

1 JUDGE PRIDGIN: Good morning, we are back
2 on the record. Dr. Nielsen is back on the stand and I
3 believe Ms. Kliethermes was in the middle of
4 cross-examining him when we adjourned for the evening
5 last night. Is there anything further from counsel
6 before she resumes her cross-examination?

7 All right. Hearing none, Dr. Nielsen,
8 you're still under oath, sir. Ms. Kliethermes, when
9 you are ready.

10 CROSS-EXAMINATION (continued)

11 QUESTIONS BY MS. KLIETHERMES:

12 Q. Good morning, sir.

13 A. Good morning.

14 Q. I believe we left off on your rebuttal
15 testimony looking at your attached exhibits to that
16 testimony.

17 A. Uh-huh, yes.

18 Q. And do you recall the contents of your
19 Exhibit 4?

20 A. Yes.

21 Q. Many of those plants listed are not new
22 construction, are they?

23 A. About half of them are.

24 Q. Many of those are not coal-fired, are
25 they?

Appendix
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1 A. No.

2 Q. Many of these projects described here
3 are, in fact, outages; are they not?

4 A. There's substantial outages that may have
5 cost --

6 Q. A simple yes or no will suffice.

7 A. Okay. Many of them are outages.

8 Q. Several of them are to do with things
9 such as water inlets or other less than complete plant
10 projects, correct?

11 A. I think two -- one of them is for water
12 inlet. That's the only one I think that's less
13 complete.

14 Q. Is one of them for a decommissioning
15 study?

16 A. Oh, yeah, Main Yankee was decommissioned.

17 Q. Was Diablo Canyon only for design?

18 A. That was a design issue that was in the
19 prudence docket.

20 Q. And if I'm correct in recalling, you
21 stated last night that you did not interview Schiff
22 Hardin in the scope of your prudence review; is that
23 correct?

24 A. I did not. Members of my team had an
25 interview with them.

1 Q. Who made that interview?

2 A. Jack Dignam (phonetic) and John Owen, as
3 I recall.

4 Q. And what are their titles?

5 A. Chief operating officer and John was our
6 ex-chief operating officer, who's now retired.

7 Q. Do you still have the copy of GAGAS
8 before you?

9 A. No, I don't.

10 MS. KLIETHERMES: Does the court reporter
11 have the copy of GAGAS?

12 COURT REPORTER: I don't have it in here
13 with me. I have it in my car if you would like me to
14 run out there and get it.

15 MS. KLIETHERMES: We'll see if we can do
16 this without that.

17 BY MS. KLIETHERMES:

18 Q. Generally is the purpose of GAGAS
19 directed at identifying issues in an ongoing project?

20 A. Parts of it are.

21 Q. Is the purpose of GAGAS to identify
22 issues that have gone wrong in a fully completed
23 project?

24 A. It can.

25 Q. Is that a stated purpose of GAGAS?

1 A. In the performance audit sections, yes.

2 MS. KLIETHERMES: Yeah, I'm sorry, I
3 think I'm probably going to need the document.

4 JUDGE PRIDGIN: If we need to take a
5 recess for the court reporter.

6 MS. KLIETHERMES: Let me see if I have
7 enough that doesn't involve that to get us to where we
8 take a break. Frankly, it's a pretty significant
9 part. And we may need to go in HC for this next line.

10 JUDGE PRIDGIN: Okay. Just a moment,
11 please.

12 MS. KLIETHERMES: Well, I guess we'll
13 confirm with their counsel. Yes. We do need HC.

14 JUDGE PRIDGIN: Just a moment, please.
15 We'll go in-camera.

16 (REPORTER'S NOTE: It is noted later in
17 the transcript that the following portion does not
18 need to be in-camera.)

19 JUDGE PRIDGIN: We are in-camera. And if
20 you'll please let me know when we can go back to
21 public.

22 MS. KLIETHERMES: Certainly. Oh, GAGAS
23 has appeared.

24 JUDGE PRIDGIN: Don't hear that every
25 day.

1 MS. KLIETHERMES: I will go ahead and do
2 this in-camera portion.

3 JUDGE PRIDGIN: So do we need to stay
4 in-camera?

5 MS. KLIETHERMES: Yeah, I'll do this
6 portion, first. May I approach?

7 THE COURT: You may.

8 THE WITNESS: Thank you.

9 MR. FISCHER: Do you have a copy for us
10 by chance?

11 MS. KLIETHERMES: I don't. It's your
12 invoices from the DR request.

13 MR. FISCHER: You wouldn't have an extra
14 copy of GAGAS, would you?

15 MS. KLIETHERMES: No.

16 BY MS. KLIETHERMES:

17 Q. what document have I placed before you?

18 A. It's a Data Request Number 266.

19 Q. And what does it describe or what does it
20 pertain to?

21 A. "Please provide the following: Your
22 consulting contract entered into with Pegasus Global
23 Holdings, Pegasus Global, in parens, and/or any
24 employee, principle, or representative of Vantage
25 Consulting, Inc., copies of all billing statements,

1 invoices, statement of fees or charges or similar
2 documents, however classified or entitled, submitted
3 to you by Pegasus Global or any employee, principle,
4 or representative of Pegasus Global."

5 Q. And does it indicate that a series of
6 documents are attached in response to that, including
7 several invoices?

8 A. "Please see attached responsive
9 documentation, attachments, Pegasus Consulting
10 agreement. Please see attached responsive
11 documentation. No invoices received for known period,
12 November 1, 2008, through February 5, 2009." And then
13 it lists a bunch of invoices.

14 Q. And could you review those invoices and
15 indicate whether or not they are Pegasus invoices on
16 this project?

17 A. Other than the contract that is attached,
18 they seem to be invoices.

19 Q. And they're invoices from Pegasus related
20 to the Iatan project?

21 A. Yes.

22 MS. KLIETHERMES: Could I have this
23 marked and I would offer it as an exhibit?

24 JUDGE PRIDGIN: We would be at 275, and
25 this is HC, Ms. Kliethermes?

1 MS. KLIETHERMES: That's my
2 understanding.

3 (KCP&L Exhibit No. 275-HC was marked for
4 identification by the court reporter.)

5 MR. FISCHER: Will Staff be making a copy
6 for the rest of us?

7 MS. KLIETHERMES: Yes.

8 JUDGE PRIDGIN: 275 has been offered, any
9 objections?

10 MR. FISCHER: Judge, I haven't seen the
11 document. I'd like to reserve an objection until
12 we've had a chance to review what they have.

13 JUDGE PRIDGIN: So noted. I will not
14 rule yet.

15 MR. STEINER: Sarah, which DR is that?

16 THE WITNESS: 266.

17 BY MS. KLIETHERMES:

18 Q. Could you tell us briefly about road
19 shows?

20 A. I don't understand the context.

21 Q. Have you stated in your deposition that
22 you do road shows for investors of various investment
23 banks?

24 A. Yes.

25 Q. And just very briefly, what -- what do

1 you -- what sort of time draw are those road shows?
2 what sort of activities do you do when on these road
3 shows?

4 A. Well, as part of the services that were
5 retained by Deutsche Banks, which is one of the major
6 investment banks in the world, we do consulting for
7 their chief economics department, or chief economists.
8 We hold video-conferences with them every other Monday
9 morning and then approximately two to three times a
10 year, we're made available in London to go around and
11 advise or answer questions from many of their various
12 large investment funds that are investing in projects.

13 Q. Are these all-day affairs?

14 A. They are all-day affairs, but it depends.
15 Some -- some weeks that I'm over there, I might have
16 one meeting or two meetings a day, which maybe last
17 for an hour or two. Generally, they are very intense
18 for a couple of days and then I work like I do all the
19 time on the road.

20 MS. KLIETHERMES: I think we can probably
21 go back out of camera.

22 JUDGE PRIDGIN: Just one moment, please.

23 MS. KLIETHERMES: Judge, as that played
24 out, I don't believe any of that would need to be HC,
25 so if the record could be corrected to make that prior

1 segment public, that would be appreciated.

2 JUDGE PRIDGIN: So noted. And we are
3 back in public forum.

4 BY MS. KLIETHERMES:

5 Q. Do you review change orders in the course
6 of your prudence audit?

7 A. Yes.

8 MS. KLIETHERMES: May I approach?

9 JUDGE PRIDGIN: You may.

10 BY MS. KLIETHERMES:

11 Q. what I have handed you are various
12 InterFab change orders, would you agree? Change
13 orders related to the vendor or contractor InterFab;
14 is that correct?

15 A. Yes.

16 Q. Did you review these change orders in the
17 course of your audit?

18 A. As I recall, we reviewed these in some
19 detail because they're related to the aux boiler
20 issue.

21 MS. KLIETHERMES: Could I have those
22 marked?

23 JUDGE PRIDGIN: This will be 276.

24 (KCP&L Exhibit No. 276-HC was marked for
25 identification by the court reporter.)

1 MS. KLIETHERMES: At this time, I will
2 offer those as an exhibit.

3 JUDGE PRIDGIN: 276 is offered, any
4 objection?

5 MR. FISCHER: Assuming they are what
6 counsel has indicated, I don't have a problem with
7 that.

8 MR. STEINER: I think they're HC, could
9 you mark those HC, Sarah?

10 JUDGE PRIDGIN: These are marked as HC,
11 so Exhibit 276-HC is offered and admitted.

12 (KCP&L Exhibit No. 276-HC was received
13 into evidence.)

14 THE WITNESS: I should correct this.
15 There's some InterFab invoices related to the aux
16 boiler, but this isn't -- these appear to be in
17 addition to those.

18 BY MS. KLIETHERMES:

19 Q. Did you review InterFab invoices in
20 general?

21 A. I have reviewed some of them. I can't
22 swear that I've looked at every one.

23 Q. And I'll try to do as much of this as I
24 can in public session. Do you see a box above the
25 signature block? I'm sorry, not a box, some text

1 above the signature block?

2 A. Yes.

3 Q. Could you please read that aloud? And if
4 you have difficulty --

5 A. You've got younger eyes.

6 Q. "It is understood that the requested
7 changes will not be undertaken until the change order
8 is approved by the parties and that the terms and
9 conditions govern all work to be performed under this
10 change order. Contractor waives any and all rights to
11 claim additional time or money under the agreement for
12 services to be performed under this change order.
13 This change order constitutes compensation in full on
14 behalf of the contractor for all costs and mark-ups
15 directly or indirectly attributable; i.e., the changes
16 ordered herein for all delays related therein and for
17 performance of the changes within the time stated."

18 To your recollection of reviewing change
19 orders, did I state that correctly?

20 A. I don't remember.

21 Q. Okay.

22 A. But I assume that you read it right.

23 Q. I hope I read it right. And to clarify,
24 that specific document is subject to copying and
25 printing, so it's difficult to read the text.

1 To your knowledge, is text of that nature
2 or near that nature on all Iatan change orders?

3 A. Yes. Generally, that's a fairly common
4 language on all change orders regardless of project
5 and I -- I really don't find that unusual.

6 Q. Is the effect of that language that work
7 should not be done prior to approval?

8 A. That depends on how the change order
9 evolved. There might have been an emergency
10 situation. There's particular terms and conditions in
11 purchase orders and contracts that allow them to give
12 verbal authorization or maybe followed by confirmation
13 in writing when an emergency situation may be over or
14 they have some need to get the change order underway.
15 And then the contractor and the -- and the owner can
16 negotiate the final price.

17 Q. If a change -- if work was performed
18 prior to the execution of a change order due to
19 exigent circumstances, would you expect documentation
20 of that emergency to be attached to the change order?

21 A. It could be, yes. It depends, really, on
22 the nature.

23 Q. Is that something you look for in
24 performing a prudence audit?

25 A. Not for a prudence audit.

1 Q. Is evidence of work being done prior to
2 authorization of that work, would you consider that to
3 be imprudent?

4 A. It may be. It depends on the
5 circumstances, as I said.

6 Q. Can you describe a circumstance in which
7 it would be prudent to not document work?

8 A. They keep very exact records when they
9 authorize to be done on a time and material basis.
10 For example, and trying to get various types --
11 depending on the situation and how emergent the
12 situation is, they will authorize, they keep exact
13 records of time and materials. I did look at that as
14 a process. I didn't look at every change order to
15 determine whether that was a needed -- they had a need
16 to pursue that change order on a time and materials
17 basis. However, they had the processes in place. If
18 something stuck out at us like an auditor, you don't
19 look at every piece of paper on the project, so.

20 Q. When you describe an emergency situation,
21 would you expect those sorts of document -- I'm sorry,
22 let me start over.

23 If exigent circumstances existed such
24 that there wasn't time to prepare a change order, how
25 much time is reasonable for the preparation of a

1 change order following the resolution of the emergency
2 situation?

3 A. Depends on what the emergency is and
4 how -- how the contractor may have been authorized on
5 a T&M basis -- for an example, the T&M basis, to do
6 that. There's no set --

7 Q. would a year be reasonable?

8 A. It depends if this was a change to an
9 existing contract under which they had provided
10 similar types of facilities. And it also -- the
11 change order might be executed a year later because of
12 negotiations that they have had with the contractor.

13 Q. Do you consider KCP&L's change order
14 process to be burdensome?

15 A. No.

16 Q. Is it more or less rigorous than your
17 experience throughout the industry?

18 A. It's comparable rigor.

19 Q. In performing your audit, did you look
20 for fraud?

21 A. I look for fraud, but not specifically.
22 You know, a prudence audit is of the decision-making
23 advance --

24 Q. I think you've answered my question.

25 A. I was just trying to explain why.

1 Q. I'm sure your counsel will facilitate
2 that.

3 MS. KLIETHERMES: May I approach?
4 (KCP&L Exhibit No. 277 was marked for
5 identification by the court reporter.)

6 BY MS. KLIETHERMES:

7 Q. I've handed you some data request
8 responses and I believe the numbers are 0331 and 0630.
9 Do those reflect a list provided by KCP&L of purchase
10 orders for which there was no contract and contracts
11 orders -- or I'm sorry, contracts for which there was
12 no associated purchase order? Is that correct?

13 A. I'm reading them.

14 Q. Oh, I'm sorry.

15 A. I've never seen these before, so I'm
16 reading them. Now what was your question?

17 Q. Are -- do those appear to be lists of
18 Iatan project charges where there was either no
19 purchase order or no contract?

20 A. well, 331 there are two lists. The
21 company has -- list number one, the company has a
22 contract with the vendor but has not issued a purchase
23 order. Company does not have a contract with the
24 vendor, payment has been made via direct pay.

25 And then DR 360, there seems to be two

1 lists again. Company has a contract with the vendor
2 but has not issued a purchase order. Company does not
3 have a contract with the vendor, payment may be a
4 direct pay.

5 Q. So then would you agree with me that
6 these are lists of contracts -- or of charges to the
7 Iatan project where there was either not a purchase
8 order or not a contract in place?

9 A. Yes.

10 Q. Were you aware that there were such
11 charges?

12 A. Yes.

13 Q. Did you closely investigate such charges?

14 A. That wasn't the purpose of my audit.

15 Q. How familiar are you with the -- or are
16 you familiar with the Iatan change order system?

17 A. Yes.

18 Q. Are you aware that a change order cannot
19 be entered absent a purchase order?

20 A. Yes.

21 MR. FISCHER: Objection, calls for facts
22 not in evidence.

23 BY MS. KLIETHERMES:

24 Q. Can a change order be entered on a --
25 against a vendor who does not have a purchase order in

1 place?

2 A. In general?

3 Q. In general, yes or no?

4 A. In general, they -- the system requires a
5 purchase order.

6 Q. Can a vendor be paid out in excess of the
7 purchase order through KCP&L's Iatan system?

8 A. It depends on the circumstances, but in
9 general, the system provides that it cannot be paid
10 over the amount that's specified in the purchase
11 order.

12 Q. So the lack of a purchase order would
13 indicate the lack of at least one cap on vendor
14 payment, correct?

15 A. I don't understand the question.

16 Q. I believe you just stated that an invoice
17 will not be paid that is in excess of a purchase order
18 amount, correct?

19 A. Yes.

20 Q. That will suffice.

21 A. In general.

22 Q. Are you aware that contracts were let
23 with very low-dollar value for which a very high
24 ultimate payout was expected?

25 A. You'd have to give me an example.

1 KRIS NIELSEN testified as follows:

2 BY MS. KLIETHERMES:

3 Q. Is it your recollection that the
4 particular vendor who was just named in the HC session
5 was eventually paid significantly more than \$1?

6 A. Yes.

7 Q. Would those changes have been -- I'm
8 sorry, would any invoices in excess of \$1 have
9 appeared as change orders in the KCP&L change order
10 system?

11 A. Yes, unless they were going through a
12 definitional process. As I recall, I believe they
13 were with Kissick, the definition process of what his
14 contract would be involved with.

15 Q. So just looking at change orders, one
16 would not be able to tell whether work that was
17 performed was initially intended to be performed,
18 correct?

19 A. Not for the original scope. You'd have
20 to do more documentation and look at more
21 documentation to figure that out.

22 Q. So it's not true that just looking at
23 change orders will show you what work has been changed
24 in the scope of the Iatan project, is it?

25 A. It is, because the -- the change order is

1 below the K-1 report. Change orders lead you to other
2 documents that describe the process of letting of the
3 Kissick contract.

4 MS. KLIETHERMES: I believe the vendor
5 name was HC.

6 MR. FISCHER: Judge, I think you're fine
7 here.

8 JUDGE PRIDGIN: Okay. Thank you.

9 BY MS. KLIETHERMES:

10 Q. Was it intended at --

11 MS. KLIETHERMES: To make this easy, can
12 I just use the name?

13 MR. FISCHER: Sure.

14 BY MS. KLIETHERMES:

15 Q. When Kissick was brought on, was it
16 anticipated they would be doing more than \$1 worth of
17 work?

18 A. I believe so.

19 Q. Was the work that it was intended that
20 they performed within the initial scope of the Iatan
21 project?

22 A. Yes.

23 Q. So are there --

24 A. The scope of work, they hadn't determined
25 exactly what portion of the scope of work that Kissick

1 would do.

2 Q. So are there change orders that show in
3 addition to the scope of work for Kissick that are
4 reflective of work that was included in the initial
5 scope of work for the project as a whole? Yes or no?

6 A. Yes.

7 Q. Thank you. Would you consider the
8 practice of charging to -- I'm sorry, would you
9 consider the practice of not having both contracts and
10 purchase orders in place for a vendor to need
11 improvement?

12 A. It depends on the circumstances, but in
13 general, I would agree with that statement.

14 Q. Did your report state that that was an
15 area that needed improvement?

16 A. I wasn't -- the audit was not intended to
17 state what areas needed improvement. We had to do the
18 process -- or evaluate the process and the timing and
19 the date and so on.

20 MS. KLIETHERMES: Did I ever offer GAGAS
21 as an exhibit?

22 THE WITNESS: I don't believe so.

23 MS. KLIETHERMES: I'll offer it at this
24 time.

25 JUDGE PRIDGIN: Do you recall which

1 number, Ms. Kliethermes?

2 MS. KLIETHERMES: I have it down as 273.

3 JUDGE PRIDGIN: Very good, that's the one
4 I had missing. All right. 273 is offered, any
5 objection?

6 MR. FISCHER: We have not received that
7 exhibit either, Judge. I would reserve the
8 opportunity to look at it.

9 JUDGE PRIDGIN: All right. I'll leave
10 that pending as I am 275.

11 MS. KLIETHERMES: And just to -- well,
12 never mind.

13 MS. KLIETHERMES: And before I forget,
14 I'd also like to offer 277-HC.

15 JUDGE PRIDGIN: Any objections? Hearing
16 none --

17 MR. FISCHER: Judge, we haven't received
18 a copy of that either, so I think we'd like to reserve
19 that.

20 JUDGE PRIDGIN: Very good, I'll just hold
21 those all pending.

22 MS. KLIETHERMES: And Judge, to the
23 extent that he'll have additional foundational
24 objections later pending review of these exhibits, I'd
25 like to reserve the opportunity to lay additional

1 foundation. I've been dispensing with that to move
2 this along the best I can.

3 JUDGE PRIDGIN: I understand that. Thank
4 you.

5 BY MS. KLIETHERMES:

6 Q. And if you'll pardon my delay, my copy of
7 GAGAS I had tabbed and will take me a moment to find
8 this.

9 MS. KLIETHERMES: Judge, honestly, it
10 might be best if we take a short break so the court
11 reporter can retrieve the other copy of GAGAS,
12 assuming you didn't remove the tabs.

13 COURT REPORTER: I did not.

14 JUDGE PRIDGIN: Okay. We'll take a very
15 brief break. We'll go in recess for about ten
16 minutes.

17 MS. KLIETHERMES: Thank you, my
18 apologies.

19 (A break was held.)

20 JUDGE PRIDGIN: We're back on record.
21 Ms. Kliethermes, are you ready to proceed?

22 MS. KLIETHERMES: Yes.

23 BY MS. KLIETHERMES:

24 Q. And just to clear up some of the things
25 before we went on break so it's fresh in my mind, your

1 testimony is your substitute for a performance audit
2 report as described in GAGAS, correct?

3 A. As a subset of performance audits.

4 Q. I'm sorry, I don't think you answered my
5 question, perhaps I should phrase it differently.

6 Is your testimony a substitute for a
7 performance audit report as described in GAGAS?

8 A. Yes.

9 Q. what objective analysis did you provide
10 to KCP&L to improve program performance and operation?

11 A. Program performance and operation? That
12 wasn't the purpose.

13 Q. You didn't include any?

14 A. No. I was judging --

15 Q. I think you've answered my question.

16 Did you provide any information to help
17 them reduce costs?

18 A. No.

19 Q. Did you provide any information to
20 facilitate decision-making by parties with
21 responsibility to oversee or initiate corrective
22 action?

23 A. No.

24 Q. Did you provide information to contribute
25 to public accountability?

1 A. No.

2 Q. Could you please turn to page 17 of
3 GAGAS?

4 A. Yes.

5 Q. The heading on that page is "Chapter 1,
6 Use and Application of GAGAS," correct?

7 A. Yes.

8 Q. The first heading under that double bar
9 is "performance audits," correct?

10 A. Yes.

11 Q. The first numbered section next to
12 performance audits is 1.25, correct? Could you read
13 that into the record?

14 A. "1.25: Performance audits are defined as
15 engagements that provide assurance or conclusions
16 based on evaluation of sufficient appropriate evidence
17 against stated criteria such as specific requirements,
18 measures, or defined business practices.

19 "Performance audits provide objective
20 analysis so that management and those charged with
21 governance and oversight can use the information to
22 improve, program, performance and operations, reduce
23 costs, facilitate decision-making by parties with
24 responsibility to oversee or initiate corrective
25 action and contribute to public accountability.

1 "Reporting information without following
2 GAGAS is not a performance audit but a non-audit
3 service provided by an audit organization."

4 Q. So you've just stated that you didn't
5 satisfy any of the objectives of a performance audit,
6 did you not?

7 A. I did.

8 Q. And so would you conclude that your audit
9 was not performed following GAGAS?

10 A. My audit was performed according to
11 GAGAS.

12 Q. All right. I think we'll just let
13 Section 1.25 speak for itself then.

14 During the break, I have an addendum to
15 Exhibit 275. This is also HC. It's the remainder of
16 the Pegasus invoices. They were lost in the shuffle.

17 MR. FISCHER: Counsel, are those the ones
18 that were filed a little later in the process? Is
19 that what you're talking about?

20 MS. KLIETHERMES: Frankly, I don't know.

21 MR. FISCHER: Okay.

22 MS. KLIETHERMES: May I approach?

23 MR. FISCHER: Judge, just for the record,
24 I'd like to make a statement that we've been having
25 cross-examination on documents that Staff is making

1 exhibits that have not been provided to anybody else
2 on the counsel table. And while there's a -- we may
3 have some of these documents, there's an awful lot of
4 documents in this case and it's just impossible to
5 follow. And I guess I would just ask as a matter of
6 courtesy, if we could get copies whenever we're doing
7 this, I'd sure appreciate it.

8 THE COURT: Mr. Fischer, thank you.

9 MS. KLIETHERMES: And if I may respond.
10 I would like to personally apologize for that. I
11 accepted this witness at two o'clock yesterday
12 afternoon and I have simply not had an opportunity --

13 MR. FISCHER: And I don't mean any
14 personal criticism at all.

15 THE COURT: I understand. Thank you.

16 (KCP&L Exhibit No. 278 was marked for
17 identification by the court reporter.)

18 BY MS. KLIETHERMES:

19 Q. Have you reviewed this document before?

20 A. It looks like a document that I've seen,
21 but I don't have a current recollection.

22 Q. Did you review the results of the
23 employee survey for Iatan?

24 A. I didn't personally.

25 Q. You didn't do that as part of your

1 performance audit?

2 A. We did it as part of the performance
3 prudence audit, but I don't -- it wasn't part of my
4 area of responsibility, no. I take responsibility for
5 everything we did and I think I have seen this, but I
6 don't have a current recollection.

7 Q. Was it prepared by Mr. Churchman?

8 A. I don't know.

9 Q. Are you aware if any follow-up was taken
10 on any of the items discussed in that document?

11 A. I don't know, because I can't recall the
12 document.

13 Q. Well, take a moment to review it and see
14 if any areas that are listed refresh your
15 recollection.

16 A. It appears to be the results of the
17 survey and response. I don't know who did it or what
18 it pertains to.

19 Q. So you don't recall identifying any
20 practices in that document that need improvement?

21 A. I recognize some things. For instance, I
22 know that we saw some comments about blatant
23 favoritism for male employees, offered more
24 opportunities than women. And I remember and I
25 presume, according to you, that this was Churchman's

1 response. I don't know that that's the case. I feel
2 that I have been very -- that I have very qualified
3 women on my staff and on this project. If there is a
4 complaint, let me or HR know about it.

5 Q. So as part of your audit, though, did you
6 direct any follow-up on that particular point?

7 A. Any follow-up on this point?

8 Q. I withdraw the question. Did you
9 document anywhere that you find the practices
10 involving male versus female employees acceptable and
11 not requiring improvement? would you like me to state
12 that again?

13 A. Yeah.

14 Q. I'm sorry. Where is your documentation
15 that you find the practice you just referred to as
16 being acceptable and not requiring improvement?

17 A. I don't have that documentation.

18 Q. Thank you.

19 A. We saw the documentation at the site.

20 MS. KLIETHERMES: May I approach?

21 JUDGE PRIDGIN: You may.

22 (KCP&L Exhibit No. 279-HC was marked for
23 identification by the court reporter.)

24 BY MS. KLIETHERMES:

25 Q. Could you identify that document,

1 generally? I believe that document is HC, so I'll
2 attempt to avoid HC matters.

3 A. It purports to be an E&Y October, 2009
4 audit, materials management review.

5 Q. Did you review that audit in the course
6 of performing your review?

7 A. I reviewed all of the Ernst & Young
8 audits.

9 MS. KLIETHERMES: I'll offer Exhibit
10 279-HC.

11 JUDGE PRIDGIN: Any objection?

12 MR. FISCHER: No objection.

13 JUDGE PRIDGIN: 279 is admitted --
14 279-HC, excuse me.

15 (KCP&L Exhibit No. 279 was received into
16 evidence.)

17 BY MS. KLIETHERMES:

18 Q. When did construction start on the Iatan
19 project?

20 A. Which unit?

21 Q. If you could identify for each
22 subcomponent.

23 A. Iatan 1 -- well, work actually began
24 shortly after August, 2005 with the preparation of
25 specifications for the -- the boiler contract. If you

1 mean physical construction --

2 Q. Yes.

3 A. Iatan 2 physical construction, I believe,
4 started in with some minor stuff in April of 2007.
5 I'd have to check that, but that's my current
6 recollection.

7 Q. When was the project's budget developed?

8 A. The control budget estimate?

9 Q. Any budgets that you find relevant.

10 A. The control budget estimate was prepared
11 as of December, 2005.

12 Q. When was the project schedule developed?

13 A. Shortly before that.

14 Q. When did the company complete its first
15 risk management plan?

16 A. Their first risk management plan, I
17 believe, was part of the environmental assessments
18 that they had done. So that would have been 2003,
19 2004 when the project was in its early stages.

20 Q. When were the project's policies and
21 procedures completed?

22 A. They had policies and procedures from day
23 one. They had corporate procedures and rolled them in
24 as necessary to project-specific procedures as
25 construction began.

1 Q. When was the project execution plan, or
2 PEP, completed?

3 A. That document was -- the PEP that has
4 been marked as the PEP was begun, as I recall, early
5 in 2007 and completed in May, as I recall.

6 Q. And just very briefly, what is
7 integration as used in your professional parlance?

8 A. Well, project -- the PMBOK, or the
9 Project Management Body of Knowledge, defines nine
10 areas. There are eight areas that are integrated via
11 the integration section, which is the -- the overall
12 encompassing processes, procedures, and so on for the
13 whole project.

14 Q. Would you agree that those items we just
15 discussed, the cost estimate, the schedule, the
16 management plan, the risk management need to be
17 integrated to be useful?

18 A. Yes, they do, over time.

19 MS. KLIETHERMES: If I may approach?

20 JUDGE PRIDGIN: You may.

21 (KCP&L Exhibit No. 280 was marked for
22 identification by the court reporter.)

23 BY MS. KLIETHERMES:

24 Q. If you could take a look at Data Request
25 622, which has now been marked as 280 -- excuse me,

1 the company's response to Data Request 622. Does this
2 refer to various questions about Nielsen and Pegasus?

3 A. Yes.

4 Q. When did you visit the Iatan site?

5 A. The first time I visited the Iatan site
6 was maybe February or March, 2009.

7 Q. All right. And if you turn to page
8 labeled 2 of 12 in that document, does that list the
9 times that you visited the site?

10 A. "Please provide a listing of dates he" --
11 meaning me -- "or his team visited the Iatan site."

12 Q. Yes. Does that refresh your recollection
13 regarding the instances when you visited?

14 A. No, not necessarily.

15 Q. That would also include other individuals
16 than yourself if they were on your team?

17 A. Yes, yes.

18 Q. Thank you. I believe there was testimony
19 that you interviewed various Iatan individuals; is
20 that correct?

21 A. Yes.

22 Q. Were those in-person meetings or phone
23 meetings?

24 A. On Iatan 1, they were phone interviews.

25 Q. And on Iatan 2?

1 A. Generally, I think they were all
2 in-person.

3 Q. Would it surprise you if various people
4 who you list as interviewed don't recall being
5 interviewed?

6 A. No.

7 MS. KLIETHERMES: I'd like to offer
8 Exhibit 280.

9 JUDGE PRIDGIN: 280 is offered. Any
10 objection?

11 MR. FISCHER: No objection.

12 JUDGE PRIDGIN: 280 is admitted.

13 (KCP&L Exhibit No. 280 was received into
14 evidence.)

15 BY MS. KLIETHERMES:

16 Q. Do you know Mr. Thomas Maiman?

17 A. No, I do not. I know him by reputation,
18 but I don't know him personally.

19 Q. All right. Have you encountered
20 discovery problems on any of the prudence audits
21 you've ever performed?

22 A. Occasionally.

23 Q. Have you ever recommended a whole or
24 partial disallowance pending resolution of a discovery
25 problem?

1 A. No. Before my testimony or -- has been
2 completed, I don't think there were any outstanding
3 issues.

4 Q. I'm not referring to this project, I'm
5 referring to --

6 A. No, I'm just talking in general.

7 Q. If a discovery issue has not been
8 resolved and it is time to file your testimony, would
9 it be reasonable to recommend a whole or partial
10 disallowance pending verification of outstanding data?

11 A. It might be.

12 Q. Thank you, you've answered my question.

13 A. I've never encountered that situation.

14 Q. Have you ever encountered inadequate
15 record-keeping on any case you've worked on?

16 A. Yes, there was quite a bit of inadequate
17 record-keeping back in the 1980s, early '90s.

18 Q. Have you ever recommended a whole or
19 partial disallowance pending provision of adequate
20 records?

21 A. No.

22 Q. Is it reasonable to recommend a whole or
23 partial disallowance pending provision of adequate
24 records?

25 A. I -- I can conceive of possibly a

1 situation as that would -- I would make a
2 recommendation for an interim decision.

3 Q. Have you ever performed a prudence audit
4 of a plant where the utility had agreed to perform
5 additional record-keeping?

6 A. I really don't understand it. To whom?

7 Q. To a financier, to parties in a
8 regulatory proceeding, to environmental groups, to
9 anyone?

10 A. There's certain commitments at various
11 times and various projects, such as when a project is
12 financed, they -- they -- the financiers might have
13 additional financing information requirements. I've
14 seen that happen before. I've seen commitments to
15 various stakeholders at various times in various
16 projects.

17 Q. And what sort of consequences have you
18 seen where a utility has failed to meet those
19 record-keeping obligations?

20 A. Where I've seen failures? These are
21 failures primarily back in the 1980s and the early
22 '90s on the base load plants. They got their hands
23 slapped by the Commission. I don't recall any
24 specific disallowance.

25 Q. When you say they got their hands

1 slapped, could you describe to the best of your
2 recollection what that means?

3 A. One of the examples that I remember is
4 one of the first prudence audits that's ever been done
5 on nuclear plants, that was on the Sharm plant that
6 took 16 years to construct when it had an original
7 schedule of, I think, three and a half years. And
8 over -- that was built from 1969 to 1985, I believe.

9 And over that time, there was a dearth of
10 records at the beginning of the project and the New
11 York Commission, as I recall, slapped Long Island
12 Lighting Company's hand, but the prudence
13 disallowances were for other issues. And since the
14 company couldn't carry forth the burden, the
15 stakeholders, both the Commission staff and consumer
16 counsel in that case, had sufficiently raised a
17 question of the prudence of some decisions and there
18 was no documentation available.

19 Q. So it's difficult to do a prudence audit
20 where there's a dearth of information, correct?

21 A. At that time, yes.

22 Q. Does the computer age overcome the
23 problem of a dearth of information in performing a
24 prudence audit?

25 A. There is more data than you can imagine

1 because of the computer age.

2 Q. In fact, does an abundance of information
3 make it difficult to perform a prudence audit?

4 A. No, you just have to know what you're
5 doing as an auditor and what you're looking at as an
6 auditor. And if you want more information, which you
7 know is available because of the systems and
8 procedures and processes that they have in place, the
9 utility might specify that they've given you
10 sufficient information or you can find the information
11 in X, Y, and Z, and you have to go look at X, Y, and
12 Z.

13 Q. So then you would agree that it's helpful
14 to have a clearly delineated explanation of
15 information in performing a performance audit?

16 A. Yes.

17 Q. Could you describe briefly how you and
18 your firm accessed information in records on Iatan 1?
19 And by that, I'm referring to whether documents were
20 sent to your office, whether you requested documents
21 to be sent, just generally?

22 A. We -- we were provided with copies of
23 everything that was made available to the Kansas Staff
24 and Missouri Staff. And I didn't make a
25 differentiation at that time. And additional

1 information that we wanted, we requested verbally so
2 that I think we got actually disks of many of the
3 preliminary documents, such as contracts, the E&Y
4 audits, and so on.

5 And then as we went through the
6 evaluation, we requested various documents that
7 Staff's got this or Drabinski, and that was the Staff
8 consultant in Kansas, has gotten this, we want to see
9 it or we had conversations through Duane Morris that
10 they inquired if -- to what the nature of the
11 documentation was. We requested that documentation on
12 disks and it was sent to us.

13 Q. And the same question for the Iatan 2
14 project, is it the same answer?

15 A. No, it's not.

16 Q. Then please provide that answer.

17 A. Most of the -- there was more information
18 because it was a larger project and more involved
19 project, so we went to the site. After we had
20 requested various types of information to follow-up on
21 that information and follow-up with discussions or
22 interviews.

23 Q. All right. And if you'll bear with me
24 for just one moment, that may be all I have for you.

25 MS. KLIETHERMES: Thank you. That's all

1 I have for you.

2 JUDGE PRIDGIN: Thank you. Let me see if
3 we have any bench questions. Commissioner Jarrett?

4 EXAMINATION

5 QUESTIONS BY COMMISSIONER JARRETT:

6 Q. Good morning, Dr. Nielsen.

7 A. Good morning.

8 Q. I'll be very brief. Now, you
9 participated in a prudence review in the Kansas case;
10 is that correct?

11 A. Yes.

12 Q. And I believe in that case, you
13 recommended two disallowances; is that correct?

14 A. Yes.

15 Q. And one of them was the engagement of
16 welding services, Incorporated with an associated
17 disallowance of \$12,714,596?

18 A. Yes.

19 Q. And then number two, KCP&L's removal and
20 readdition of an auxiliary boiler to the Iatan 2
21 project with an associated disallowance of \$7,754,454;
22 is that correct?

23 A. Yes.

24 Q. Now, in your direct testimony on pages --

25 A. I think it's my rebuttal.

1 Q. Yeah, rebuttal testimony, 16 and 17?

2 A. Sixteen and seventeen.

3 Q. At the bottom of the page there, I guess
4 starting with line 19, you talk about two exceptions
5 to the reasonable prudent decisions KCP&L made.

6 A. Yes, sir.

7 Q. The first one deals with the welding
8 Services, Incorporated issue. And you recommend a
9 disallowance of \$12,714,596.40 --

10 A. Yes.

11 Q. -- is that correct? So basically the
12 same as Kansas?

13 A. Yes, sir.

14 Q. Then on the top of page 17, as relating
15 to the auxiliary boiler, you recommend a disallowance
16 of \$5,346,049 and no cents. Why the difference
17 between the \$7,754,454 in Kansas and what you're
18 recommending in Missouri of \$5,346,049?

19 A. That's actually explained in oh,
20 approximately 235, I think. And we -- the actual
21 disallowance that I recommended in Kansas had several
22 components that were estimated. When we did the
23 report this time for Missouri, they had actual
24 invoices against the estimates. So they're the same
25 categories of costs, but they actually incurred less

1 costs than I had projected, about two million dollars.

2 And I explain all of this in the subsequent pages.

3 Q. Okay. I just wanted to make sure I
4 understood that. Thank you.

5 A. It wasn't in favoritism to Missouri.

6 Q. No, I understand that. Thank you.

7 JUDGE PRIDGIN: Commissioner Jarrett,
8 thank you. Commissioner Kenney?

9 EXAMINATION

10 QUESTIONS BY COMMISSIONER KENNEY:

11 Q. Dr. Nielsen, thanks for your time here
12 today. I won't keep you too much longer. I want to
13 talk about those same two allowances, but I want to
14 talk about the \$12 million paid to the welding
15 contractor. You were here today and last evening and
16 particularly for some of my discussion with
17 Mr. Roberts?

18 A. Yes, sir.

19 Q. And I asked about certain settlement
20 discussions and certain settlement decisions and
21 essentially KCP&L made certain strategic business and
22 litigation decisions to make certain settlements in
23 order to avoid future costs that they deemed to be
24 more expensive. Do you remember --

25 A. Yes.

1 Q. -- the essence of some of that
2 discussion? why would that \$12 million paid to the
3 welding contractor not fit within that type of
4 strategic and litigation business decision-making? It
5 seems that by paying that amount, it advantaged the
6 project along schedule and saved future costs. At
7 least I think that's the argument KCP&L was making.

8 A. I disallowed that for that exact same
9 reason. It was the same character as the rest of the
10 settlement items and they had a very sophisticated
11 dispute resolution process and they used that very
12 effectively on the project. I agree with everything
13 that was said last night except this one, they -- I
14 didn't see any evidence that they had made that would
15 advance the project and it should have been part of
16 the settlement.

17 Q. what evidence would you have wanted to
18 see?

19 A. More than the -- than the testimony that
20 I saw filed in Kansas after I disallowed this. I
21 can't remember, I think it was Mr. Davis, and he gave
22 a rationale that sounded good but there was no
23 documentary evidence on the site such as the
24 give-and-take that was described by Mr. Roberts last
25 night in his memos.

1 Q. So -- okay. So it's the absence of
2 information supporting some effort to engage the
3 settlement negotiations with respect to that specific
4 item?

5 A. Yes, and it was very obvious that they
6 had this on their radar screen and it just fell off
7 the radar screen. I believe.

8 Q. So what was different in the -- did
9 Mr. Roberts testify in the Kansas case?

10 A. Yes.

11 Q. So it was the absence of evidence?

12 A. Yes.

13 Q. Other than Mr. Davis's testimony?

14 A. Yes.

15 Q. So the testimony of a particular witness
16 with respect to the business and litigation strategic
17 processes by itself is insufficient?

18 A. The way we do performance prudence audits
19 is to evaluate all of the records first because as you
20 may, from your litigation experience, you realize that
21 parties have various remembrances later on. So we
22 evaluate the processes, procedures, decisions that are
23 made at the time, what information they had at the
24 time, and how they executed that until the next
25 relevant decision.

1 And it was such a glaring mismatch
2 because of the excellent management they had in
3 contract administration all the way through the
4 project contract management that it was not. And I
5 asked
6 Mr. Davis about this, but --

7 Q. And what did he say?

8 A. And he gave me his recollections.

9 Q. So let me -- and I appreciate your
10 response. Let me ask my question again, however. So
11 testimony justifying or explaining strategic business
12 and litigation decisions standing alone isn't
13 sufficient, in your opinion?

14 A. If there's no documentation, that's the
15 only evidence that you would have and I just felt that
16 that wasn't a reasonable explanation.

17 Q. Okay. That's a subtle distinction. You
18 didn't feel it was a reasonable explanation or the
19 explanation standing alone without documentary support
20 was insufficient. That's different.

21 So my question first was: Is it your
22 opinion that testimony from one of the KCP&L witnesses
23 explaining or justifying a strategic business and
24 litigation decision standing alone is insufficient?
25 That's just yes or no, generally speaking.

1 A. I would think that would generally be
2 acceptable.

3 Q. The testimony would be?

4 A. Yes.

5 Q. Okay. So it wasn't the absence, it
6 wasn't just the absence of the documentary
7 information? You felt Mr. Davis's explanation was
8 insufficient?

9 A. Yes.

10 Q. What was insufficient about his
11 explanation?

12 A. That he didn't have documentation to back
13 it up and the decision really as a judgment call, is
14 kind of made up after the fact.

15 Q. So it was the absence of documentation to
16 support his testimony?

17 A. No, it --

18 Q. I'm confused. Forgive me for being
19 obtuse.

20 A. No, you're not being obtuse. The absence
21 of documentation that they made a conscious decision
22 to facilitate the project as a whole going forward
23 didn't, in my mind, justify the expense because they
24 had such a good documentation system in place and a
25 process in place and it wasn't supporting what Mr.

1 Davis said, although I understood what he said and
2 that's perfectly acceptable from a project management
3 standpoint. It was not from a prudence standpoint.

4 Q. All right. I think I'm going to have to
5 just remain confused. Let me move on to something
6 else.

7 You listed a bunch of mistakes that you
8 think Staff made and I think it was -- I lost my place
9 when I flipped over to the other testimony. It's
10 beginning on page 26 of your testimony, and you
11 outline nine areas in which Staff made incorrect
12 assertions and then you move on to Mr. Drabinski.

13 I want to ask you about one particular,
14 number five under the -- on page 26. It starts on
15 page 26 and moves on to 27. So, it's beginning at
16 lines 21, and continuing on lines 1 and 2 on page 27.
17 And you indicate that you think Staff -- Staff's
18 assertion about withheld documents preventing them
19 from conducting a full prudence audit is incorrect.
20 And you note that these same documents were not
21 disclosed to Pegasus Global.

22 How can you make the assertion that
23 Staff's assertion is incorrect if you didn't see those
24 same documents? How do you know whether those
25 documents are significant or not?

1 A. I understand, and I've been asking for
2 the redacted portions of various documents, and
3 there's not much redaction in this project. But I
4 wanted to see for myself, they asserted
5 attorney-client privilege, I believe, the special
6 master's been appointed to deal with that fairly
7 recently. But we could tell from other documents, I
8 just wanted to see if these supported our conclusions.

9 Q. Did they?

10 A. I don't know.

11 Q. Because you never saw them?

12 A. No.

13 Q. Well, all right. So how do you know, if
14 you haven't seen the documents, whether or not they
15 were relevant to Staff's investigation?

16 A. From a prudence standpoint, I didn't need
17 them because I had other supporting documents.

18 Q. All right. You didn't need them for your
19 prudence audit and so therefore you determined that
20 Staff didn't need them for theirs either?

21 A. I only criticized Staff because they
22 didn't do a prudence audit. From a financial auditing
23 standpoint, they might have needed it or they might
24 not have needed it, I don't know.

25 Q. So -- because your first point on page 26

1 said that they didn't perform a prudence audit. And
2 you state that clearly. But then number five is
3 different because you're saying that -- I mean, it
4 almost seems as number five is what you're saying is
5 those documents are unnecessary for prudence audits.
6 So I'm trying to figure out how you can determine
7 whether the documents are necessary or not if you
8 haven't seen them.

9 A. From my experience, normally privileged
10 and confidential documents deal with something that,
11 like attorney-client privilege --

12 Q. Uh-huh.

13 A. -- that doesn't go to the heart of the
14 prudence matters. But in addition, we had most of
15 what we were evaluating. All of them we were
16 evaluating, I would have liked to have seen those, but
17 it wasn't crucial and it wasn't crucial for the Kansas
18 staff as well.

19 Q. All right. Then let me move on to number
20 eight on page 27, the control budget estimate again.

21 A. Yes.

22 Q. This continues to befuddle me. What's
23 the significance of it being established at December,
24 2006 versus at some other point, in your opinion?

25 A. Normally, from a project management

1 perspective, you have to have what's been called a
2 stake in the ground, and I use that term as well when
3 I do project management consulting. You put a stake
4 in the ground when there's sufficient definition on
5 the project that you can then measure via various
6 metrics, in other words, monitor that budget.

7 And as there are additions to the budget
8 or there are changes to the budget, you have to have a
9 system which identifies them. But you have to have
10 something to measure off of and it's normally a
11 control budget estimate. The control budget estimate,
12 as I recall, was done approximately at 25 percent
13 engineering complete.

14 Q. Uh-huh.

15 A. That's normal in the industry. And from
16 that point forward, prior to that, there's -- there's
17 not enough definition in the project because the
18 project -- the control budget estimate deals with that
19 other 75 percent by reasonable estimates, whether
20 range of accuracy and the risk management matrix or
21 profile of the project allows you to come up with a
22 large block of unallocated contingency and that
23 becomes the metric against which the project is
24 measured.

25 Q. All right. So that's the definition of