

1 before Mr. Meyer is sworn? All right. Mr. Meyer, if
2 you would raise your right hand, please.

3 (Witness sworn.)

4 JUDGE PRIDGIN: Thank you, very much,
5 sir. And any direct before he stands cross?

6 MR. HATFIELD: Yes, Your Honor.

7 JUDGE PRIDGIN: When you're ready,
8 Mr. Hatfield.

9 MR. HATFIELD: Thank you, Judge.

10 DANIEL MEYER, having been sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. HATFIELD:

12 Q. Would you state your name and address for
13 the record, please.

14 A. Daniel F. Meyer, M-e-y-e-r. 30 Sequoia,
15 Lake Forest, two words, Illinois.

16 Q. And are you the same Daniel F. Meyer who
17 caused to be filed in this case direct, rebuttal and
18 supplemental rebuttal testimony?

19 A. I am.

20 Q. And did those filings also include
21 schedules for exhibits?

22 A. Yes, they did.

23 MR. HATFIELD: And, Judge, just for the
24 record, supplemental testimonies -- or supplemental
25 rebuttal for the same reasons as we discussed earlier,

Appendix
NN

1 response to Mr. Drabinski's late-filed testimony all
2 by agreement.

3 BY MR. HATFIELD:

4 Q. Mr. Meyer, do you have any changes or
5 corrections to any of the testimony you filed?

6 A. Not that I'm aware of.

7 Q. We've marked that testimony as
8 Exhibits 43 -- 43, 44 and 45 for direct, rebuttal and
9 surrebuttal. And Mr. Meyer, do the schedules and
10 exhibits you've attached depict information discussed
11 in your testimony?

12 A. Yes, they do.

13 Q. Do you have any corrections? Did I
14 already ask you that? Do you have any corrections to
15 your testimony?

16 A. You asked me, but not that I'm aware of.

17 MR. HATFIELD: Judge, we'd move the
18 admission of those three exhibits.

19 JUDGE PRIDGIN: All right. Exhibits 43,
20 44 and 45, all NP and HC, have been offered. Any
21 objection?

22 Hearing no objection, Exhibits 43, 44,
23 45, both NP and HC, are admitted.

24 (KCP&L Exhibit Nos. 43-NP, 43-HC, 44-NP,
25 44-HC, 45-NP and 45-HC were received into evidence.)

1 MR. HATFIELD: Tender the witness for
2 cross.

3 JUDGE PRIDGIN: Mr. Hatfield, thank you.
4 Mr. Schwarz?

5 CROSS-EXAMINATION BY MR. SCHWARZ:

6 Q. Mr. Meyer, when -- what -- what was the
7 last coal-fired based generating plant that you worked
8 on in a construction management capacity?

9 A. The -- as part of the Schiff oversight, I
10 believe it was Nipsco in Indiana. I was on the Schiff
11 team on that project.

12 Q. And you had direct field responsibility?

13 A. No.

14 Q. When was the last time you -- you had
15 direct field responsibility in a construction
16 management capacity on a base load coal unit?

17 A. I haven't.

18 Q. Okay. Did Morrison Knudsen do that kind
19 of work?

20 A. Yes, they did.

21 Q. You just weren't assigned to that group?

22 A. That's correct.

23 Q. Okay. You cite an article by Mr. Rowe
24 concerning contingencies. Do you recall that?

25 A. Yes, I do.

1 Q. That article dealt with transit systems,
2 did it not?

3 A. Yes, it did. Let me correct the answer I
4 just gave you. I cited the Rowe article for the
5 purposes of the wisdom of making periodic cost
6 projections.

7 Q. Excuse me. This is not -- this is not
8 responsive.

9 JUDGE PRIDGIN: All right. Thank you.
10 And I'll -- if you can try to answer just the question
11 that's being asked, please.

12 THE WITNESS: Could you give me the
13 question again, please?

14 BY MR. SCHWARZ:

15 Q. Actually you've asked and answered so
16 we're good. How many times have you testified on
17 prudence before a state public service or corporation
18 commission?

19 A. This is my first.

20 Q. on pages 21 and 22 of your supplemental
21 surrebuttal you discuss labor costs in Kentucky. Do
22 you recall that?

23 A. Yes.

24 Q. Did you provide any analysis on those two
25 pages to support the statements that you made there?

1 A. Let me -- could I get that out?

2 Q. Sure. Absolutely.

3 A. That's in --

4 Q. The supplemental rebuttal. I may have
5 said surrebuttal, but it's rebuttal.

6 A. And again, I'm sorry. What page?

7 Q. 21 and 22.

8 A. Okay. I've just looked at it. Your
9 question is?

10 Q. My question is, did you provide any
11 analysis to support the statements you made there?

12 A. Well, I'm not sure which ones that you're
13 referencing. I've worked in Kentucky. I didn't --
14 I'm representing to you that I've worked on projects
15 in Kentucky and I'm doing that right now, but I don't
16 know whether you consider that an analysis or not.

17 Q. Are you aware that both Burns and
18 McDonnell and Schiff Hardin made labor differential
19 estimates in their calculations for union versus open
20 shop with respect to Iatan costs?

21 A. The Iatan was -- the Iatan costs were
22 figured on a union basis.

23 Q. Do you know what a bottom up/top down
24 estimate refers to?

25 A. There's a lot of variability in the

1 industry with respect to terminology like that, but
2 generally it -- a bottom down -- I mean a top
3 down/bottom up is -- you come from the top and you go
4 down and you come from the bottom and you go up and
5 meet someplace in the middle and do whatever it is you
6 want to do with those results.

7 Q. Would you agree that at least the top
8 down analysis uses general industry information like
9 dollars per kilowatt adjusted for location and
10 technology and so forth?

11 A. Not necessarily.

12 Q. What would a top down analysis involve?

13 A. Well, it depends on who's doing the
14 analysis and for what purpose. If you could give me
15 a --

16 Q. Well, let's say that you were going to do
17 a top done analysis of what it might cost to build a
18 coal-fired plant in Weston, Missouri.

19 A. Well, there could be several different
20 ways to do it depending on who was doing it. If you
21 were a contractor, you would look at your own
22 individual experience in doing that type of work. If
23 you were an engineer, you might also look at your own
24 particular experience in doing that type of work. If
25 you were neither, you might look at industry, you

1 might look at a -- you would talk to other people.

2 You could hire estimates for that type of service.

3 Q. But hiring -- let's not talk about
4 hiring. So as -- would you, for instance, refer to
5 generally available data sources?

6 A. You might.

7 Q. And -- well, let's talk -- what's a
8 bottom up estimate?

9 A. Well, again, that depends upon the -- you
10 know, the person doing the estimate. Again, I'll take
11 you through the scenario. If you're a contractor, you
12 would look at your detailed cost and productivity
13 information on prior or similar plants. If you were
14 an owner, you would look at your lowest level of
15 detail, whatever that was with respect to the costs of
16 those plants.

17 And so it really depends upon the -- the
18 person doing -- or the persons performing the estimate
19 exactly what data they would use. It would generally
20 be like I just enumerated for you.

21 Q. would that involve, for instance,
22 estimating that you'd need so many yards of concrete
23 at so much per yard and you'd need a boiler and you'd
24 need a turbine? I mean you'd -- that's basically a
25 components kind of -- of -- you know, materials and

1 labor and -- and components built up from that --

2 A. Are you talking --

3 Q. -- bottom?

4 A. -- about a bottom's up estimate?

5 Q. Yes, sir. Yes, sir.

6 A. Yeah, it might -- it might contain those
7 parameters, yes.

8 Q. Okay. And didn't Burns and McDonnell use
9 both a bottom up and top down estimate, for instance,
10 in estimating the costs of the Iatan project for
11 KCP&L?

12 A. Yes. It's my recollection that -- that
13 that's how Burns and McDonnell looked at their
14 estimate, yes.

15 Q. Did you review the Monte Carlos
16 approaches that Burns and McDonnell applied to its
17 estimation process?

18 A. Which Monte Carlos are you referencing?

19 Q. Whatever -- what -- the one that Burns
20 and Mc-- Burns and McDonnell -- are you aware that
21 Burns and McDonnell did a Monte Carlos analysis of its
22 cost estimates?

23 A. They -- they did a type of Monte Carlos.
24 They did what they call the excel something.

25 Q. Okay. Do you have -- do you take issue

1 with the method that they used?

2 A. Yes.

3 Q. Okay. And what might your differences be
4 with Burns and McDonnell?

5 A. Well, our differences were on several
6 levels. I'm not sure --

7 Q. What are your differences with the Monte
8 Carlos analysis that Burns and McDonnell applied to
9 the Iatan cost estimates?

10 A. Well, if you take the -- the Monte Carlos
11 that they performed with respect to the 2004 PDR, we
12 didn't think much of it because the underlying
13 estimate hadn't been properly vetted. And to do a
14 very complex analysis like a Monte Carlos on a base
15 estimate that hadn't been vetted was kind of -- it
16 imparted a impression of specificity and accurateness
17 which it just didn't deserve because the base upon
18 which they did the Monte Carlos hadn't been vetted.

19 Q. Okay. But the analysis -- the Monte
20 Carlos analysis itself, the -- the way they applied
21 it, it's -- wasn't problematic, it was the underlying
22 data to which it was applied if I -- do I understand
23 your answer correctly?

24 A. You don't understand my answer. And we
25 also took issue with the way that they actually

1 performed the Monte Carlos.

2 Q. Okay. And that's what my question was.
3 what specifically with the Monte Carlos analysis do
4 you take issue?

5 A. It was how they formulated the questions.

6 Q. Can you give me two examples, if you
7 would?

8 A. Well, the Monte Carlos basically is a
9 random number generator and the number that you pick
10 at random would be this line item of costs is going to
11 overrun by 2 percent and another random number picked,
12 it may underrun by 6 percent. And then you go do that
13 5,000 times and you get an average, quote, end quote,
14 answer.

15 Q. Okay. Is it -- is that -- am I to
16 understand that's one or that's two examples of --

17 A. Well, that would be two, but --

18 Q. You're aware that -- and I don't know if
19 this is HC.

20 MR. HATFIELD: I don't either. What are
21 you going to ask him?

22 MR. SCHWARZ: The turbine building costs.

23 MR. STEINER: Sizing?

24 MR. SCHWARZ: Basically the bids and
25 structures.

1 MR. STEINER: I don't think so.

2 BY MR. SCHWARZ:

3 Q. Okay. You're -- you're aware that there
4 was a cost bust on the quantities and costs related to
5 the turbine building?

6 A. I'm aware of the turbine building as an
7 issue as the job was being designed, yes.

8 Q. Are you aware that the company and Burns
9 and McDonnell were alerted to the problem when they
10 got bids for the structural steel on the building?

11 A. I -- I -- yes.

12 Q. Okay. Can you -- can you draw a
13 conclusion for me about -- concerning the -- strike
14 that. Strike that. I'm sorry.

15 Can you -- can you comment on the process
16 of vetting the cost and quantities by Burns and
17 McDonnell and KCPL given the -- that the -- that they
18 were only alerted to the problem by the -- receiving
19 bids?

20 A. Could you give me your question again?

21 I --

22 Q. What -- what can you -- what conclusions
23 can you draw about the process for vetting costs and
24 quantities by Burns and McDonnell and KCPL by the fact
25 that they were only alerted to problems by reception

1 of bids?

2 A. Well, that -- the driver behind the cost
3 adjustments that were ultimately made associated with
4 the turbine building really drove off of the drawings.
5 So the -- and that was -- and people have been using
6 this term periodically during the hearing, but that's
7 a prime example of design maturation.

8 And as the engineers, you know, move
9 their engineering calculations along and move their
10 drawings along, they came up with a set of -- set of
11 drawings for the turbine building and then they sent
12 those out for bid.

13 what you're referencing is when the
14 contractors came back in with a detailed tonnage
15 take-off. That -- that's -- that's was one sign. But
16 when those drawings went out, it was clear that -- I
17 think it was relatively clear that there was going to
18 be some adjustment necessary.

19 Q. But the cost people on -- on the project
20 were surprised at the -- the cost people were alerted
21 by the increase in costs, were they not?

22 A. Oh, yeah. That -- that was one of the
23 flags that went up, sure.

24 Q. Is it safe to say then that the cost
25 people hadn't examined the drawings that went out to

1 make sure that they had costed the RFP properly?

2 A. You -- you wouldn't do what you suggested
3 at that point in time. You would -- you wouldn't do
4 that.

5 Q. So it's your understanding that -- that
6 you don't form estimates before you send anything out
7 for bid?

8 A. Per-- periodically you do, yes.

9 Q. What was -- what was the size of this
10 contract -- of this RFP?

11 A. The RFP for the steel erection?

12 Q. For -- for the turbine building and
13 for -- for the -- yeah, the bid that went out.

14 A. The turbine building was part of the
15 balance of plant. It was a component of the balance
16 of plant work. So it was -- it was not one number
17 that went to a steel erector.

18 Q. Do you have your rebuttal testimony?

19 A. I do.

20 Q. Would you turn to page 38, please?

21 A. Okay.

22 Q. Let me make sure I'm in the right place.
23 At pages -- at lines 22 and continuing over to the
24 next page, you -- you discuss that productivity
25 problems that can be an issue in multi-prime

1 contracts; is that correct?

2 A. I'm sorry. I'm at page 38. Is that
3 where I should be?

4 Q. I think so. Let me -- I'm sorry. I'm
5 sorry. I'm sorry.

6 MR. HATFIELD: Are you in the right one?

7 MR. SCHWARZ: I'm not in the right one.
8 Christ.

9 THE WITNESS: Where shall I go?

10 BY MR. SCHWARZ:

11 Q. You should stay right where you are. I,
12 on the other hand, should proceed to where I directed
13 you. You -- you -- and I'm sorry. On lines 12
14 through 22 you talk -- are you with me?

15 A. I am.

16 Q. You talk about examples of design
17 maturation at unit 2, but I -- do you have any
18 analysis of any of those items in your testimony?

19 A. I'm sorry. I'm in my supplemental
20 rebuttal.

21 Q. No, no. Just rebuttal.

22 A. Oh, I'm sorry.

23 Q. Now you can try to find out where I am.

24 A. Page 38 in the rebuttal.

25 Q. Rebuttal.

1 A. Sorry. And lines 12 to 22?

2 Q. Through 22, yeah. You list --

3 A. Let me just look at it for a second, if
4 you would, please.

5 Q. Oh, I'm sorry. Sure.

6 A. Okay. I've looked at it.

7 Q. Okay. Do you have any analysis in your
8 testimony of those items?

9 A. I'm not sure what you mean by "analysis."
10 What I've done there is explain the types of design
11 maturation surrounding, you know, the balance of
12 plant.

13 Q. You've -- I would say you have provided a
14 litany of individual items. I don't see any analysis
15 as to how those may have changed from one point in
16 time to another.

17 A. Those are the ones that did change. And
18 if you pull the change orders out, they're all change
19 orders associated with those items that I listed. I
20 just didn't list them by change order number.

21 Q. Well, and you -- you didn't provide any
22 analysis as to why steam turbine generator handrail
23 issues were a design maturation as opposed to some
24 other kind of contract issue.

25 A. Well, when I looked at the -- at the

1 handrail, for example, that they -- well, let me back
2 up and answer your question fully. I looked at the
3 change orders as support for this paragraph in my
4 report. And as part of looking at those change
5 orders, the change order form had a description of the
6 work, it had a reason why you were doing it, it had
7 amounts of money, it had all kinds of things on it.

8 This particular change order that you
9 mention, the handrail, was a case of design maturation
10 because as time passed, the company had to interface
11 with Platte County inspectors and those types of
12 people and they had codes that were different. And,
13 you know, they -- they laid the law down on what the
14 code's going to be and boom, you got to go do it. And
15 that's what drove that particular one. And that
16 information is contained typically in all of those
17 change orders that would explain those costs.

18 Q. And Mr. Drabinski has been pummeled by
19 various witnesses for not including analysis in his
20 testimony, but that's the same kind of reference that
21 you make in yours, is it not?

22 A. I don't think I make many references
23 similar to Mr. Drabinski.

24 Q. No, no, no. But I mean the analysis for
25 your -- for your listed items is contained in

1 schedules and other places. It's not written out word
2 for word. The explanation you just gave me does not
3 appear on page 38, does it?

4 A. I believe it's in one of my schedules.

5 Q. It -- does it appear on page 38?

6 A. The what appear on page 38?

7 Q. The analysis to cause steam turbine
8 generator, quote, STG, closed, handrail issues. The
9 analysis --

10 A. The results of my analysis place it in
11 that paragraph. The change order itself isn't on this
12 page. I agree with you.

13 Q. Very good. Very -- and thank you. I'm
14 not suggesting it doesn't exist somewhere else either,
15 but it's not on this page?

16 A. No.

17 Q. Would you turn to page 41 of the same
18 testimony?

19 A. Okay.

20 Q. And again, lines 4 to 12.

21 A. Okay. That's -- I've looked at those
22 quickly.

23 Q. Are -- are you there?

24 A. I'm sorry. I thought I told you I looked
25 at it quickly.

1 Q. And as before, the actual analysis that
2 it's due to design maturation is by way of reference
3 to schedules --

4 A. It's in Exhibit --

5 Q. -- and data elsewhere?

6 A. It's -- this is a subsection of my report
7 that starts on page 40 at line 10. And on line 14,
8 DFM2010-22 is the exhibit that is associated with this
9 section of the record.

10 Q. Right. But it -- the analysis -- that's
11 where the analysis is. It's not in the body of -- of
12 the testimony. Correct?

13 A. I'm still not sure you and I are hooking
14 up one to one on analysis, but the -- the change
15 orders and stuff are in the exhibit. Clearly they're
16 not on this piece of paper.

17 Q. Correct. Correct. Correct. On that
18 same page, lines 19 to 24.

19 A. Page 41?

20 Q. Yes. You're --

21 A. Let me just look at it, please.

22 Q. Sure.

23 A. Okay. I've looked at it.

24 Q. Okay. So that's talking about the
25 Kissick contract and that was for foundations.

1 Correct?

2 A. That's correct.

3 Q. And it has been variously and -- stated
4 that -- that the Iatan project was a fast track
5 project. Do you agree?

6 A. I would agree.

7 Q. It's also been stated that fast track was
8 the standard approach to construction generally since
9 the mid '80s, with the exception of the federal
10 government which has only started doing it recently.
11 Is that consistent with your understanding?

12 A. I -- I always have trouble with the word
13 "standard" in the construction industry, but it's
14 certainly one that's frequently applied.

15 Q. Commonplace?

16 A. Commonplace in the power business.

17 Q. All right. Right. So it -- it's not
18 unusual that there were many aspects of the
19 contract -- of the project that were not designed at
20 the time construction started or work started by an
21 individual contractor?

22 A. I would agree.

23 MR. SCHWARZ: I would appreciate some
24 indulgence for a moment here.

25 JUDGE PRIDGIN: Certainly.

1 BY MR. SCHWARZ:

2 Q. Would you agree that cost reforecasts are
3 a standard practice in management of large
4 construction projects?

5 A. Yes.

6 Q. Would you agree that those are
7 forward-looking projects or assessments?

8 A. Well, they look behind to the shoulder
9 and they also look forward. They do both.

10 Q. I'm sorry?

11 A. They do both.

12 Q. Do they look backwards or do they take as
13 the starting point the -- the present -- where the
14 project is now?

15 A. They do both.

16 Q. Well, could you turn to page 26?

17 A. Of the --

18 Q. Of the testimony we're in now, the
19 rebuttal.

20 A. Okay.

21 Q. On your table there, would you explain if
22 you would, item number five, Cost increases due to
23 schedule? Well, strike that. That's a terrible
24 question. I shouldn't have done that.

25 On the Iatan project as a multi-prime

1 project, who is -- has overall responsibility for
2 maintaining the project schedule?

3 A. The owner.

4 Q. And what are the owner's responsibility
5 with respect to each of the contractors working on the
6 project with respect to schedule?

7 MR. HATFIELD: I just want to object. It
8 may be ambiguous as to whether he's asking him on this
9 project or for some industry standard.

10 MR. SCHWARZ: This is in reference to the
11 Iatan project.

12 MR. HATFIELD: No objection, judge.
13 Sorry.

14 JUDGE PRIDGIN: That's all right.

15 THE WITNESS: I don't think I understand
16 your question. Boil it down a little bit, if you
17 would.

18 BY MR. SCHWARZ:

19 Q. What are -- with respect to managing the
20 schedule, what are KCPL's obligations to the
21 contractors on the project?

22 A. Well, KCPL, you know, typically managed
23 the -- or monitored the schedule of the subcontractors
24 and was responsible for and did make sure that those
25 schedules were meshing with each other. And KCP&L

1 also made some tough calls when those schedules didn't
2 mesh with one another in order to keep the project
3 moving.

4 Q. How could delay -- delays -- as you've
5 listed there, how could delays result in a cost
6 increase?

7 A. Not all delays do. Some delays result in
8 a cost increase, some don't. But one that would
9 entail -- would involve a constant increase because of
10 work being on the critical path delayed and then there
11 being time function expenses associated with that.

12 Q. I think that's a little technical. would
13 you put that in plainer English for the Commissioners,
14 please?

15 A. Well, let me -- maybe I -- give me your
16 question again.

17 Q. Well, my question was, how can delays
18 cause cost increases due to scheduling?

19 A. They can cause cost increases -- a delay
20 can because it may or may not delay the work on the
21 critical path of the project. If it delays the work
22 on the critical path of the project, there's a -- a
23 fairly good chance that there will be some extra costs
24 associated. If the delay doesn't affect the work on
25 the critical path of the project, then the chances of

1 the cost being associated with it are not so much.

2 Q. I appreciate that answer, but I -- let
3 me -- if contractor B arrives on the site and expects
4 to -- to be working on the product of contractor A.
5 Okay?

6 A. Okay. That usually doesn't happen, but
7 okay.

8 Q. One contractor won't subsequently work on
9 something that's been done by another?

10 A. Usually not. I mean each contractor's
11 responsible for his own work and --

12 Q. No, no. That's not -- you're supposed
13 to -- assume that contractor B is supposed to run
14 cable along an interior wall.

15 A. Okay.

16 Q. Okay. And contractor A is supposed to
17 have finished the interior wall.

18 A. Okay. I see what you mean.

19 Q. Yeah.

20 A. I thought -- I see what you mean. So
21 your question is?

22 Q. My -- my question is if -- if a
23 contractor is -- is supposed to work on something
24 that's already been provided by a prior contr--

25 A. Cable on the wall. The prior guy did the

1 wall.

2 Q. The example that I gave you.

3 A. Okay. The prior guy did the wall. Now
4 I'm here to put my cable up. Your question is?

5 Q. How can that cause a cost increase?

6 A. That could cause a -- it could cause a
7 cost increase because of trade stacking, for example.
8 If that wall wasn't ready and the guy came in, now
9 you've got people working in a crowded space, it may
10 or may not, but that would be an example.

11 Q. Would contractor B, the one who's
12 supposed to run the cable --

13 A. Okay.

14 Q. -- would he complain to the schedule
15 manager, in this case KCPL, I had my crew here, I lost
16 a half day because what you told me was going to --
17 the wall was -- was supposed to be here that I was
18 going to attach this to and it wasn't and I had my
19 guys standing around -- would that be a cost increase
20 in the project that would be due to scheduling delay?

21 A. It wouldn't -- no. It would be a notice
22 from contractor B that he has got a complaint and that
23 he -- he may have extra costs and he wants his money.
24 But it's a notice. I would look at it as a notice.

25 Q. As an engineer, okay --

1 A. Okay.

2 Q. -- if you schedule somebody to show up to
3 affix cable to a wall and the wall isn't there, is
4 there a -- a loss in efficiency due to the provision
5 of men and material to do work that you cannot do?

6 A. That might occur if someone had mobilized
7 to the site of the wall that wasn't there, yes. That
8 could have occurred.

9 Q. Okay. And that was the example that I
10 gave, was it not? That's what we've been talking
11 about.

12 A. Yeah.

13 Q. There is a cost --

14 A. I'm with you.

15 Q. And I'm not concerned at this stage about
16 who's responsible for it, but if a contractor shows up
17 to do some work and what the -- in this case KCPL, the
18 schedule manager has said, You should affix your
19 product or your component to this point, to this piece
20 of property --

21 A. wall --

22 Q. -- wall and it's not there, that causes
23 some cost to someone?

24 A. It may cause cost to someone.

25 Q. How could it not?

1 A. Well, he might have turned around and
2 just gone around the corner and worked someplace else,
3 which is pretty common in the business.

4 Q. Okay. Okay. But assuming that that's
5 the -- that he doesn't have -- the cable attacher
6 doesn't have any other work to do that day, that's
7 then a -- a cost?

8 A. That might be a cost, yeah.

9 Q. What about -- what do you mean by
10 compression?

11 A. What do I mean?

12 Q. Yes. As you used the word "compression"
13 in item five there, what do you mean?

14 A. I -- within the context of item five,
15 that would be squishing a whole bunch of work into a
16 shorter period of time than is originally
17 contemplated.

18 Q. Okay. Okay. And what kind of costs
19 might that entail?

20 A. It may or may not. It depends on the
21 circumstances. That -- that's what the stuff of
22 construction disputes are about, to be quite frank
23 with you.

24 Q. Yeah. But my question is, why might
25 compression increase costs?

1 A. Well, because it could require overtime,
2 it could require weekend work, it could require a lot
3 of things.

4 Q. Right. And the reason I'm going along
5 this line is you've got -- the Commissioners are five
6 lawyers, some of them may have some construction
7 experience, but they may not. And I don't know that
8 they're familiar with these terms and I just want to
9 get a layman kind of understanding.

10 A. Okay.

11 Q. Okay?

12 A. Yeah. Do you need me to explain
13 "squish," by the way?

14 Q. Squish, but not is.

15 A. Squish is good enough for compression.
16 Just think squish.

17 Q. Acceleration, how might acceleration
18 cause cost increases on a project?

19 A. Acceleration is typically used in the
20 construction industry as -- kind of comes in two ways.
21 One is doing it faster. The other might be doing it
22 in different sequence.

23 Q. Okay.

24 A. Depending on the particulars, there may
25 or may not be costs associated with either of those.

1 Q. Exactly. I mean, none of these -- it
2 doesn't say and doesn't I don't think even imply that
3 these will necessarily cause costs, but they may?

4 A. Well, the purpose -- well, you're
5 correct.

6 Q. Okay.

7 A. But the purpose of this whole table
8 wasn't really to address subject matters that you're
9 going into now.

10 Q. I -- I really liked it when you said I
11 was correct and you could have stopped after that.

12 A. Okay. Sorry.

13 Q. And again I'll ask you for -- you know,
14 in laymen's terms, why would loss productivity --
15 well, A, how would loss productivity result from a
16 scheduling problem?

17 A. Loss productivity might result from a
18 scheduling problem for the reasons that we've been
19 talking about for the last ten minutes. There could
20 be compression, there could be sequence changes.

21 Q. It -- would congestion fall into this --

22 A. Oh, yes.

23 Q. -- category? It's not listed here, but
24 that would be an additional item where scheduling
25 might be a problem?

1 A. Yes. But, again, I just want to
2 reemphasize that the purpose of this table is not
3 to -- purpose of this table is different than what
4 you're using it for, but -- which is okay.

5 Q. Well, but -- okay. And are the items
6 that are included in number five, and congestion as
7 well, are those -- those are factors that are well
8 known in -- in the construction industry?

9 A. Those are factors that are banded about
10 with great regularity in the industry, written about,
11 argued about and paid for.

12 Q. And hopefully planned to avoid?

13 A. Absolutely.

14 MR. SCHWARZ: I think that's all that I
15 have for Mr. Meyer.

16 JUDGE PRIDGIN: All right. Mr. Schwarz,
17 thank you.

18 Since we're getting close to
19 four o'clock, rather than interrupt again, it might be
20 better to take a late afternoon break. Is there
21 anything further from counsel before we go on break?

22 All right. Let's reconvene at 4:05, please. Thank
23 you. We are off the record.

24 (A recess was taken.)

25 JUDGE PRIDGIN: All right. We're back on

1 record. Mr. Schwarz finished his cross-examination, I
2 believe. And just to verify, I believe Mr. Mills said
3 he would be gone some during the hearing, but just to
4 clarify for the record, any cross-examination from
5 Public Counsel? All right. Hearing none, Ms. Ott,
6 cross-examination.

7 CROSS-EXAMINATION BY MS. OTT:

8 Q. Good afternoon, Mr. Meyer.

9 A. Good afternoon.

10 Q. You're not a registered professional
11 engineer, are you?

12 A. No, ma'am.

13 Q. Okay. And you're not a CPA?

14 A. No, ma'am.

15 Q. And you do not consider yourself an
16 expert on matters of accounting?

17 A. I'm not an accountant.

18 Q. And you also do not consider yourself an
19 expert on auditing?

20 A. I am not an auditor.

21 Q. Now, you are familiar with Pegasus

22 Holding --

23 A. Yes.

24 Q. -- Incorporated?

25 And are you familiar with their

1 engagement for KCPL?

2 A. Through this hearing.

3 Q. So you were not interviewed by Pegasus

4 Holding?

5 A. No, ma'am.

6 Q. And you've previously worked with

7 Commonwealth Edison on projects?

8 A. Yes, ma'am.

9 Q. Now, did you ever work with Mr. Thomas
10 Maiman on projects when he was at Commonwealth Edison?

11 A. No, ma'am.

12 Q. Is your only experience working with
13 Mr. Maiman through the Iatan projects?

14 A. No, ma'am.

15 Q. Now, Mr. Byce, he's one of your -- is he
16 your co-worker or an employee under Meyer Consulting?

17 A. He is a co-worker. That's a good enough
18 description.

19 Q. So do you employ Mr. Byce?

20 A. No.

21 Q. So is he a contractor through the Meyer
22 Consulting or --

23 A. Yes.

24 Q. So do you have a written agreement with
25 Schiff Hardin for your services?

1 A. No.

2 Q. Does Mr. Byce have an agreement for his
3 services through Schiff Hardin?

4 A. No.

5 Q. Does Mr. Byce have an agreement for his
6 services through Meyer Consulting?

7 A. No.

8 Q. Now, could you have worked directly with
9 KCPL without going through Schiff Hardin?

10 A. Could you -- your use of the word "could"
11 has got me. I guess I could have.

12 Q. So is it your practice to be an
13 independent contractor with a law firm rather than
14 directly working with the owner?

15 A. Most of my business is -- and let me
16 define that. Probably on average, 60, 65, two-thirds
17 of my business is in another whole world called
18 dispute review boards. And in that business, I work
19 directly with joint clients. Those boards are -- are
20 creatures of contract who retain me to basically help
21 them accomplish some very complex large public works
22 projects without going to court. And I work directly
23 for the joint parties. I'm retained by both parties
24 to the contract.

25 Q. Okay. But you weren't retained by both

1 parties to the contract for the Iatan projects?

2 A. No, ma'am.

3 Q. Okay. I don't know if you've heard
4 discussion while you've been sitting in the room about
5 the board of directors meeting that has -- it's been
6 marked as Staff Exhibit -- or not Staff, KCPL 261-HC
7 that has the December '06 updated control budget
8 estimate. Have you heard discussions?

9 A. Yes. I recall that.

10 Q. Have you seen that document before?

11 A. I don't know if I have or not.

12 Q. I'll hand you a copy of it.

13 MS. OTT: And I think we'll need to go HC
14 because I'll probably talk about a number.

15 JUDGE PRIDGIN: Just one moment, please.

16 (REPORTER'S NOTE: At this point, an
17 in-camera session was held, which is contained in
18 volume 26, pages 2267 to 2270 of the transcript.)

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1 JUDGE PRIDGIN: We're back in public,
2 Ms. Ott. When you're ready.

3 DANIEL MEYER testified as follows:

4 BY MS. OTT:

5 Q. Mr. Meyer, what's your definition of
6 definitive estimate?

7 A. In terms of this hearing?

8 Q. Yes.

9 A. The control budget estimate.

10 Q. Now, what is your definition of
11 definitive estimate with industry standards?

12 A. I really don't have one because to be
13 quite frank with you, the AACE discontinued the term
14 in year 2003, which is before this project started.
15 It was discontinued because it obviously didn't add
16 value to the discussion.

17 Q. Okay. Prior to 2003, what was the
18 industry standard for definitive estimate?

19 A. I would paraphrase, but it's an estimate
20 with very high accuracy.

21 Q. And when you say high accuracy, are you
22 talking 90 percent, 80 percent, 50 percent?

23 A. 90 percent what?

24 Q. Accuracy.

25 A. In terms of what?

1 Q. When you said the definition was
2 something of "very high accuracy," I'm looking -- do
3 you have a percentage to quantify the accuracy?

4 A. Well, I think there would be variability
5 in that, but as -- I think generally how people use
6 that term when it was kind of like more en vogue, it
7 would be engineering on 70 percent, something like
8 that.

9 MS. OTT: I have no further questions.
10 Thank you.

11 JUDGE PRIDGIN: Thank you. Redirect?

12 MR. HATFIELD: If I can have one minute.

13 Yes, Judge, just a couple of questions.

14 REDIRECT EXAMINATION BY MR. HATFIELD:

15 Q. I'm going to go backwards, Mr. Meyer.

16 A. Okay.

17 Q. You were just discussing definitive
18 estimate with Ms. Ott. And you were saying that the
19 term was abandoned by the AACE. And just to
20 paraphrase what you said, is that because different
21 people would use it with different meanings?

22 A. Yes. And it brought no -- obviously
23 brought no value to the table in terms of imparted any
24 type of clarity or they wouldn't have discontinued it.

25 Q. And is that because there was a lack of a

1 common understanding of the meaning of the term?

2 A. Yes.

3 Q. Now, Mr. Schwarz asked you a little bit

4 about analysis. And let me see if I've got it here.

5 Well, he was talking to you -- just leave it down

6 there. He was talking to you about page 38, line 2 of

7 your testimony. Does that testimony actually direct

8 the reader to another area for, quote, analysis?

9 A. Yes.

10 Q. And where does it direct the reader?

11 A. Let me pull that -- I believe to one of

12 my schedules.

13 Q. Right. It says what it says. And let me

14 ask you something. He -- he asked you about

15 Mr. Drabinski's analysis and talked about whether

16 Mr. Drabinski's analysis did the same thing, et

17 cetera. Do you recall that?

18 A. Yes, I do.

19 Q. Were you -- was the purpose of your

20 testimony to do a prudence analysis as an expert

21 offering expert opinions on prudence?

22 A. No.

23 Q. Is the purpose of your testimony

24 explained in the beginning of your rebuttal testimony?

25 A. Yes, it is.

1 Q. And what was the purpose of that
2 testimony?

3 A. It -- it was to rebut Mr. Drabinski. It
4 was to show that all these things that Staff said
5 couldn't be done could, in fact, be done because I did
6 it.

7 Q. Okay. And when you say the "things that
8 Staff said couldn't be done," are you referring to
9 Staff's allegation that the Kansas City Power and
10 Light cost control system could not identify and track
11 cost overruns against the control budget estimate?

12 A. Yes. I'm referring to that and I'm --
13 I'm referring to that for a couple reasons. Number
14 one, Staff did it. They did it for some items so they
15 just truncated the effort; number two, Drabinski was
16 able to do it; and number three, I was able to do it.

17 Q. So again comparing what you did to
18 Mr. Drabinski, you weren't trying to reach an opinion
19 on whether a particular item was prudent or not?

20 A. No.

21 Q. All right. And were you able in your
22 testimony to use Kansas City Power and Light's cost
23 control system to identify and explain cost overruns?

24 A. Yes, I was. And those are captured in my
25 schedules attached to my testimony.

1 Q. Now, I asked about in your testimony.
2 Did you also work on the project as it was
3 progressing?

4 A. Yes, I did.

5 Q. Were you able to identify and explain
6 cost overruns as they were occurring on the project?

7 A. Absolutely. We went through -- first of
8 all, we vetted the CBE. After we vetted the CBE, we
9 performed a cost projection in May of '08, we
10 performed a cost projection in July of '09, we
11 performed another cost projection in March of '10 and
12 we performed yet another cost projection in November
13 of '10.

14 I sat through each and every one of those
15 cost projections for days on end working with -- or
16 observing what KCPL staff was doing with respect to
17 identifying potential costs in the future.

18 Q. And Mr. Schwarz asked you a little bit
19 about owner responsibility with regard to schedule
20 management.

21 A. Yes.

22 Q. Now, were you here when Mr. Bell talked
23 about the schedule?

24 A. Yes.

25 Q. And at one point I think he said

1 something about the schedule maybe being a little
2 aggressive. Would you agree with that or not?

3 A. Not really. I mean it was a schedule
4 that -- it certainly wasn't a cakewalk. No -- no
5 construction project of this size and complexity is a
6 cakewalk. They're all challenging.

7 Q. And let me ask you about that before I go
8 onto a question. Your direct testimony and your
9 rebuttal discusses the number of construction projects
10 you've been involved with personally; is that right?

11 A. Oh, yes. As does my rebuttal.

12 Q. Just give us some sort of ballpark number
13 of how many construction projects.

14 A. Well, I'm 67. I was a hands-on
15 contractor until I was 47. At any one year, 1,500--

16 Q. All right.

17 A. -- ish.

18 Q. And then you mentioned that you're
19 involved in dispute review boards. Are those
20 related -- are some of those related to construction
21 projects?

22 A. They're all related to construction
23 projects. And as I started to explain earlier, my
24 practice, what I do is visiting construction jobs all
25 over this country, in Canada, in the Caribbean, in

1 Europe. And it's my role to observe the construction
2 of those projects, whether it's design or whether it's
3 construction or whether it's the management of those
4 projects.

5 In the course of my business, I see cost
6 reports from the premiere contracting companies in
7 this -- in this country. I'm intimately familiar with
8 what those cost reports do and what they don't do.
9 I'm in a position to observe contract settlements that
10 the parties make. These projects on which -- in which
11 I'm involved range from 200 million to 3 billion.

12 I can tell you that the settlements that
13 KCPL made with Alstom are not even a blip in the
14 screen with respect to the global settlements made on
15 many, many, many government construction projects in
16 this country.

17 In the early '70s, the industry was a
18 wreck and it was a wreck because everybody litigated
19 everything. At the drop of a dime, people would go to
20 court. The industry became paralyzed. And beginning
21 in the mid '80s there was a mine shift to move away
22 from fighting and to focus more on what's good for the
23 project.

24 MR. SCHWARZ: I'm going to object at this
25 stage as being non-responsive and far beyond the scope

1 of the question.

2 JUDGE PRIDGIN: Mr. Hatfield?

3 MR. HATFIELD: I agree.

4 JUDGE PRIDGIN: Sustained.

5 BY MR. HATFIELD:

6 Q. Mr. Meyer, we -- I think we were talking
7 about schedule just a little bit. How did the owner
8 do on schedule management?

9 A. This is a happy job when it comes to
10 schedule. This schedule -- or this project was done
11 within 2 percent of the original contemplated time and
12 this is -- in the industry, this is a happy job.

13 MR. HATFIELD: Thank you. I don't have
14 any further questions.

15 JUDGE PRIDGIN: Mr. Hatfield, thank you.
16 Mr. Meyer, thank you very much. You may step down.

17 Are we ready for Mr. Henderson?

18 And we re-arranged chairs, Mr. Henderson.
19 If that's not -- if that chair is okay, let me know.
20 If not, we can -- we changed chairs a moment ago so
21 however you're comfortable.

22 THE WITNESS: It's fine.

23 MR. SCHWARZ: Or we can get the executive
24 director to find some suitable furniture finally.

25 JUDGE PRIDGIN: Anything before