different

1 going on. I don't recall getting multiple monthly
2 invoices for the purpose of getting -- getting
3 expenses paid within a particular time.

4 Q. Okay. Just really, really quickly, can
5 you give me the best people to talk about the cost
6 control system, the best -- if it's more than the
7 previous person you -- you mentioned?

8 A. Absolutely. There are, in my mind, four
9 and it just depends on what aspect of it you want to
10 talk about. As far as what was negotiated at the time
11 the regulatory plan came to be, what the parties
12 talked about and what that language meant at the time,
13 that would be Chris Giles. He negotiated that on
14 behalf of the company.

15 Q. Okay.

16 A. If you want to talk about the day to day
17 and the trenches, how the cost control system worked
18 and what we did with it on a day-to-day basis, that
19 would be Forrest Archibald. If you want to talk about
20 how our cost control system compares to the rest of
21 the industry across the US and historically, that
22 would be Dan Meyer.

23 Q. Okay. who else -- who else reviewed
24 invoices? You only did a portion of the Schiff Hardin
25 invoices. Correct? who else did?

1 A. It depends on what was going on in the
2 invoice. It was subject matter driven basically.
3 That -- Jerry Reynolds, who was also a lawyer in the
4 law department oversaw the contract work and a lot of
5 the work they did was contract work. So he would
6 review the portion. I reviewed the portion that
7 pertained regulatory stuff, for lack of a better term.
8 And then procurement --

9 Q. "Stuff" is a scientific term in this
10 Commission so it's okay.

11 A. And then procurement and then the project
12 team would look at the portions that dealt with the
13 actual -- the project support piece.

14 Q. Was your review the only review that was
15 done or did it go to Mr. Riggins before it was sent on
16 to pay?

17 A. Typically that -- that's what would work.
18 It would go through me for me for my portion and
19 Reynolds for his portion. And then if we had -- if
20 there were questions we couldn't resolve, which did
21 happen from time to time, then he would be the next
22 step. And it would go to Bill Riggins as general
23 counsel and he would have the final say if we went to
24 Schiff with anything in particular.

25 Q. But that was not a necessary part of the

1 review process? If you didn't -- if you looked at the
2 review and you didn't have any questions, it just got
3 sent right to accounting. You didn't have to go --

4 A. No. I think it would still go through --

5 Q. It would -- okay.

6 A. I think it would still go through

7 Riggins, but it would just -- if we had a

8 recommendation or not or questions or not.

9 Q. Okay. Do you know if -- do you know if
10 there was a second independent review done at that
11 level or was your -- if you didn't have any questions
12 on it, it basically was a proforma kind of approval?

13 A. I don't know if it was proforma. I don't
14 know --

15 Q. You don't know?

16 A. -- to what extent Mr. Riggins looked at
17 them or not. I -- I don't know that.

18 Q. That's fair.

19 COMMISSIONER GUNN: That's all I have.

20 Thanks. I appreciate that.

21 JUDGE PRIDGIN: Commissioner Gunn, thank
22 you.

23 Commissioner Kenney?

24 QUESTIONS BY COMMISSIONER KENNEY:

25 Q. Might be in danger of beating a dead

1 horse, but just bear with me because this is
2 intriguing to me. And I want to ask first about the
3 Comprehensive Energy Plan, Construction Projects, Cost
4 Control system. It's a HC document, but I'm not going
5 to ask about the contents of it. This document is --
6 was drafted specifically in response to the
7 Comprehensive Energy Plan. Correct?

8 A. Absolutely.

9 Q. Okay. And you said Chris Giles
10 negotiated the regulatory plan with Staff or he was
11 primarily responsible for negotiating the contents of
12 that?

13 A. Correct. From the company's perspective,
14 he was our principal negotiator.

15 Q. Okay. Is he a lawyer?

16 A. No, he's not.

17 Q. Paragraph Q is the paragraph of the
18 regulatory plan that's gotten all the attention.

19 A. Absolutely.

20 Q. And I probably asked you some of these
21 questions yesterday about whether the terms identify
22 and verify -- or the terms of paragraph Q, whether
23 they were discussed and what those terms meant. Was
24 it ever discussed that Staff would review the cost
25 control system plan and approve it or did Staff have

1 any involvement in drafting the cost control plan at
2 all?

3 A. Not in drafting it, but the understanding
4 was that they would provide it to them and expect
5 input from them. And we provided -- provided this
6 document -- the cost control system document to Staff
7 in July of 2006 and met with them to go over it.

8 Q. All right. Who attended those meetings?

9 A. I believe -- yeah, Ms. Ott gave me the
10 sign-up sheet for that. It's -- there's a July 11th,
11 2006 meeting and I have a copy of that sign-in sheet.
12 And there are -- it's a list of who's there, but
13 what's interesting to me, the people who ultimately
14 audited the project and are making these arguments
15 weren't in attendance at this meeting. According to a
16 sign-in sheet, Bob Schallenberg wasn't there, Chuck
17 Hyneman wasn't there nor was Mr. Majors.

18 Q. Who from our Staff was there?

19 A. Lena Mantle, Wess Henderson, Cary
20 Featherstone, Steve Dottheim, Steve Traxler, David
21 Elliott, Rus-- sorry, he's OPC. Dan Beck, Warren
22 Wood, who was with the Staff at that time.

23 Q. Okay.

24 A. That's --

25 Q. Is this -- is this attached to something

1 or is this something that was requested in discovery?

2 MR. FISCHER: Judge, I -- I would like to
3 reserve a exhibit number for this because I think --
4 there's been so much discussion, we'd love to have
5 this in the record.

6 JUDGE PRIDGIN: That's certainly fine,
7 Mr. Fischer.

8 BY COMMISSIONER KENNEY:

9 Q. Did you attend those meetings?

10 A. Yeah. I'm on the list, yes.

11 Q. You're on the -- okay. Did you -- was
12 that the only meeting that was had with respect to
13 that document?

14 A. Oh, no. This was just the first meeting
15 where we presented it to Staff and went over it with
16 them.

17 Q. How many of those meetings were there, do
18 you know?

19 A. Well, how many meetings did we talk about
20 the cost control system?

21 Q. Well, I guess -- let me back up. Was
22 that meeting convened specifically to discuss the cost
23 control system?

24 A. Yes.

25 Q. And I'm assuming it was a draft cost

1 control system at that time; you were seeking input.

2 Right?

3 A. Correct. Or it was -- it was a draft and
4 it was an explanation this is how we intend to do it.

5 Q. And how many more meetings were had
6 specifically to discuss the cost control system?

7 A. The cost control system, I would say
8 there were many meetings about that, but I would just
9 parse as far as changing the draft language, there --
10 there weren't subsequent meetings about the language
11 of the document because we didn't get feedback
12 indicating that the text should be changed.

13 Q. Okay.

14 A. But what there -- there were many
15 meetings after that to describe how the system would
16 work, how you would track costs and then with the
17 reforecast, of course, how that worked.

18 Q. How many of those meetings occurred?

19 A. At very minimum on a quarterly basis we
20 met with staff and the cost control and the cost of
21 the project was a discussion every time. And the
22 quarterly meetings go back to the first quarter of
23 2006.

24 Q. All right.

25 A. And then with each reforecast meeting,

1 each reforecast we met with the Staff. And then
2 separate and apart from that, Staff requested I'm not
3 sure how many -- I think roughly a dozen times. He
4 can probably testify to it, but to meet specifically
5 with Forrest Archibald, our cost engineer, to go over
6 how it was working. So there have been many meetings
7 about it.

8 Q. Let me make sure I understand the timing.
9 The comprehensive -- the stipulation and agreement is
10 the Comprehensive Energy Plan. I just want to make
11 sure we're using the same terms. Right?

12 A. Yes.

13 Q. Okay. The Comprehensive Energy Plan was
14 executed in May of '05?

15 A. Yes. And approved in August of '05.

16 Q. And then this document, cost control
17 system document, was finally drafted by July of '06?

18 A. Correct.

19 Q. All right. And prior to July of '06,
20 when that July 11th meeting occurred, had Staff had
21 any opportunity to provide input into its development?

22 A. I -- I don't know. That would --
23 Mr. Giles was in my role at that time so he would be a
24 better witness to ask. I just -- I don't know about
25 the level of discussions. I attended this meeting

1 where it was presented, but discussions that might
2 have occurred before that I'm just -- I'm not familiar
3 with.

4 Q. So at that July 11th, 2006 meeting, this
5 document was substantially completed at that point?

6 A. Yeah. I -- I'm not aware of any
7 changes --

8 Q. That occurred after that?

9 A. -- that occurred, right.

10 Q. So this as we look at it as Schedule
11 SJ2010-1 is how it was presented at the July 11th,
12 2006 meeting?

13 A. Yes. That's my understanding.

14 Q. And that's how it's existed throughout
15 the life of the regulatory -- the Comprehensive Energy
16 Plan?

17 A. Yes.

18 Q. All right. And do you know if at the
19 meeting that you attended or if at any subsequent
20 meetings there was ever discussion of -- well, let me
21 ask a different question.

22 Somewhere in here it talks about how cost
23 overruns above the definitive estimate will be
24 identified and explained. And if that's something you
25 all discussed earlier, I apologize. We were in

1 agenda.

2 A. We touched upon it, but that's fine,
3 Commissioner. It's -- Section 3 is project control,
4 Section 3.1 is cost control. And that's on page 8.

5 Q. Yeah. Does it specifically speak to cost
6 overruns being identified and explained?

7 A. I would say yes. I mean the words
8 "identify and explain" don't appear, but what it
9 says -- and it's relatively brief, it's just five
10 paragraphs. But it says that we're going to set a
11 definitive estimate -- control budget estimate.

12 Q. Right.

13 A. We're going to monitor it continuously
14 and we're going to track to it and there's going to be
15 a documentation process around that and we're going to
16 provide that information.

17 Q. So 3 point -- do we need to go in-camera
18 now?

19 MR. FISCHER: No.

20 BY COMMISSIONER KENNEY:

21 Q. No. 3.0, project controls; 3.1 --

22 A. Cost control.

23 Q. -- cost control. Those are the five
24 paragraphs, one, two, three, four -- where's the fifth
25 paragraph? Is it on the next page? So it's -- or is

1 it all these down to change order management?

2 A. Exactly. Down to change order
3 management. And I mean it goes on and it's all -- I
4 mean this whole document --

5 Q. Everything under 3.0 though is what
6 you're thinking speaks directly to identifying and
7 explaining cost overruns?

8 A. I'd say -- I mean the whole document
9 can -- explains the system.

10 Q. Okay.

11 A. But to your specific question, if you --
12 I can direct you to a part of the agreement that
13 speaks very directly to it, it would be those five
14 paragraphs.

15 Q. Were there ever any discussions prior to
16 I guess implementation of this document about what
17 Staff's expectations were with respect to identifying
18 and explaining cost overruns either at the July 11th
19 meeting or a subsequent meeting?

20 A. The only expectations I remember being
21 discussed up until I would say July of 2010 but prior
22 to that was the expectation that you could track to
23 the control budget estimate. And we were on the same
24 page that that was the point of the system to be able
25 to track to the control budget estimate.

1 Q. Control budget estimate was going to be
2 the baseline against which everything would be
3 measured?

4 A. Exactly.

5 Q. Okay. All right. Where was the -- I'm
6 going to switch gears now. The Strategic Talent
7 Effectiveness document that Ms. Ott was referring to,
8 what that document? Where is that attached to? What
9 is that document?

10 A. I'm not sure if it's attached to anyone's
11 testimony.

12 Q. Is it part of a data request or discovery
13 request?

14 A. Yeah, it was provided.

15 Q. I'd like to see it since you guys talked
16 about it.

17 MS. OTT: We can mark it as an exhibit
18 and put it into the record.

19 JUDGE PRIDGIN: That's certainly fine.
20 Thank you.

21 BY COMMISSIONER KENNEY:

22 Q. So let me -- now I'm going to beat the
23 dead horse and talk about Schiff Hardin. \$230 an hour
24 for a paralegal seems exorbitant. And I reviewed your
25 testimony and you worked at -- you worked at Shook,

1 Hardy?

2 A. Uh-huh.

3 Q. And then Vinson and Elkins, DC; is that
4 right?

5 A. Yes. Correct.

6 Q. What do the paralegals at those two firms
7 charge, if you remember?

8 A. I don't recall paralegal rates. Sorry.

9 Q. When were you there?

10 A. I left Vincent and Elkins in 2005, I
11 believe.

12 Q. What was your hourly rate when you left?

13 A. 325 an hour.

14 Q. Okay. So \$100 -- so 325 in 2005 for DC
15 rates. I guess I can't really do an apples-to-apples
16 comparison so I won't even try. \$230 an hour, does
17 that strike you as reasonable based upon what you know
18 having worked at Shook, Hardy and Vinson and Elkins
19 for paralegal work?

20 A. I'd say it depends on how the firm's
21 using their paralegal and how good the paralegals are.
22 I've met with some paralegals that save a lot of
23 lawyer time. And if that paralegal is saving a lot of
24 lawyer time, I would argue that's a savings in the
25 long run.

1 Q. Was there an engagement letter in terms
2 of representation with -- between KCP&L and Schiff
3 Hardin?

4 A. Again, I wasn't involved in hiring them,
5 but yeah, I would expect so. We typically have an
6 engagement letter with law firms and I wouldn't think
7 this would be an exception.

8 Q. Have you seen it?

9 A. Not that I can recall. It seems that I
10 have. I just -- I don't want to --

11 Q. Did Staff ask for it as a DR and would it
12 be a privileged? Would the engagement letter and the
13 terms of representation be a privileged document?

14 MR. FISCHER: Commissioner, it's my
15 understanding we did provide that to the -- to the
16 Staff.

17 COMMISSIONER KENNEY: All right. Is it
18 the engagement letter and terms of representation or
19 any documents that set forth the relationship between
20 Kansas City and Power and Light and Schiff Hardin?
21 And we don't have to find it now. I just want to know
22 if it's available. I would like to see it eventually,
23 but not right this very second.

24 BY COMMISSIONER KENNEY:

25 Q. What's Mr. Roberts' hourly rate, if you

1 know?

2 A. I believe that's in Staff's report. I
3 don't have that ahead of me, but they -- in Staff's
4 report they have his hourly rate. And my recollection
5 is 550.

6 Q. It's around here somewhere.

7 A. My recollection is 550, but Mr. Roberts
8 will be on the stand.

9 Q. He's in Chicago. Right?

10 A. Correct.

11 Q. Okay. All right. So the 20 -- the
12 upwards of \$20 million we're talking about is from
13 what point through what point?

14 A. From the beginning of the project. And
15 that's I think the really important point to keep in
16 context is both the scope of the work they were doing,
17 the quality of work and over the time frame.

18 Q. Well, and that's what I want to get at
19 because that's what I want to see the -- the terms of
20 the representation and the engagement letter I'm
21 assuming sets forth the scope of the work for they're
22 being retained --

23 A. Uh-huh.

24 Q. -- and it sets forth who's going to be
25 working on the project?

1 A. That's what I would anticipate.

2 Q. How bills are paid?

3 A. Yeah. That's what I would anticipate.

4 Q. Okay. And so when -- when were they
5 retained? Was it in 2005 or 2006?

6 A. They began -- they -- they began
7 providing services to the company back in 2005 is my
8 recollection. But the -- like I said, I'm not
9 familiar with the engagement letter so I don't know
10 what the date of that would be.

11 Q. Are you aware of whether Schiff Hardin
12 had had any prior relationship with Kansas City Power
13 and Light or had performed any prior legal services?

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

15 Q. So this was a new relationship?

16 A. Yes. As far as I know.

17 Q. Okay. And was Mr. Roberts always the
18 partner in charge of the file as far as you know?

19 A. Yes. As far as I know.

20 Q. Okay. And who -- all right. Never mind.

21 MS. OTT: Judge, for clarity, the
22 document you're looking for is attached to Chuck
23 Hyneman's surrebuttal testimony as schedule 11 or 1-1.

24 COMMISSIONER KENNEY: What is it exactly
25 that's attached to his testimony?

1 MS. OTT: The contract for legal
2 services.

3 COMMISSIONER KENNEY: Okay.

4 JUDGE PRIDGIN: Thank you.

5 BY COMMISSIONER KENNEY:

6 Q. Okay. So Ernst & Young and this
7 Strategic Talent Effectiveness entity had some
8 criticisms of Schiff's relationship with the project
9 team; is that right?

10 A. Yeah. Basically I believe it could be
11 summarized as their conclusions were Schiff was
12 communicating too bluntly with the project team.

13 Q. And it sounded like -- and I want to look
14 at the Strategic Talent Effectiveness. The words that
15 you read seem more harsh than Ernst & Young's
16 criticism does. Is that fair?

17 A. I think that's fair. I think Ernst &
18 Young document basically says Schiff Hardin's
19 extremely competent, extremely well qualified, they
20 just need to work on communicating with the project
21 team better.

22 Q. And you said the Strategic Talent
23 Effectiveness, is this -- is that a consulting firm or
24 something? what is that?

25 A. Yeah. Strategic Talent Solutions is a

1 consultant.

2 Q. Talent Solutions. And they were hired in
3 May of '07?

4 A. No. This report is dated May of '07.

5 Q. were they hired specifically to come in
6 and assess Schiff Hardin's relationship with the
7 project management team?

8 A. No. The company had a pre-existing
9 relationship with Strategic Talent Solutions.

10 Q. well, what precipitated asking Strategic
11 Talent Solutions to do an assessment of Schiff
12 Hardin's relationship with the project management
13 team?

14 A. I wasn't directly involved that decision.
15 That would be a great question for Bill Downey who I
16 believe was. But my -- my understanding is that the
17 company recognized that communication could be
18 improved between those two groups and we wanted to
19 assess what needed to be done about it to improve the
20 communication.

21 And the report's dated May 2007, which is
22 pretty early on in the project. So we were trying to
23 address an issue before it became a problem that
24 affected the project.

25 Q. well, how did you become aware that

1 communication was an issue? How did the company
2 become aware?

3 A. Again, that's a better question for
4 Mr. Downey.

5 Q. So -- and I think you said that the --
6 that the question that should be asked is what did the
7 company do in response to Ernst & Young's criticism.
8 So what did the company do in response to Ernst &
9 Young's criticism?

10 A. Basically we -- we got the players
11 together and figured out why it wasn't working, why
12 were they having a hard time communicating. And to
13 simplify it, I would put it down to it was a bedside
14 manner issue. That Schiff recognized their role was
15 to give us direct, honest, open criticism but how
16 that's delivered has an impact on how it's received.
17 So there was a discussion about how to deliver that in
18 a less confrontational manner and that was done.

19 Q. And who participated in those
20 discussions?

21 A. It would have been the -- the Schiff
22 Hardin team and the project team at that time.

23 Q. Did you participate in those discussions?

24 A. No, I was not directly involved in the
25 project.

1 Q. Okay. And do you know if the
2 relationship improved from that point forward and
3 there were no more problems?

4 A. My understanding is the relationship
5 improved a lot after that.

6 Q. And did -- was there a need to have ever
7 have Ernst & Young or Strategic Talent Solutions do
8 any further assessment to determine whether the
9 communication problems has been solved?

10 A. That -- that's a great question. There
11 were subsequent audits done and this was -- this issue
12 never came up again.

13 Q. I just want to make sure I understand.
14 In the time that you were reviewing bills and that
15 you're aware, there were never any adjustments made to
16 the bills?

17 A. I -- I didn't recommend any with respect
18 to Schiff Hardin. Using this same process --

19 Q. Great client to have.

20 A. Well, no. With respect to other law
21 firms, there were other instances that came up where I
22 wasn't aware that this partner was working on this
23 matter and so we're not going to pay that time. So
24 that is part of the process and that came up. But
25 that didn't happen on a Schiff Hardin bill.

1 Q. All right.

2 A. At least that I recommended. What
3 Mr. Riggins ultimately did, I don't know, but I didn't
4 recommend any.

5 COMMISSIONER KENNEY: All right. I don't
6 have any other questions. Thanks.

7 JUDGE PRIDGIN: Commissioner Gunn?

8 QUESTIONS BY COMMISSIONER GUNN:

9 Q. Yeah. I just have a couple and I might
10 have to go HC for a couple but I don't right now.

11 Were there fee increases that you were
12 aware of from the time that the engagement with Schiff
13 Hardin was made through the project?

14 A. There were. And then those rates were
15 frozen. I believe they froze their rates in 2009.
16 Mr. Roberts would maybe be better able to answer that.
17 But they froze their rates and new business, for
18 example, that Schiff Hardin gets is billed at a higher
19 rate than what we're paying today.

20 Q. And do you know what the increase was?
21 Was it an across the board increase or was it a
22 percentage increase?

23 A. I don't recall if it was across the board
24 or percentage increase. I know one of the issues or
25 one of the raises were attributable to one of the

1 lawyers working on the project went from associate to
2 partner during that time frame so her rates increased,
3 but that wouldn't have been an across the board
4 percentage.

5 COMMISSIONER GUNN: I'm going to need to
6 go to HC.

7 JUDGE PRIDGIN: Give me just a moment,
8 please.

9 COMMISSIONER GUNN: I think. Because
10 it's an HC document, it's marked.

11 JUDGE PRIDGIN: Just one moment, please.

12 (REPORTER'S NOTE: At this point, an
13 in-camera session was held, which is contained in
14 volume 16, pages 565 through 568 of the transcript.)

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1 JUDGE PRIDGIN: All right. We're back in
2 public.

3 CURTIS BLANC testified as follows:

4 BY COMMISSIONER GUNN:

5 Q. I mean you can see where it's concerning?

6 A. No. And I understand. But I think as we
7 described, a paralegal that's good saves lawyer time
8 and that saves money.

9 Q. Sure. But if you can do paralegal time
10 at the agreed upon rate and now you have a different
11 rate, there -- and there's no explanation for that --
12 and I don't know on some of this, yeah, you may be --
13 can paralegal work be done by a first-year associate
14 who is at substantially less than -- than the --
15 the -- the rate that she was paid?

16 And I also don't know whether those rates
17 could have been negotiated down because there was
18 no -- I don't know that there was any negotiation
19 process in the rates. And I don't have anybody that I
20 can ask -- the person that's responsible for it, I
21 don't have anybody that I can ask.

22 I mean I will tell you that in my
23 experience when you're talking about a potential
24 \$20 million bill, that you have a competitive process.
25 Because you're going to -- and at the end of the day,

1 you might all know who's going to win the competitive
2 process, you might know that there's only one person
3 out there that can do this job, but you don't know
4 that there's not somebody else that can do it that
5 can't do it a whole lot cheaper.

6 A. No, and I would agree that \$20 million is
7 a lot of money. But what Dan Meyer in particular will
8 tell you is that looking at the industry for that
9 level of services, less than 1 percent of the project
10 cost is a really good deal.

11 Q. And you know what? I don't necessarily
12 disagree with you. But I don't know that it can't --
13 couldn't have been less than 1 percent of the total
14 project costs. I don't know that because there was no
15 competitive process.

16 And I don't know that because I honestly
17 I -- I find -- I find it -- I -- I find it am-- I mean
18 out of the hundreds of time entries that you -- that
19 were reviewed -- and it's not fair to say that none of
20 them were adjusted because you only know a portion --
21 you only know a portion. But I find it amazing that
22 out of the hundreds of -- of time entries that were
23 done, that there were zero adjustments made. Not
24 even -- not even -- not even one.

25 I mean, you know, in experiences in

1 private practice, that has become somewhat of a
2 general counsel's job is to take a look at these
3 bills. And what concerns me is, is that the decision
4 was made that because it's going to go into project
5 costs, that there wasn't -- there didn't need to be a
6 level of scrutiny on these things because they were
7 being pumped right into -- they were going to be
8 passed along to the rates.

9 And while less than 1 percent might be a
10 really good deal, I don't know -- I don't know whether
11 that's the best deal that the consumers could have
12 gotten.

13 A. Right. I didn't say and certainly didn't
14 mean to say that there was no scrutiny because it was
15 a project cost. That's not -- not my testimony or
16 position. That's not what occurred.

17 Q. And I don't mean to imply that. I don't
18 mean to imply that these -- I don't even mean to imply
19 that these are imprudent. I certainly don't. What
20 I -- what I'm saying and it's devolved and I apologize
21 for that, is, is that you can see how this raises a
22 question for us or for me in -- in particular.

23 And so I'm going to have other questions
24 for -- for all -- for the other lawyers and the other
25 people that reviewed in-- invoices out there. They

1 should probably be prepared to help me answer some of
2 these questions.

3 A. Sure. And Mr. Roberts can explain how
4 Schiff Hardin sets its rates.

5 Q. Absolutely. Right. And Mr. Roberts will
6 probably be asked those questions, I'll be
7 anticipating. But I don't have anything else. I
8 appreciate -- I appreciate the exchange.

9 JUDGE PRIDGIN: All right. Any further
10 Bench questions?

11 This appears to be a good time to break
12 for lunch. I'm showing 12:30, if we could reassemble
13 at 1:30. Is there anything from counsel before we go
14 off the record? All right. Hearing nothing, we will
15 stand in recess until 1:30.

16 (A recess was taken.)

17 JUDGE PRIDGIN: All right. Good
18 afternoon. We're back on the record. When we
19 adjourned for lunch, I believe Mr. Blanc was on the
20 stand. The Bench had finished questions and we were
21 back to recross.

22 MR. SCHWARZ: I have no questions on
23 recross. Thank you, Judge.

24 MR. MILLS: I have a few.

25 JUDGE PRIDGIN: Okay. Mr. Mills does.

1 Anything else before we begin recross? Okay.

2 Mr. Mills, when you're ready.

3 MR. MILLS: Let me check something
4 quickly.

5 JUDGE PRIDGIN: Sure.

6 MS. OTT: And actually I -- we were going
7 to mark two documents as exhibits and I had copies
8 made. So if we want to do that right now while he's
9 clarifying something.

10 JUDGE PRIDGIN: That's fine.

11 MS. OTT: I guess it would be Staff
12 Exhibit 248.

13 JUDGE PRIDGIN: Let me check my list. I
14 believe that's correct.

15 MS. OTT: would be the July 11th, 2006
16 meeting on cost control. And it's -- contains three
17 documents, the attendance list, the Comprehensive
18 Energy Plan, Construction Projects, Cost Control
19 system, which is highly confidential, as well as the
20 KCPL Comprehensive Energy Plan, Cost Control System,
21 July 11th, 2006 PowerPoint presentation.

22 JUDGE PRIDGIN: Okay.

23 MS. OTT: And then I guess 249 would be
24 the Strategic Talent Solutions May 2007 report highly
25 confidential.

1 JUDGE PRIDGIN: Ms. Ott, what you just
2 handed me is 248?

3 MS. OTT: Yes.

4 (KCP&L Exhibit Nos. 248-HC and 249-HC
5 were marked for identification.)

6 JUDGE PRIDGIN: All right. Anything
7 further before Mr. Mills has questions for Mr. Blanc?

8 All right. Mr. Mills, when you're ready,
9 sir.

10 RECROSS-EXAMINATION BY MR. MILLS:

11 Q. And I just have a few questions. You
12 were asked some questions from the Bench about a
13 paralegal at Schiff Hardin that billed at a rate of
14 \$230 an hour. Do you recall that?

15 A. I don't remember the exact figure. I
16 might have that up here, but I remember questioning
17 about a paralegal's rates.

18 Q. And there was some concern about how high
19 the rates were?

20 A. There were questions about the rates.

21 Q. Did you do any analysis to find out if
22 that \$230 an hour paralegal was saving a lot of lawyer
23 time?

24 A. As I described, that wasn't part of my --
25 my part of the bill review process wasn't to evaluate

1 whether the hourly rates was reasonable. It was to
2 evaluate the work performed and if it was done in an
3 efficient manner.

4 Q. And my question is not as to the rate,
5 but my question is did you do any analysis to
6 determine whether that particular paralegal was saving
7 a lot of lawyer time?

8 A. No. I was trying to be responsive to
9 that. I personally did not, but that wasn't part of
10 my role. I wouldn't expect to. I -- the review I did
11 was in response to my interaction with the project and
12 more specifically my interaction with the Schiff
13 Hardin team. I didn't work with that paralegal. I
14 don't think I worked with any Schiff Hardin paralegal,
15 so I wouldn't have a personal basis to do that kind of
16 analysis.

17 Q. Okay. Now, did I hear you correctly that
18 you -- that you have recommended to bills from --
19 recommended adjustments to bills from other law firms
20 during your employment at KCP&L?

21 A. Yes.

22 Q. Okay. And which law firms?

23 A. The example that comes to mind first was
24 a -- it was a Duane Morris bill. And I looked at it
25 and there was a time entry for work that I didn't

1 believe we had asked for and from a partner that I
2 didn't recognize who that was.

3 And I -- similar to the process we
4 described here, I went around to the other lawyers
5 that interacted with him and said, Do you have any
6 knowledge of this? And the answer was no. And
7 because my concerns weren't satisfied, we went to
8 Duane Morris and asked them. And it turns out it was
9 an error and it was removed from the bill.

10 Q. And what kind of work was Duane Morris
11 doing?

12 A. In that case, it was part of the Iatan
13 project. We looked at them as a -- as potentially
14 supplementing or replacing -- we looked at Duane
15 Morris to see if they could do the kind of work that
16 Schiff Hardin was doing just in our due diligence for
17 law firm services. And then in addition to that, they
18 provided some legal service with respect to the
19 engagement of Pegasus.

20 Q. Okay. Now, and I'm going to try to ask
21 this question in a way so as not to get into highly
22 confidential information, but it's in reference to
23 the -- in part, in reference to the contract that --
24 that's in evidence with -- with Schiff Hardin.

25 And my question is, is the -- do you know

1 and did you do any research to find out whether the
2 \$230 an hour paralegal is more experienced or better
3 in some way than the paralegal that Commissioners
4 asked you about on the -- the contract form with
5 Schiff Hardin?

6 A. As I explained, I didn't work directly
7 with any of the paralegals. In conversations with the
8 Schiff Hardin team, my understanding is the paralegal
9 with the higher billing rate is substantially more
10 experienced, but that -- those are members of Ken
11 Roberts' team and he would be able to answer that
12 directly. But my understanding is there's a
13 significance difference in their experience.

14 Q. And when did you have that conversation?

15 A. Just over the course of these hearings.

16 Q. Okay. And I believe when you were having
17 discussions with either Commissioner Gunn or
18 Commissioner Kenney, you recommend that they ask Dan
19 Meyer about the reasonableness of Schiff Hardin's
20 charges in this case?

21 A. Yes. That's correct.

22 Q. Who does Dan Meyer work for?

23 A. Dan Meyer works with Schiff Hardin, but
24 he's got 40 years of experience in the construction
25 industry and what --

1 Q. You've answered my question.

2 A. Okay.

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

5 JUDGE PRIDGIN: Mr. Mills, thank you.

6 MS. OTT?

7 RECROSS-EXAMINATION BY MS. OTT:

8 Q. Yes. Going back to -- the Commissioners
9 were discussing the Ernst & Young and Strategic Talent
10 Solutions audit report. You made comments that you
11 took the findings and attempted to correct them. Is
12 it your opinion that in an audit when you receive
13 negative -- or feedback that suggests you implement or
14 correct a problem, is that a positive thing to you?

15 A. I'd say it's part of prudent management.
16 And the Kansas Commission's order basically recognized
17 that as well, that -- I guess there are two prongs
18 there. The first is whether you should do an audit,
19 whether you should do that self-assessment. And
20 absolutely that self-assessment is part of prudent
21 management. But then what you do in response to that
22 is also important. So both are important, to do the
23 audit and then respond to the audit findings. Both
24 are important.

25 Q. But is having something negative or that

1 needs corrective action in an audit report something
2 that's positive to you?

3 A. As I said, it depends what the response
4 is. If they pointed out something and we didn't do
5 anything, that -- that would be negative. But to
6 point out something that we could be doing better and
7 then to do it better, yes, that's positive. That's a
8 prudent good project management.

9 Q. But wouldn't it be positive to not have
10 those comments in an audit report in the first place,
11 that you shouldn't have to have corrective action,
12 that it should have been implemented prior to an
13 audit?

14 A. If the standard were perfection, that
15 would probably be a fair assessment, but the standard
16 isn't perfection. The standard is prudence.

17 Q. So are you saying it's okay to be
18 imprudent until somebody finds something wrong and
19 then you correct it and then that's prudent?

20 A. That's not what I'm saying at all. I'm
21 saying I don't think perfect is a reasonable
22 expectation for anyone and it's not the standard for a
23 disallowance. What I'm saying is that when someone
24 points out you're not perfect, that improvements could
25 be made, it's prudent management to look for those and

1 make those changes.

2 Q. In going back to discussions on the
3 Schiff Hardin contract and the contract had set fees
4 and there was a subsequent fee increase, who approved
5 the rate -- the rates increase for Schiff Hardin
6 employees?

7 A. Sure. It would be the general counsel.
8 That's typically how it works with engagement of law
9 firms. That's communication between the law firm and
10 the general counsel.

11 Q. So that would have been Mr. Riggins who
12 would have approved those in-- the increases?

13 A. Correct.

14 Q. And is there any documentation that
15 states that Mr. Riggins approved those increases?

16 A. I guess not that I'm aware of, but that's
17 not my understanding of how the process typically
18 works. The process, as I understand it, is typically
19 that's a conversation had -- and not specific to
20 Schiff, but most law firms is that there's a partner
21 in charge, basically someone at the law firm that's
22 responsible for the relationship with the client and
23 then on the client side it's the general counsel.

24 And then those two have a conversation.
25 The partner in charge and the general counsel have a

1 conversation about how the service is going, what the
2 rates are going to be in the coming year. So it's a
3 conversation. I'm not aware of --neither of the firms
4 I've worked for had an amended engagement letter on an
5 annual basis or any formal documentation like that.

6 Q. So after these oral conversations in
7 which people may or may not have agreed to allow
8 Schiff Hardin to increase their rates, there was
9 nothing memorialized to say, Pursuant to our
10 conversation, we've agreed to the following changes?

11 A. Well, not that I'm aware of. But one of
12 the parties to each of those conversations is a
13 witness in this case. Ken Roberts was the partner in
14 charge for Schiff Hardin and in charge of that
15 relationship and he is the one that had those
16 conversations with the company.

17 Q. But Mr. Riggins isn't here.

18 A. But one of the parties to the
19 conversation is.

20 Q. Well, there's always two sides to every
21 story.

22 Now, going back to the audits, the STS,
23 did either of them, STS or Ernst & Young, request to
24 do a follow-up visit -- a follow-up audit to see if
25 you were implementing their recommended changes?