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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

On-The-Record Presentation

April 29, 2010
Jefferson City, Missouri
Volume 3

In the Matter of the Construction)
Audit and Prudence Review of)
Environmental Upgrades to Iatan 1)
Generating Plant, and Iatan Common) File No. EO-2010-0259
Plant, and the Iatan 2 Generating)
Plant, Including All Additions)
Necessary For These Facilities to)
Operate)

HAROLD STEARLEY, Presiding,
REGULATORY LAW JUDGE

ROBERT M. CLAYTON III, Chairman,
TERRY JARRETT,
KEVIN GUNN,
COMMISSIONERS.

REPORTED BY:
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FOR: Staff of the Missouri Public
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25

1 P R O C E E D I N G S

2 JUDGE STEARLEY: Good morning. Today is
3 Thursday, April 29, 2010. This is the second day of our
4 on-the-record presentation concerning the construction and
5 prudence review of the environmental upgrades to Iatan 1,
6 the Iatan 2 generating plant, File No. EO-2010-0259.

7 We'll start with my customary warnings. If
8 you would all please turn off all cell phones and
9 Blackberries and other electronic devices that can
10 interfere with our webcasting and recording, it would be
11 greatly appreciated.

12 Also, please be sure today when you are
13 testifying or questioning witnesses that your microphones
14 are on and that you're speaking into the microphones.

15 Our scheduled witnesses for today are Tim
16 Rush, Michael Cline, Charles Hyneman, Keith Majors and
17 Robert Schallenberg. And I believe it's time for KCPL GMO
18 to call their next witness.

19 MR. FISCHER: Judge as a preliminary
20 matter, could I ask the Commission, since we had such a
21 long discussion about the Wolf Creek decision, the rate
22 case decision, that the Commission take administrative
23 notice of the Commission's Order from April 23rd, 1986 in
24 Case Nos. EO-85-185 and EO-85-224. I have copies of this
25 141-page Order that I printed from the Westlaw 75 PUR 4,

1 page No. 1 that I can give to the Commission if that would
2 be helpful.

3 JUDGE STEARLEY: That would be helpful,
4 Mr. Fischer, and the Commission will take administrative
5 notice of those cases.

6 MR. DOTTHEIM: Judge?

7 JUDGE STEARLEY: Yes, Mr. Dottheim.

8 MR. DOTTHEIM: I would like to, and I don't
9 have copies, in that KCPL is offering a copy of the Report
10 and Order in the Wolf Creek case, there was a reference
11 yesterday, I think in particular by Mr. Giles, about the
12 present audit being unprecedented as far as
13 attorney/client matters.

14 I'd like to provide several Orders from the
15 Wolf Creek case wherein the Commission established one of
16 its regulatory law judges as a special master to handle
17 discovery matters, in particular attorney/client privilege
18 and work product immunity, and denied KCPL's application
19 for rehearing and then ruled in various subsequent orders
20 on disputes on individual documents that were brought to
21 the hearing examiner for a ruling.

22 JUDGE STEARLEY: And are you wanting us to
23 take official notice of all those Orders, Mr. Dottheim?

24 MR. DOTTHEIM: Yes. And I would provide
25 copies. In fact, a fair number of them appear in the

1 Commission's MoPSC Reports, Volume 27, is my recollection,
2 and I can provide copies of those. I don't -- I don't
3 have them with me this morning.

4 JUDGE STEARLEY: All right. I guess if you
5 want to -- if you want to file them in EFIS afterwards or
6 if you can get them to us today. Without knowing the
7 dates, specific titles of the Orders, it's kind of
8 difficult for me to take notice of them at this time.

9 MR. DOTTHEIM: Certainly. I understand
10 that, but I just wanted to broach that subject.

11 Also, too, when I distributed yesterday various
12 pleadings in the Case No. ER-82-88 in the matter of the
13 construction audit of Kansas City Power & Light Company's
14 Wolf Creek nuclear generating station, I didn't literally
15 copy every single document in the case papers in that
16 docket. And certainly if KCPL reviews that file and would
17 like to submit to the Commission any other pleadings that
18 appear in the the case papers for EO-82-88, the Staff
19 would not object.

20 JUDGE STEARLEY: All right. Very well.
21 Why don't I set a deadline, May 7th, for getting those
22 filings in to EFIS.

23 Any other preliminary matters? You can
24 proceed with witnesses.

25 MR. HATFIELD: We'd call Mr. Rush, Judge.

1 Judge, I want to assure you and Commissioner Jarrett that
2 Mr. Rush had nothing to do with the Wolf Creek litigation.

3 JUDGE STEARLEY: Mr. Rush, would you please
4 raise your right hand.

5 (Witness sworn.)

6 JUDGE STEARLEY: Thank you. You may
7 proceed.

8 TIM RUSH testified as follows:

9 DIRECT EXAMINATION BY MR. HATFIELD:

10 Q. Would you please give the Commission your
11 name again for the record.

12 A. My name is Tim Rush.

13 Q. Mr. Rush, what is it you do for KCPL and
14 GMO?

15 A. I'm the Director of Regulatory Affairs. My
16 major focus deals with Missouri regulatory matters, which
17 is, for example, rate cases, class cost of service, rate
18 design, and other regulatory rulings that may occur,
19 rulemakings, et cetera.

20 Q. What have your responsibilities been with
21 regard to the Iatan 1 project?

22 A. Essentially my responsibility is the data
23 processing coordinator for all of the data requests that
24 come in. Additionally, I'm responsible for putting
25 together the case. I was responsible for that, making the

1 filings, and I was a witness in the case.

2 Q. Now, have you had any involvement with the
3 Kansas Commission?

4 A. Just in a general cursory place. I used to
5 be responsible for the Kansas area also, and I'm no longer
6 that, but I have some involvement of generally
7 understanding what's going on and making sure data
8 requests are consistent, making sure that -- I was a
9 witness in the Kansas case also.

10 Q. So is it fair to say as regards discovery
11 matters on the Iatan 1 environmental upgrades you've been
12 the point of contact with the Missouri Staff?

13 A. I have been. There are folks that work for
14 me that have been sometimes the middle person to make sure
15 that -- there are so many activities going on that there
16 are a number of people involved, but I am generally
17 responsible for the overall piece of that.

18 Q. And Mr. Rush, are you familiar with the
19 Great Plains Energy Code of Ethical Business Conduct
20 concerning cooperation with investigations?

21 A. I am.

22 Q. And I'm not going to read it to you, but
23 I'm just going to put it up on the ELMO for the
24 Commission. We've talked about it several times. Would
25 you just explain for the Commission what the companies

1 have done to comply with this particular Code of Conduct,
2 cooperation with investigations, as relates to the matter
3 we're here about today?

4 A. I'm going to go back in time a little bit
5 to the initiation of the regulatory plan, which was
6 basically in 2005. One of the things that we were
7 concerned about at that point in time, we had been working
8 with the Staff and a number of other parties in trying to
9 address an experimental regulatory plan that ultimately
10 came to this Commission and was approved.

11 Included in that was the -- basically we
12 were going to file two rate cases with an optional two
13 other rate cases. We kind of looked at the whole
14 situation of trying to make sure that we were open and
15 honest and transparent with everything that was going on.

16 And so at that point in time we made a
17 decision to implement -- purchase and implement a
18 web-based electronic system to provide access to data
19 requests and other discovery matters that would be a lot
20 easier than the previously hard copy documents or e-mails
21 or CDs, and so we implemented a system called CaseWorks at
22 that point. I think the term for the web-based product is
23 called CaseWorks X.

24 It allowed for essentially all parties of a
25 case to be able to see all the data requests, data from

1 any case that they wanted to sign up for. And so what it
2 did was allowed, for example, the Staff to be able to look
3 at data requests from the Office of Public Counsel or any
4 other party and vice versa, where a lot -- a lot of that
5 process was very difficult in the past.

6 So one of the things we did was we
7 implemented that kind of a system back in that time.

8 Q. You said they could see requests. What
9 about responses?

10 A. They also could see the responses, I'm
11 sorry. So, for example, because we we're dealing with --
12 we thought we would be dealing with such high volumes of
13 data, and if you can imagine giving thousands and
14 thousands of documents and how you would address that, we
15 elected to go to this kind of a system.

16 And it was somewhat, you know, just simply
17 a technological change in environment where we used to
18 deal with e-mails or, well, when I previously started
19 work, we would deal with just hard copy papers and deal
20 with banker boxes full of paper. We kind of moved to
21 e-mail technology, and now we've evolved to this web-based
22 product. That was one of the things that we tried to do
23 at that time.

24 We also wanted to make sure one of the
25 things that we tried to do is to allow all parties to see

1 all data requests and responses, and that was somewhat
2 unprecedented. Usually what would happen is you would
3 allow them to -- they would ask to see all the data
4 requests, and then they would submit a request that said,
5 let me see these answers, and then you'd go through kind
6 of a time-consuming process. Now when we publish a data
7 request out on Caseworks EX, all parties can see it.

8 Q. And so how do they access, how would the
9 Missouri Staff, for example, access this electronic system
10 that Kansas City Power & Light established?

11 A. They simply go on to the web and they sign
12 on to Caseworks EX and they can go and see any case that
13 they've signed up for. So they can go look at the Kansas
14 data requests and the responses associated with that. They
15 can look at the, for example, if you had -- in our last
16 case we had a GMO case and we had a KCPL case, they can
17 look at both cases, all the responses. We had a steam
18 case. They could look at that. They could go back to
19 past rate cases and pull up data from that.

20 So it's kind of a step in technology that's
21 significant from where it was in the past. We implemented
22 that back in 2006 essentially, and we've used it ever
23 since then for all of the rate cases. So that was one of
24 the ways that we looked at trying to help provide the
25 discovery process and improve that.

1 Other things we've done would include, for
2 example, because of the Staff's desire to have things on a
3 timely manner, we've implemented -- essentially we have
4 formal data requests. That would be requests asked by
5 Staff or other parties. So we have that process where we
6 simply do it within the timeframe, for example, 20 days in
7 some cases, and then it moves to ten days at a --
8 different junctures.

9 We also have informal data requests where
10 essentially the company talks to the Staff and we actually
11 write the request that we think the Staff's wanting, and
12 we can sometimes turn those around quicker because we've
13 really sat down with the Staff in a process, know what
14 they want, and can -- we can answer the question in a
15 faster pace.

16 Q. Let's go back to that for a minute because
17 that concept was kind of foreign to me. So are you saying
18 then Staff will call you and say, here's what we're
19 looking for. What do you mean you write the request?

20 A. Well, sometimes to try to speed up the
21 time, it's easier for us to talk to the Staff, understand
22 what their questions are, and then try to write a question
23 so we can provide it in kind of a data request method
24 where you have a question and an answer, and then we would
25 write the question, make sure that's what Staff wanted,

1 and then we would be able to provide them the information
2 they wanted.

3 Q. So you actually write their DRs for them?

4 A. Right. It's a matter of trying to get
5 things done quicker for them.

6 Q. All right. I interrupted you --

7 A. The other thing we do is, for example, we
8 have reoccurring data requests where we -- Staff has asked
9 us every month or timeframe provide us the same data, and
10 so we do what's called reoccurring data requests, where
11 every single month or every time something changes, we
12 provide them that. If a new audit's done, we provide them
13 the new audit. And so we have quite a few of those that
14 we work through.

15 And then we also have supplemental DRs.
16 One of the process requests is if, for example, we find
17 out other information becomes available, we need to
18 supplement the previous data request, so we would go back
19 and supplement that information.

20 Q. Can you give the Commission a sense of how
21 many people at the companies are involved in the discovery
22 process?

23 A. Well, yeah. I think that the way to look
24 at this, we basically have point persons throughout the
25 company. So -- and those point people are responsible in

1 certain areas to be coordinators of the data requests in
2 those individual areas, and then we have folks that
3 actually put the responses together, and then we have
4 folks that may be involved with reviewing those, and then
5 we actually can publish them or send them out. There's
6 probably about 200 people involved with the whole process
7 on a very regular basis.

8 In the department I work in, we have about
9 four people that essentially are dedicated to answering
10 data requests, but they're more in the process side, not
11 in -- not in getting the information and answering it, but
12 more in coordinating and making sure we get it done in a
13 timely manner.

14 Q. For people just for Missouri case or is
15 that Missouri and Kansas?

16 A. It's really Missouri and -- it's really
17 cases, but the majority of our work deals with Missouri.

18 Q. And that's -- just to be clear, is that
19 four people dedicated full-time?

20 A. Yes, it is. Now, that -- when we started
21 this process, we've had to build from them because it just
22 continues to grow. The data management process has grown,
23 and not all of those folks are permanent employees of the
24 company. We have some that are contracted, help make sure
25 that we can get all of this done in a timely manner.

1 Q. Right. And for those people that are
2 involved in the process, what have been your instructions
3 with regard to the GPE policies?

4 A. Well, timeliness is critical, truthfulness
5 is critical and completeness is critical. So we in every
6 way try do it in as quick turnaround as we can but
7 truthful and honest and just make sure that they -- we
8 follow the Code of Ethics that are set out.

9 Q. All right. And I want to take you through
10 some specifics about discovery in this case, but before we
11 do that, you've been here for the testimony --

12 A. I have.

13 Q. -- throughout this particular proceeding.
14 Mr. Dottheim, I think, talked a little bit yesterday about
15 production and things being produced sort of on the brink
16 of going to the ALJ -- or the RLJ. I'm sorry. Do you
17 remember that discussion yesterday?

18 A. Yes, I do.

19 Q. And along those lines, let me just ask you,
20 were you aware of the Staff's preliminary audit report
21 filed June 19th of 2009?

22 A. I was, yes.

23 Q. Let me show you a section of that report --
24 or that report, and particularly I'm looking at this
25 paragraph here (indicating). I'll just read it real

1 quickly. With resolution of new rate cases in 089 and 090
2 and based on Staff's experiences related above -- and I'll
3 just say for the Commission, that's referring to discovery
4 disputes that have occurred -- the Staff intends to spend
5 less time attempting to informally resolve discovery
6 disputes with KCPL before bringing the disputes before the
7 presiding officer and the Commission.

8 And then I'll read the rest of the
9 paragraph just for completeness. The difficulty with
10 discovery relative to KCPL has required the technical
11 Staff to seek the full-time assignment of one Staff
12 attorney to be primarily responsible to handle discovery
13 matters related to the performance of construction audits
14 and prudence reviews.

15 Did you read that paragraph back in June
16 when the Staff said, we're not going to wait any longer,
17 we're not going to work on informal discovery, we're going
18 to the ALJ faster?

19 A. I did, yes.

20 Q. And what, if anything, did you do in
21 reaction to that statement from Staff?

22 A. I would say we have not changed our
23 processes. We've tried to make sure that we are moving as
24 quickly as we can with all the data requests that may be
25 asked. I know I read it and I know that I understood that

1 there are probably a handful of concerns the Staff has
2 brought to our attention. We've tried to resolve all of
3 those. There was a point, I believe, where Staff took a
4 Motion to Compel before the Commission. I think it was in
5 the November timeframe, and we tried to respond to that
6 and kind of give a synopsis of the data request process
7 and what we had done.

8 You know, one of the things we did do is
9 probably we added more full-time folks to try to just make
10 sure we had a coordinator with the Staff, but essentially
11 nothing changed

12 Q. And did you have any concerns about
13 Staff's, I'll call it a promise to go to the RLJ more
14 quickly?

15 A. Obviously it's our concern to make sure
16 we're timely and we're making sure that we meet their --
17 the Staff's needs. As I said before, as long as we do
18 everything and follow the policy of the company making
19 sure we get the reviews done right, making sure they're
20 complete and truthful, we really weren't -- I wasn't
21 concerned, because if I'm doing something wrong, I want to
22 fix that, and I thought we were trying to do everything we
23 could.

24 Q. All right. Let me -- if I could approach
25 the witness, Judge?

1 JUDGE STEARLEY: You may.

2 BY MR. HATFIELD:

3 Q. Let me show you what we're going to mark as
4 Exhibit 1. Of course, I didn't make enough copies.

5 JUDGE STEARLEY: I believe we're up to
6 Exhibit 3 for --

7 MR. HATFIELD: Of course we are, Judge,
8 Exhibit 3. I did not make enough copies for all the
9 Commissioners. I'm going to put this up on the ELMO as
10 best I can here.

11 JUDGE STEARLEY: I believe this was
12 included in one of the filings.

13 MR. HATFIELD: It sort of was.

14 (KCPL GMO EXHIBIT NO. 3 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. HATFIELD:

17 Q. Mr. Rush, are you familiar with what we've
18 marked as Exhibit 3?

19 A. I am.

20 Q. And can you explain a little bit what that
21 is?

22 A. This was a summary -- this is a summary,
23 and it's updated since our filing, but I actually filed a
24 document very similar to this back in the November
25 affidavit that I supplied to the Commission. It addresses

1 the discovery process, the data requests and a summary of
2 the information that's been provided to the Staff and in
3 both Missouri and Kansas dealing with the rate cases. It
4 has a summary of the volume of information that's been
5 provided. I also have a summary of some of the meetings
6 that have taken place.

7 One of the things that we did early in the
8 cases is we have had numerous meetings with Staff, both
9 from the engineering or the operations side as well as the
10 services side, both in the rate case and in the
11 investigation of Iatan 1.

12 Q. Okay. Judge Stearley suggested it, so
13 this -- there was a similar document filed with an
14 affidavit earlier in this case; is that right?

15 A. There was. I believe it was through
16 November, a certain date in November of 2009.

17 Q. And in the upper left-hand corner of
18 Exhibit 3 it indicates that this was updated to March 24th
19 2010?

20 A. That's correct.

21 Q. So that's an accurate representation of
22 what's represented on this exhibit?

23 A. Right. This is simply an update through
24 the March 24th period. It's the same data plus the
25 additional information that's been received since then or

1 requests and responses.

2 Q. And what I want to do is just have you
3 explain at a pretty high level, I think, what we're
4 looking at here. First -- well, not the first line, but
5 there's a line that says number of data requests?

6 A. Right.

7 Q. And so that says -- and then there's a
8 column for 0089, which was the KCPL rate case; is that
9 right?

10 A. That's correct. So the first row, first
11 column has 1,913, I believe, and that is the data requests
12 that have been received in the 0089 docket, which was the
13 rate case and ultimate -- and resulted in the audit, which
14 has now become what I believe is the 0259 docket that
15 we're here today on.

16 The second column deals with the 985, and
17 those were the data requests that were received in the GMO
18 rate case, the steam cases following that at 117. And
19 then in Kansas, their data requests were 526 for a total
20 of 3,541. Those include formal, informal, supplements and
21 reoccurring data requests.

22 Q. All right. So we didn't do the math here,
23 but when I backed out the Kansas data requests, I got a
24 Missouri total and the numbers are what they are.
25 Missouri total data requests are approximately 3,015?

1 A. That's right.

2 Q. And let's --

3 A. We've received additional data requests
4 since this time. I just picked a date to establish a
5 timeframe.

6 Q. And note A to the data request indicates --
7 note A again was just to the KCPL case, 1,554 for Missouri
8 Staff. What does that mean?

9 A. That would mean that Staff auditors, both
10 operations or services group, asked 1,554 data requests.
11 Other parties, for example, ,Office of Public Counsel and
12 any other intervenor in the case, would have had the 359.

13 Q. All right. Then let me ask you to focus
14 for a minute on the last sentence of note A.

15 A. Okay.

16 Q. Last sentence of note A says, includes 439
17 data requests received subsequent to the Commission's
18 June 10th, 2010 Order. What Order were you referring to
19 there, the June 10th, 2010 Order?

20 A. That would have been the audit report that
21 was coming out. So I picked a date that would --
22 essentially the rate case was over and the timeframe where
23 the audit of Iatan 1 was occurring.

24 Q. So that June 10th Order was the one that
25 said, give us a preliminary report by the 19th and file a

1 final report by December 31st?

2 A. That's correct.

3 Q. And you received 439 more data requests
4 since then?

5 A. Right.

6 Q. Has there been any other rate case pending
7 during that time?

8 A. No.

9 Q. All right.

10 A. I was going to say, I did do a check
11 quickly the other day, and since March 24th we've received
12 another 45 data requests in the Missouri investigation,
13 just for your information.

14 Q. All right. So that would be in addition,
15 so that would take us to 3,060 Missouri data requests?

16 A. Something like that.

17 Q. All right. And then below that, so I
18 assume now that when we say number of attachments, that's
19 referring back up to the responses to those data requests?

20 A. That would be correct, yes.

21 Q. So in responding to those 3,015 Missouri
22 data requests, tell me what you're describing here.

23 A. Well, regarding the number of attachments,
24 you have a number of ways to respond to data requests.
25 You have the electronic attachments that you might be

1 simply attaching PDFs or Excel files or Word documents and
2 you can you do that in a multiple way. You can provide
3 them, you know, on CDs, DVDs, jump drives, whatever, or
4 just simply an attachment to the Caseworks system.

5 One of the things that happens in the
6 services division in Kansas City is beyond wanting them
7 in -- for example, we filed a response to a data request
8 in EFIS, which is the Commission's electronic filing and
9 information system. We also published the same
10 information in Caseworks EX so that all parties have
11 access to the information.

12 But in addition, in the Kansas City office,
13 we provide hard copies of that same information, meaning
14 we make a copy of it, and so we provide volumes and
15 volumes of paper to that. So on occasion we'll provide
16 DVDs and CDs, but typically they want a hard copy or
17 printable document. And we do provide two copies of all
18 of those data requests.

19 Q. And that may answer my next question, but I
20 was noticing here in the attachments that on the hard
21 copies it says hard copy and then there's provided to
22 engineering, and then there's hard copy for legal
23 department. I don't see any hard copies for Kansas. Why
24 is that?

25 A. Well, they simply, they use Caseworks EX

1 pretty extensively, and -- and you know, that's a system
2 that they like to access information on.

3 Q. So are they asking you for hard copies?

4 A. Not through the data request process that
5 we go through. I mean, there could be other folks that
6 they've asked data requests from though that have been
7 provided. But if not, they're often at the site, so I
8 don't think they -- they come visually look at stuff.
9 They -- they typically -- I have not had any hard copy
10 requests.

11 Q. All right. And then you have data file
12 size. Explain to us briefly what that is.

13 A. What I was trying to do here is give you an
14 idea of the volume or the number of pages, something that
15 would make things similar, and so what we did is we
16 defined what we provided as far as the size and then we
17 made a -- took that and used that to approximate a number
18 of pages so that ultimately we could get to a volume of
19 how many pieces of paper we essentially provided in a
20 general sense.

21 Q. And then is that the next line?

22 A. That's the next section, right.
23 Approximate total page count for these documents, and I've
24 got 4.5 million essentially pieces of paper that have been
25 provided in response to the data requests in this case.

1 Q. And now I notice that Kansas page total
2 ends up only being, what is that, 528,000?

3 A. Right.

4 Q. And so I don't know if I did my math right,
5 but the math is what it is. When I backed out the math it
6 looks to me like approximately 3.9 million pages of
7 documentation provided to Missouri Staff. Is that close?

8 A. That's right. There's a lot of volume.

9 Q. All right. Then let's talk about meetings
10 down there. You've got number of meetings. What does
11 that mean?

12 A. Well, during the rate case, for example,
13 one of the things that we try to do is to offer up folks
14 in the company that would have expertise that Staff want
15 to directly talk to. Could be anywhere from people in the
16 accounting area, people at the site, at the plant, people
17 in the human resources area, all sorts.

18 We're dealing, as I said, with several
19 hundred folks that have some involvement with the case,
20 and so we often have meetings where we're looking at
21 clarifications, we're looking at they want additional
22 information. We do have instances where they want to
23 review specific documents that, for example, we did not
24 produce and provide to the parties in certain areas. We,
25 for example, do not release certain employment

1 information. We'll let -- we'll let the Staff and other
2 parties come view that information, take notes, et cetera
3 or board minutes.

4 But those are the kinds of meetings that we
5 have often clarification, and you can see we tried to
6 distinguish them in the rate -- in the rate case or the
7 089 case between those dealing with the main case and
8 those broken out between the audit staff and the
9 engineering staff associated with things dealing with
10 Iatan 1.

11 Q. Okay. And so why were -- did you have an
12 understanding of why you were meeting with the engineering
13 staff on 32 separate occasions during the KCPL rate case?

14 A. I have a general understanding. Those were
15 really addressed in the rebuttal testimony of Brent Davis
16 in the rate case. He kind of actually went through all --
17 many of those meetings, but they're basically with the
18 folks in the operations side, Dave Elliott and Shawn Lange
19 where they come up and make regular visits at the plant.
20 They've gone through all kinds of documents associated
21 with change orders and all of the components of the case.

22 And so those meetings are typically done at
23 the site and are addressed in the actual construction and
24 activities going on with the Iatan 1 project.

25 Q. Now, and again, the math is as it is, but

1 I -- there's a total over there of 141 meetings, and when
2 I backed out the four meetings with Kansas, I got 137
3 separate meetings with Missouri Staff --

4 A. Right. Yes, that's right.

5 Q. -- is that a fair approximation?

6 MR. HATFIELD: Let me ask you, then, now
7 that we understand, Judge, let me go ahead and move the
8 introduction of Exhibit 3 before I forget.

9 JUDGE STEARLEY: Any objections to the
10 admission of KCPL's Exhibit No. 3?

11 (No response.)

12 JUDGE STEARLEY: Hearing none, it shall be
13 received and admitted into the record.

14 (KCPL GMO EXHIBIT NO. 3 WAS RECEIVED INTO
15 EVIDENCE.)

16 BY MR. HATFIELD:

17 Q. Let me go back to the footnote to
18 Exhibit -- or to Footnote A, the 439 data requests that
19 have been received since the Order.

20 A. Okay.

21 Q. Do you have an understanding or has anybody
22 explained to you why the Staff was continuing to send data
23 requests after the June to 10th Order?

24 A. Well, that's dealing with the audit that I
25 thought was leading up to or was leading up to the

1 December 31st report, audit report. And so, for example,
2 what we did in that process as far as the data processing
3 request, the way the previous -- well, in the 089 docket,
4 we had agreed that after rebuttal testimony was filed, we
5 would turn data requests around within a ten-day
6 timeframe, where previously to the rebuttal testimony we
7 would have 20 days. And so we followed that process after
8 the case was concluded because of the audit so that they
9 would be able to have a -- the audit report done by
10 December.

11 So I mean, I understood this was all for
12 the audit, and we kept the 10-day process, which sometimes
13 felt very burdensome as you can imagine, but, you know,
14 they wanted to get the stuff done in a quick manner, and
15 so we were attempting to do that and follow that process.

16 Q. And then the other thing, just to be clear
17 on our dates, since December 31st when the construction
18 report and audit review was filed, how many data requests
19 have you received since December 31st, or can you do that
20 math?

21 A. I -- I don't have that number. I don't.

22 Q. All right. But it's 40 something since --

23 A. 40 something since March. I believe there
24 were 400, but -- in total, but I don't -- I'm not for sure
25 of that. I'm sorry.

1 Q. Has the company continued to respond to
2 data requests even after the December 31st audit report
3 was filed?

4 A. We have. We have made one step. We've
5 basically challenged the ten-day piece and said we want to
6 move to 20 days, but -- and we kept -- and so we
7 ultimately have an agreement with staff that it would be
8 20 days to respond to data requests at this point, but we
9 still get them in.

10 Q. All right. And then lastly, let me just
11 give you an opportunity to address some specific things in
12 Staff's December 31st audit. This is page 6 of Staff's --
13 December 31st audit. This is page 6. It says -- says
14 discovery issues have pestered this audit from the
15 beginning. Do you agree with that?

16 A. I don't, but I know we have issues on
17 occasion with discovery issues, timeliness, et cetera,
18 simply because of sometimes the volume that occurs.

19 Q. All right. Says the majority of KCPL
20 employees exhibited helpful and supportive posture
21 throughout the audit. Do you agree with that?

22 A. Absolutely.

23 Q. And then without identifying who, it says
24 the lack of transparency in the provision of information
25 and the tactics used by KCPL to delay providing

1 information appear to Staff to be driven by individuals,
2 KCPL's legal, regulatory and executive management level,
3 as well as consultants to these individuals.

4 I guess I just want to give you the
5 opportunity to respond to that allegation about the
6 regulatory department in particular.

7 A. I would say there was no purposeful reason
8 for any, you know, lack of responding to data requests in
9 a timely manner. We have -- in fact, we have tried every
10 which way. I'm the one that goes and challenges folks to
11 get these things done quickly. I know they have very --
12 they have a lot of other projects going on. That's why
13 we've created a dedicated group to be able to address
14 these data requests.

15 I don't see any way that you could look at
16 the regulatory folks trying to delay things. I mean, I --
17 I was thinking of, you know, sometimes we receive a large
18 volume of data requests. For example, in October, let's
19 say, we got 80 data requests in one day, and you have to
20 turn that around. It was back in October, so you have to
21 turn that around in ten days. You have to receive the
22 data request, you have to assign the data request to the
23 folks to be able to answer it. Those folks have to get
24 the information. The information has to be checked for
25 completeness. If you can imagine going back five years

1 and going through every single month of data and pulling
2 out information. You have to do that, and then we have to
3 go through a process to validate that information, review
4 the information for its completeness, review the
5 information so it's consistent within all the other data
6 requests that are going on and publish it. You've got ten
7 days to turn that around, and you get 80 of them, that's a
8 lot of work.

9 Q. The Commission doesn't always delve into
10 discovery disputes. Will you just remind the Commission
11 again the day rule. Are we talking about ten calendar
12 days, ten business days?

13 A. I believe it's 10 business days, but it's
14 20 calendar days. I believe I'm right when I say that. I
15 think the -- am I correct in saying that? Okay. And I
16 believe the way it works is when data requests are
17 received at the initiation of a case, you have 20 days to
18 respond. Because rebuttal occurs very short timeframe
19 after, before the case actually goes to trial, they move
20 that to a shorter timeframe so they get quick responses,
21 and so we go to a ten day process.

22 Q. All right. And then at the end of this
23 paragraph that we've been reading from, now we're on page
24 7 of Staff's December 31st construction audit and prudence
25 review, the following sentence: KCPL's actions are more

1 akin to treating the Staff as an adverse party in
2 litigation than an entity conducting an audit of a portion
3 of their operations.

4 First of all, have you, Mr. Rush, ever been
5 involved in litigation?

6 A. Well, I have in some cases, yes.

7 Q. Has KCPL treated the Staff like you would
8 have treated adverse parties in litigation?

9 A. I can't imagine that. I mean, we've tried
10 to establish meetings. We've had all kinds of avenues to
11 try to help with the data processing requests, because we
12 need to get something done, too. I mean, their delay
13 causes us problems also, and so if we are holding up
14 information so they can't get their job done, that's going
15 to be a problem.

16 Q. And so just along those lines, then, in
17 your experience with adverse parties in litigations --
18 litigation, would you have had 136 meetings informally
19 with an adverse party in litigation?

20 A. No.

21 Q. Would you have provided quarterly reports
22 on the status of the project if you were an adverse party
23 in litigation?

24 A. No.

25 Q. Would you have adopted Caseworks EX to

1 allow full access to all requests to an adverse party?

2 A. Probably not.

3 Q. Would you have engaged in an informal
4 discovery process where you actually helped them write
5 their data requests?

6 A. No.

7 Q. Would you have provided extra copies of
8 things as a convenience to the parties?

9 A. No.

10 Q. All right. Now, so just to be clear, you
11 agree there have been disputes during the discovery
12 process?

13 A. Oh, yes.

14 Q. How would you characterize the number of
15 disputes that there have been?

16 A. I would say there are probably a handful of
17 discovery disputes. I mean, a lot of the stuff deals with
18 trying to understand what Staff is wanting. A lot of it's
19 trying to deal with just getting the information. For
20 example, they made mention of some e-mails that had to be
21 reviewed that were fairly voluminous. Quite frankly, it's
22 defining what needed to be done, proceeding to find the
23 information. We had to go get the information through an
24 IT process and collect it and go through the review
25 process.

1 Honestly, there are times that we've -- I
2 didn't follow through enough and get the information as
3 timely as it possibly could have been. I will admit that.
4 But as far as trying to purposely drop the ball, I don't
5 think we ever did that, and, you know, it's just a matter
6 of trying to move things through in a quick and timely
7 manner and complete also.

8 Q. When you have had those handful of
9 disputes, how have those been resolved?

10 A. Well, generally they are resolved, you
11 know, through a discussion process with the parties and
12 trying to just pull the information together. There have
13 been some that, for example, came before Judge Stearley,
14 and -- and, you know, we -- in certain cases he said you
15 need to add more information to it. It's not said that --
16 I don't think any Order's come out that said we
17 purposefully or we didn't do something right, but there
18 are some things he wanted clarification on, which I
19 understand, and we tried to do that.

20 Q. All right. Thank you.

21 MR. HATFIELD: I don't have any other
22 questions, Judge.

23 JUDGE STEARLEY: All right. Very good.
24 Cross-examination. Before we start with Staff, I will
25 take note that Office of the Public Counsel has not made

1 an appearance today, and as I said yesterday, if a party's
2 absent during questioning of a witness, they will have
3 been considered to have waived cross-examination.

4 With that, Mr. Dottheim, you may start your
5 cross.

6 MR. DOTTHEIM: Thank you.

7 CROSS-EXAMINATION BY MR. DOTTHEIM:

8 Q. Good morning, Mr. Rush.

9 A. Good morning.

10 Q. Mr. Rush, if I can refer you to KCPL
11 Exhibit 3.

12 A. This is the summary of the --

13 Q. Yes.

14 A. Okay.

15 Q. Okay. The -- your first column there,
16 ER-2009-0089, I think you indicated that started off as
17 the Kansas City Power & Light last rate increase case, did
18 you not?

19 A. Yes, I did.

20 Q. And what's listed there are all the data
21 requests in that case; is that correct?

22 A. I believe so, yes. Well, plus the audit
23 that has come through since then.

24 Q. So that would include the data requests
25 from the Staff accountants, would it not?

1 A. Yes.

2 Q. And that would include, that is in doing
3 what some people might call a financial audit?

4 A. It is.

5 Q. Okay. And that would include a data
6 request from the Commission's financial analysis
7 department, would it not?

8 A. Yes, it would.

9 Q. And that would include data requests on
10 rate design, would it not?

11 A. It would.

12 Q. Okay. And would it include data requests
13 related to fuel expense?

14 A. Sure.

15 Q. Would it include data requests related to
16 income taxes?

17 A. Yes.

18 Q. Would it include data requests related to
19 every item the Staff reviews in determining what Staff
20 believes is the appropriate revenue requirement in that
21 case?

22 A. Sure.

23 Q. And it would include any data requests
24 coming from the Commission's management services,
25 depreciation department, would it not?

1 A. That's correct.

2 Q. So the data requests that you show for
3 ER-2009-0089 would be all the data requests from the
4 entire Staff for the entire rate case ER-2009-0089,
5 correct?

6 A. That's right. That's what I described.

7 Q. Okay. And the column that you show next to
8 the right of the column for ER-2009-0089 is the GMO
9 electric case?

10 A. That's correct.

11 Q. That column would show the data requests
12 from the entire Missouri Staff in Kansas City Power &
13 Light's GMO electric case submitted by the Staff to
14 determine an appropriate revenue requirement in that case?

15 A. Right.

16 Q. And the next column is a column for GMO
17 steam, is it not?

18 A. Yes.

19 Q. And GMO steam, is that the old St. Joseph
20 Light & Power steam system?

21 A. It is the steam system, industrial steam
22 system in St. Joseph, yes.

23 Q. And the column for GMO steam, Case No.
24 HR-2009-0092 would be the data requests submitted by the
25 entire Missouri Staff submitted to determine what the

1 Staff believed was an appropriate revenue requirement in
2 that rate case, would it not?

3 A. Well, it would, except that, just to
4 clarify, that in all three of those cases, the way the
5 Commission structured their Order is data requests, for
6 example, provided in the 0089 case. The response could be
7 used in the steam case and vice versa. So there were, for
8 example, one request could address all three dockets.

9 Q. But the Staff did submit different data
10 requests. I'm not saying that the Staff did in every
11 instance, but KCPL and GMO, what you're showing there are
12 different data requests that KCP&L and, for example, GMO
13 electric received from the Staff of the Missouri
14 Commission?

15 A. That's correct.

16 Q. And what you're showing in the column for
17 GMO steam are data requests that the Missouri Staff
18 submitted solely for the GMO steam case?

19 A. Not necessarily, but most likely. I mean,
20 as I said, they could use it for all three cases. They
21 could ask me about the capital structure in the steam case
22 and apply it to all the other ones. So it wouldn't be
23 exclusive necessarily.

24 Q. Does the Kansas Corporation Commission
25 staff use informal data requests?

1 A. We typically do not write a data request
2 and provide a response. We typically -- it normally is in
3 a data request form. I don't really think we've used this
4 informal process with Kansas.

5 Q. Does the Missouri Staff for operations use
6 informal data requests?

7 A. No. The -- I don't think we've ever done
8 that with the operations staff. Typically with the
9 operations staff, many of them have been onsite reviews
10 and they've picked up information there. So we really
11 haven't had that process that we needed to do. I mean,
12 honestly, both for Kansas and Missouri, if that's -- or
13 the operations, if they want it -- if they had that way,
14 we would do it. It's not we would purposely not do it.

15 Q. The 10 day, 20 day arrangement or rule that
16 you mentioned, what is the present arrangement time-wise
17 that Kansas City Power & Light is functioning under
18 regarding responding to Missouri Staff data requests
19 relating to the audit of the Iatan project?

20 A. Your reference would be to the 0259 case
21 that's currently what we're here for today?

22 Q. Yes.

23 A. We operate under the 20 day process.

24 Q. Okay. And when Kansas City Power & Light
25 was operating under the ten day rule. Do you recall

1 whether there was an arrangement by which Kansas City
2 Power & Light can routinely request an additional ten days
3 to respond to Staff data requests?

4 A. I do remember that. In fact, I remember
5 that what we agreed to do is we could ask for an
6 extension, but if it got out of hand, if we did it
7 regularly, that we would be challenged on it, and so that
8 was kind of what we agreed to. So we used it very
9 sparingly if we could, but we did use it.

10 Q. Do you recall the Staff denying or refusing
11 KCPL?

12 A. I don't have any knowledge of any denials.
13 I know that we were challenged quite a few times, but that
14 was -- that's normal. I mean, they wanted why, et cetera,
15 but I didn't have any issues with any problems.

16 Q. Did KCPL ever request more time, more
17 additional time than ten days for responding in greater
18 than 20 days?

19 A. Sure. Yes. On several occasions we've had
20 to ask more because simply of the ability to get the
21 information.

22 Q. Do you recall the Missouri Staff ever
23 denying or refusing a request of the Kansas City Power &
24 Light for more than ten additional days?

25 A. I don't, and that's sometimes why it makes

1 it difficult to understand why the words discovery
2 disputes were the issues in the two audits that kept
3 coming up, so I don't quite understand that.

4 MR. DOTTHEIM: At this time I'd like to
5 have marked an exhibit, I think it's Staff Exhibit 9.

6 JUDGE STEARLEY: That's correct,
7 Mr. Dottheim. And what will this document be? I'm sorry.
8 Actually, you're up to Staff Exhibit 10.

9 MR. DOTTHEIM: Yes. Staff Exhibit 10 is a
10 e-mail string with the last e-mail from Tim Rush to Keith
11 Majors dated Friday, November 20, 2009, with an
12 attachment. May I approach the witness?

13 JUDGE STEARLEY: You may.

14 (STAFF EXHIBIT NO. 10 WAS MARKED FOR
15 IDENTIFICATION BY THE REPORTER.)

16 BY MR. DOTTHEIM:

17 Q. Mr. Rush, have you had an opportunity to
18 review what's been marked as Staff Exhibit 10? If you
19 need more time, that's fine.

20 A. Generally, yes.

21 Q. Do you recognize what's been marked as
22 Staff Exhibit 10?

23 A. I do.

24 Q. The attachment which is on legal size
25 paper, if I could refer you to that.

1 A. All right.

2 Q. Are all of the columns other than the
3 column furthest on the right columns which were supplied
4 input, the words, the dates, were supplied by the Staff,
5 and the column furthestmost on the right was supplied by
6 Kansas City Power & Light?

7 A. I believe that's correct.

8 Q. And the first sentence of your response to
9 Mr. Majors is, attached is the response to your request to
10 review certain data requests?

11 A. That's what it says.

12 Q. Do you recall -- well, let me ask you, did
13 KCPL object, if you can recall, to any data requests from
14 the Kansas Corporation staff on the grounds of
15 attorney/client privilege or attorney work product?

16 A. I'm certain we did.

17 Q. Do you recall when that occurred?

18 A. No, I don't.

19 Q. Do you recall a date whenever Kansas City
20 Power & Light first objected to a Staff data request on
21 the grounds of attorney/client privilege or attorney work
22 product?

23 A. I don't remember the date. I believe the
24 ones that are described here in this document, if this is
25 the beginning of it, occurred shortly after January 23rd,

1 and I think it dealt with the -- essentially the Staff
2 submitted, I don't know, 150 or some data requests in a
3 one-day period of which it was dealing with Iatan 1. I
4 think that was the first time we actually got some kind of
5 questions regarding Iatan 1 in the form that were asked,
6 and they'd also asked for Iatan 2, and -- and at that
7 point in time we didn't look at Iatan 2 being relevant to
8 the rate case at hand. It was dealing with the rate case
9 at that point. We ultimately concluded that after we met
10 and talked to the Staff, that that was not the case, and
11 we provided the information regarding Iatan 2 at that
12 point.

13 Q. And the company objected to the Staff's
14 data request on Iatan 2, did it not?

15 A. It did, yes. And as I said, I think that
16 we worked all that out with the Staff shortly after that
17 timeframe because we were trying to understand. I mean,
18 we objected to it, I believe it was on relevance, and
19 ultimately said, no, this is what they needed and we
20 provided that information.

21 Q. Mr. Rush, do you recall whenever KCPL
22 provided the unedited Schiff Hardin invoices to the KCC
23 Staff?

24 A. I'm not following what your question is.
25 Unedited, we had --

1 Q. I'm sorry.

2 A. -- redacted?

3 Q. Unredacted.

4 A. And I may be wrong, but I don't think we've
5 ever provided unredacted invoices. We made adjustments to
6 the redactions that we made after we I believe met with
7 Judge Stearley on that, and he indicated that we were --
8 we had, I believe, marked out too many things, and so
9 there was an adjustment to those responses, but I don't
10 know the time of that.

11 Q. Mr. Rush, didn't the Staff request copies
12 of the unredacted Schiff Hardin invoices that KCP&L had
13 provided to the KCC Staff?

14 A. Of that -- I think I am now recalling that
15 section of discovery. Yes, the Staff did request
16 essentially some documents that had inadvertently been
17 provided to the Kansas Staff that we've addressed. We --
18 we had -- once we discovered that we had made an error in
19 our response to the Kansas Commission, we had to go back
20 and request those documents to be brought back to us, and
21 we provided unredacted information or redacted information
22 to both Kansas and Missouri.

23 Q. Schiff Hardin provided project controls to
24 Kansas City Power & Light on the Iatan project?

25 A. That's my understanding. I'm not the

1 expert in that area, but that's my understanding.

2 Q. Ken Roberts is with Schiff Hardin, is he
3 not?

4 A. That's my understanding, yes.

5 Q. And he's been working with Kansas City
6 Power & Light on the Iatan project?

7 A. Yes.

8 Q. And do you recall whether he filed
9 testimony in Case No. ER-2009-0089?

10 A. I believe he did.

11 Q. Do you recall if he filed both direct and
12 rebuttal testimony?

13 A. That I don't -- I don't -- he did not file
14 direct, I don't believe. I believe he filed rebuttal.

15 Q. Do you recall if he filed testimony on
16 budget controls, on project controls?

17 A. I don't know.

18 MR. DOTTHEIM: At this time I'd like to
19 have marked another exhibit.

20 JUDGE STEARLEY: This will be Staff
21 Exhibit 11.

22 MR. DOTTHEIM: Staff Exhibit 11, and it's
23 an e-mail trail string, the last being from Mr. Rush to
24 Mr. Schallenberg dated November 10, 2009, subject data
25 request matters. May I approach the witness?

1 JUDGE STEARLEY: You may.

2 (STAFF EXHIBIT NO. 11 WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. DOTTHEIM:

5 Q. Mr. Rush, have you had an opportunity to
6 review what's been marked as Staff Exhibit 11?

7 A. I haven't read it in its entirety, but I'm
8 generally familiar with this.

9 Q. Do you recognize the document?

10 A. I do.

11 Q. The document is your response to an e-mail
12 from Mr. Schallenberg that starts at the bottom of page 3?

13 A. That's correct.

14 Q. Is the subject of Mr. Schallenberg's
15 e-mail, if you recall, data requests that he addressed
16 with you on July 17th, 2009 at the Iatan plant?

17 A. I think that is correct, but I --

18 Q. If I could refer you, for example, on
19 page 4?

20 A. I'm looking at it.

21 Q. Okay. The third paragraph, last sentence,
22 the specific outstanding matters for the 7/17 Staff data
23 requests are contained in the following paragraphs.

24 A. Right. Yes.

25 Q. And then if I could refer you to the second

1 paragraph, first sentence, KCPL provided responsive
2 material for Staff Data Request 403 and 443 which were
3 part of the 7/17/09 Staff data request group. Did I read
4 that accurately?

5 A. Yes.

6 Q. Okay.

7 MR. DOTTHEIM: I'd like to have marked as
8 an exhibit as Staff Exhibit 12.

9 JUDGE STEARLEY: Very well. And what
10 document will this be, Mr. Dottheim?

11 MR. DOTTHEIM: This document will be a
12 packet of Staff data request copies. I can give you the
13 data request numbers. The data request numbers are 339,
14 342, 350, 370, 403, 411, 413, 443 and 490. May I approach
15 the witness?

16 JUDGE STEARLEY: You may.

17 (STAFF EXHIBIT NO. 12 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 BY MR. DOTTHEIM:

20 Q. Mr. Rush, have you had a chance to review
21 what's been marked as Staff Exhibit 11?

22 A. 11 was the document you provided me
23 earlier.

24 Q. I'm sorry. I think that's the document I
25 just provided you.

1 A. I believe that might be 13. I don't know
2 if you've identified it as an exhibit. I've looked at
3 what you just provided me.

4 MR. DOTTHEIM: Judge, was the last exhibit
5 marked as Staff Exhibit 11 or --

6 JUDGE STEARLEY: Staff Exhibit 12.

7 MR. DOTTHEIM: 12. I'm sorry.

8 BY MR. DOTTHEIM:

9 Q. I'd like to refer you to Staff Exhibit 12.

10 A. I believe that's the e-mails between Bob
11 Schallenberg and myself. Am I wrong?

12 MR. HATFIELD: That's 11.

13 THE WITNESS: I'm sorry.

14 BY MR. DOTTHEIM:

15 Q. Staff Exhibit 12 would be the individual
16 data requests.

17 A. Okay. I'm looking at those.

18 Q. Do you recognize any of those documents?

19 A. I do.

20 Q. Would those be the data requests that
21 Mr. Schallenberg discussed with you at the Iatan plant
22 site on July 17th, 2009?

23 A. Why I'm pausing is I'm trying to make sure
24 that these are the -- whether they were supplements or
25 not, because, for example, we did provide supplemental

1 information in, like take the first one, in 0339, I
2 believe we provided some supplemental response to that
3 in -- I believe it was in March 30th, and so I'm unclear
4 whether these are the ones. I know we talked about those
5 numbers. I don't know whether they were the supplements.
6 I don't know whether they were additional information
7 required. I don't know.

8 MR. DOTTHEIM: I'd like to have marked
9 another exhibit. This may clear that up.

10 JUDGE STEARLEY: Staff Exhibit 13.

11 MR. DOTTHEIM: Okay.

12 JUDGE STEARLEY: And what document will
13 this be?

14 MR. DOTTHEIM: These are three data
15 requests in Case No. ER-2009-0089, and they are
16 supplements to Data Requests 339, 350 and 370.

17 (STAFF EXHIBIT NO. 13 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 BY MR. DOTTHEIM:

20 Q. Mr. Rush, have you had an opportunity to
21 review what's been marked as Staff Exhibit 13?

22 A. I have.

23 Q. Okay. Do you recognize the copies of data
24 requests that are Staff Exhibit 13?

25 A. Generally.

1 Q. Does that help clarify the question which
2 you had about Staff Exhibit 12?

3 A. The only thing I would ask is I don't know
4 if there were additional supplements provided. I don't
5 know what additional pieces were provided at all at that
6 point because you're trying to deal with the time sequence
7 of information, and you kind of have to -- if this is the
8 last piece, I mean, I generally understand what was here,
9 but just realize that there could be other supplements.
10 There could be additional information provided in the
11 discovery process that's not necessarily contained here.

12 Q. Some of these data requests are objections
13 on the basis that they call for the production of
14 attorney/client privilege and/or attorney work product, do
15 they not?

16 A. Yes.

17 Q. For some of the data requests there is the
18 indication that the information will be provided for
19 review, does it not?

20 A. That's correct.

21 Q. For the data requests for which KCPL
22 objected, the Staff asked for privilege logs, did it not?

23 A. I don't believe it did initially. I
24 believe it has recently, within multiple months, started
25 asking for privilege logs, and I'm not sure how far that's

1 gone back. I don't know the dates. I know that we've
2 worked very hard to try to get the privilege logs.

3 Q. For the data requests for which the
4 indication in the response is the information will be
5 provided for review, do you recall when the information
6 was provided for review to the Staff?

7 A. I have no idea. I know that, you know,
8 there have been times where we have provided review onsite
9 at the Kansas City offices. I know that we've used
10 Mr. Fischer's office as a location so that we could make
11 it convenient to Staff so we could bring the materials
12 down. We've done it a number of ways, but I don't know
13 the timeframe.

14 Q. I'd like to refer you to Staff Exhibit 11.

15 A. I've confused everything. I'm sorry.
16 Which is that?

17 Q. Well, I hope not to confuse you. I think
18 Staff Exhibit 11 is your e-mail.

19 A. Okay. I'm there.

20 Q. Your e-mail dated November 10, 2009.

21 A. All right.

22 Q. And I'd like to refer you to page 4, third
23 paragraph.

24 A. Okay.

25 Q. Do you recall whether KCPL provided the

1 documents covered by the data request in Staff Exhibit 12
2 that KCPL indicated it would provide for review, that they
3 were provided for review on October 20, 2009?

4 A. I don't know the specific dates. I suspect
5 that would be true. I don't know -- I don't know. When
6 you get into the privilege logs and that information, it
7 often turns over to the legal group that deals with that
8 stuff that I'm not involved with at that point, but I
9 mean, I'm involved with trying to make sure they get done.

10 Q. Mr. Rush, do you know whether any of the
11 documents covered by these data requests are required for
12 a decisional prudence review?

13 A. Well, it would be my opinion that a
14 privilege log probably is not necessary for a prudence
15 review. I would imagine that -- I honestly don't know,
16 and I'd hate to speculate, so I don't know.

17 Q. Well, not all the documents I was referring
18 to were privilege logs.

19 A. I understand that. That was the last thing
20 you had mentioned. I'm sorry if I misunderstood what you
21 were saying.

22 Q. Let's talk about the other documents that
23 are not covered by the privilege logs.

24 A. All right.

25 Q. And I think it's Data Request 339, 350, 370

1 and 403.

2 A. All right.

3 Q. Excuse me. I gave you -- I should have
4 given you the other DR numbers. It's 342, I gave you -- I
5 gave you the ones for which there are the objections.
6 It's the other ones for which there may have been also an
7 objection but there is an indication that there are --
8 there are documents which will be provided for review.
9 They're Data Requests 342, 411, 413, 443 and 490.

10 A. And your question is?

11 Q. Do you know whether documents covered by
12 those data requests that were subject to review by the
13 Staff were necessary for the performance of a decisional
14 prudence review?

15 A. I'm not an expert in decision -- in
16 prudence reviews, and I'm not certain if the ones you
17 provided me were supplemented or not. I know that in my
18 mind we have resolved all the discovery disputes. I know
19 that information was provided either onsite or in
20 Mr. Fischer's office that was deemed confidential and
21 would not be provided. I know highly confidential data
22 was provided and identified. So I'm not certain where
23 you're headed with that.

24 Q. And you're not sure ultimately when the
25 information that's indicated will be provided for review

1 was provided for review?

2 A. I could find that out very easily, but I
3 don't have the information in front of me. I mean, if you
4 pulled up Caseworks EX right here, you probably could find
5 it.

6 MR. DOTTHEIM: If I could have a moment,
7 please?

8 JUDGE STEARLEY: You may.

9 MR. DOTTHEIM: Mr. Rush, thank you for your
10 patience.

11 THE WITNESS: No problem.

12 JUDGE STEARLEY: Are you through,
13 Mr. Dottheim?

14 MR. DOTTHEIM: Yes. I'd like to offer
15 Exhibits --

16 JUDGE STEARLEY: 10, 11, 12 and 13.

17 MR. DOTTHEIM: Yes. Thank you.

18 JUDGE STEARLEY: Any objections to the
19 offering of Staff Exhibits 10, 11, 12 and 13?

20 (No response.)

21 JUDGE STEARLEY: Hearing none, they shall
22 be admitted and received into the record.

23 (STAFF EXHIBIT NOS. 10, 11, 12 AND 13 WERE
24 RECEIVED INTO EVIDENCE.)

25 JUDGE STEARLEY: Questions from the Bench?

1 CHAIRMAN CLAYTON: Thank you, Judge.

2 QUESTIONS BY CHAIRMAN CLAYTON

3 Q. Mr. Rush, welcome.

4 A. Nice to see you.

5 Q. I have, I think, two sets of questions.

6 First of all, I want to talk in some statistics. How many
7 data requests did you say were submitted by Staff to the
8 company?

9 A. Regarding the last three cases there have
10 been over 3,000, and there are some that are still coming
11 in.

12 Q. And can you give me an idea of -- out of --
13 and when you say the three cases, what cases are you
14 referring to?

15 A. What I'm talking about are, first of all,
16 is the steam case that we had dealing with the GMO
17 operations. We have a steam system in St. Joseph,
18 Missouri.

19 Q. Does that have anything to do with Iatan 1?

20 A. No, it does not.

21 Q. Let's exclude that one.

22 A. Okay.

23 Q. Let's just focus on data requests that
24 would be associated with the audit and prudency reviews
25 associated with Iatan 1 AQCS and common plant associated

1 with Iatan 1.

2 A. Okay. And if we did that and we simply
3 define the time that they started their audit, which has
4 kind of been what they've talked about today, I would say
5 that probably started in June of 2010 -- pardon me, June
6 of 2009, June 10th, 2009 and I believe there's been about
7 440 that I identified in the document that I presented.
8 We've received an additional 45 since then. So there are
9 probably 480 or 90 data requests.

10 Q. And out of those 450 roughly, how many --
11 how many of those data requests have resulted in an
12 objection from KCP&L or GMO?

13 A. It would be far less than maybe 1 or 2
14 percent, so might be 10 or 12 or so maybe. I don't even
15 know if we've had an objection to any of those data
16 requests since June. The only ones that we've had a --
17 there were data requests submitted back in, I believe it
18 was January 23rd, there were about 150 of them that came
19 in in one day kind of time period that -- that was during
20 the rate case, and that's what Mr. Dottheim was addressing
21 earlier. They dealt with Iatan 1 and 2. At that time we
22 were dealing with the rate case, and we objected to the
23 relevance associated with Iatan 2.

24 Q. I'm just looking for -- I'm just trying to
25 get a handle on --

1 A. I'm sorry.

2 Q. -- what number -- how many data requests
3 associated with Iatan 1 have been sent to KCP&L. And then
4 can you give me a number of those data requests, how many
5 have raised an objection on the part of KCP&L?

6 A. Not more than a handful.

7 Q. I think you said maybe 10 percent at one
8 point, which would be maybe around 50, or 45, 50?

9 A. That have raised an objection? I would say
10 2 or 3 percent.

11 Q. 2 or 3 percent. Okay. So a dozen maybe,
12 less than 20?

13 A. Right.

14 Q. Where objections were raised by KCP&L, can
15 you tell me whether the Commission has resolved any of
16 those --

17 A. They have.

18 Q. -- disputes?

19 A. There was actually a motion to compel
20 submitted by the Staff back in the November timeframe of
21 2009, and I submitted an affidavit at that time, and the
22 Commission responded to that and ordered saying that we
23 had met all of our obligations and we were in compliance
24 with the review process and there were no issues
25 outstanding.

1 Q. Okay. Of the data requests that were --
2 that were objected to by KCP&L, how many were not relating
3 to legal bills, attorney fees or attorney's invoices?

4 A. There were again just one or -- a couple
5 that might have dealt with other things. A lot of them
6 dealt with confidential data that was attorney/client
7 privileged that deals with things that lawyers and their
8 clients talk about, the strategies, et cetera.

9 Q. I understand, and forgive me. Maybe I'm
10 not asking my questions very clearly. If we're talking
11 around 20 to 25 data requests that were objected to, how
12 many among those were not relating to attorney invoices?

13 A. Again, very few.

14 Q. Do you know off the top of your head?

15 A. I don't have any -- very few. We're not
16 talking about a lot of DRs that were objected to.

17 Q. Okay. And -- but it's your testimony
18 that -- or your recollection that the ones were not
19 relating to attorney fees, those are the ones that jump
20 out in my mind that we dealt with.

21 A. Okay.

22 Q. You're saying there was attorney/client
23 privilege raised for additional documents that perhaps
24 were not associated with legal invoices or legal opinions?

25 A. That's right. That's I think the one that

1 came to you. The motion to compel addressed that area.

2 Q. So like less than five?

3 A. Yeah.

4 Q. One or two is your -- what you recall. All
5 right. Now I want to talk about some of these costs, so
6 feel free to stop me. I covered some of this ground last
7 night with Mr. Giles. It was late. I got everyone all
8 upset because I went into highly confidential matters, and
9 I was easily confused, and I will probably be confused
10 today, but I want to try to cover this ground. So let me
11 walk through this and give me some feedback.

12 And I guess I want to start off with this.
13 KCP&L has what percent share of Iatan 1?

14 A. KCP&L has 70 percent of Iatan 1.

15 Q. And GMO?

16 A. Has 18 percent of Iatan 1.

17 Q. And Empire?

18 A. 12 percent of Iatan 1.

19 Q. And so the municipals don't have any of
20 Iatan 1?

21 A. That's correct.

22 Q. Now, can you give me an idea of the
23 difference on Iatan 2?

24 A. I believe the number is -- first of all,
25 GMO has 18 percent of Iatan 2. Empire District has

1 12 percent of Iatan 2, and then the municipals, MJMEUC and
2 KMEA or Kansas Municipal -- or I'm not sure how you
3 pronounce it, K-M-E-A or something, have a certain amount
4 associated with them, but I don't remember if it's 100
5 megawatts and I don't know the percentages. I think one
6 of them may have 150 and one of them 100, but I don't
7 remember that. Kansas City Power & Light has I believe
8 it's 56 percent of Iatan 2.

9 Q. So the municipals --

10 A. I don't know the percentages.

11 Q. -- something around 14 percent. Okay.

12 Now, what was the original budget total cost, not Missouri
13 jurisdictional, I think I'm talking the total cost
14 focusing on Iatan 1, what was the budget control number,
15 the anticipated costs of the Iatan 1 AQCS upgrades,
16 including common plant?

17 A. As the control budget estimate when it was
18 initially designed and initially came to this Commission
19 in the first stages or the reforecasted numbers that we've
20 been talking about in the last --

21 Q. Start with the first. Start with the first
22 number.

23 A. It was 370-some million dollars, I think.
24 I don't have that -- I believe I'm correct in that.

25 Q. Now, I had 350 -- I had 353 written down.

1 A. That could be the number. I don't remember
2 that number. That's where we start -- that's when we
3 started with the regulatory plan. We presented it as
4 evidence, et cetera. We have moved to a number of
5 484 million as the definitive estimate.

6 Q. Okay. And when you say definitive, what do
7 you mean by definitive?

8 A. Well, as Mr. Giles talked yesterday, when
9 we came to the Commission and had the original control
10 budget estimate, we had just essentially started the
11 project. We had about 25 percent, I think was his
12 comment, of the work engineered. As that matured, for
13 example, I believe it was about 75 percent, we went back
14 and reevaluated all of our numbers, et cetera, and that
15 came to the 484 million.

16 Q. Now, is that going to change? I mean, is
17 that -- when you say definitive, is that -- is that the
18 final forecast or is that going to change again?

19 A. I believe Mr. Giles talked about we
20 should -- we expect to come in under budget, under that
21 number.

22 Q. Under the 484?

23 A. That's correct. For the -- for that
24 budget.

25 Q. If we use 484 for just being simple here

1 today, and you use the budgeted control number of 370,
2 that would be a difference of around 114 million, that
3 would be the overrun from the original --

4 A. That's right.

5 Q. -- budget forecast?

6 A. Original when we initiated the project.

7 Q. Okay. Now, in the rate case that was
8 resolved almost a year ago --

9 A. I know.

10 Q. -- almost a year ago, there were dollars
11 that were included in rates associated with Iatan 1 AQCS
12 upgrades; is that correct?

13 A. That's correct.

14 Q. Now, these dollars, whether you're looking
15 at the 370 or the 484, are these dollars that would be
16 capitalized and would be part of rate base?

17 A. They are.

18 Q. And so they're -- we're not talking
19 expenses?

20 A. That's correct.

21 Q. All right. So how -- can you tell me the
22 dollars that were added to rate base associated with the
23 Iatan 1 AQCS that were included in the rates from the last
24 rate case?

25 A. I'll try this. It was a settled case,

1 first of all.

2 Q. Right.

3 A. But we went through and tried to define how
4 many dollars of that were going into plant. Let me
5 clarify one thing. What we defined was the Iatan 1 and
6 the common associated with that is what we put into rates.
7 Okay. So we had to deal with this -- a portion of Iatan 2
8 was common. So we had to take that, include it with the
9 portion that was not common in Iatan 1.

10 Q. Okay. Can I stop you right there? Let me
11 stop you right there and ask this question. Now, the 484,
12 I'm assuming is Iatan 1 AQCS, which includes Iatan 1
13 common plant?

14 A. That's not correct.

15 Q. That's not correct. Okay. So the 484
16 includes all common plant associated with Iatan 2 as well?

17 A. No. It is part of the common. The common
18 was broken up into two pieces, one in the budget for
19 Iatan 2, one in the budget for Iatan 1, and we went
20 through and defined that, and we came up with an
21 evaluation, we presented it to all the parties, of how
22 much of the whole project, Iatan 1 and 2, is common.
23 Included in the Iatan 1 484 number is \$114 million that's
24 been identified as common.

25 Q. Out of a total of how much common?

1 A. I believe it's 300 and -- it is
2 \$363 million is the total common that we had identified at
3 the time of that case that -- not in rates, but that was
4 what we had identified. There's other common things that
5 are occurring after that, but that's the number. So that
6 -- what that does is that says that Iatan 1 was
7 \$370 million, and the common is \$363 million for a total
8 of \$733 million, which is Iatan 1 and all of the common
9 associated with 1 and 2.

10 Q. So that's all common?

11 A. That's correct.

12 Q. Now, in rates, in the schedule or the
13 proposal, whoever put it forward that are included in
14 rates -- well, let me step back because I have my notes
15 all squared up here.

16 A. I'm sorry.

17 Q. I had all my numbers all squared up, and I
18 thought this was going to be easy and I've run out of room
19 here. What is the total amount Iatan 1 only and exclude
20 common in entirety?

21 A. Entirely is \$370 million, is Iatan 1.

22 Q. 370, and then Iatan 1 -- so Iatan 1 common
23 is 114?

24 A. Well, that was the common that was in the
25 Iatan 1 budget.

1 Q. Right. So -- but you said the 484 includes
2 more common than just Iatan 1. Yet if I add 370 plus the
3 114 that equals 484.

4 A. There's more common and it's in the Iatan 2
5 budget. There's more -- common was put into two buckets.
6 Common is attributable to 1 and 2.

7 Q. I got that. I got that.

8 A. And we had some in 1 and some in the 2
9 budget.

10 Q. I got that. But the 484 includes Iatan 1
11 only --

12 A. That's right.

13 Q. -- and Iatan 1's share of common?

14 A. And a share of common, yes.

15 Q. And -- well, that's what I said, Iatan 1
16 plus --

17 A. I'm just trying to distinguish common means
18 both. It's used in 1 and 2, plants 1 and 2. It's just
19 stuff that's there. It just happened to be the chimney,
20 for example, would have been in Iatan 1, but it was for 1
21 and 2.

22 Q. All right. well, let's --

23 A. I know I'm probably talking semantics and I
24 apologize.

25 Q. That's all right. So in rates, how many

1 dollars were added to rate base? I know it was a
2 settlement, but I'm assuming there's a number that
3 represents Iatan 1 additions to rate base. It was
4 completed and fully in service, and that rate base went up
5 by a certain amount, and that I know there's a component
6 that perhaps is subject to refund. So what was the first
7 number, and of that, how much is subject to refund?

8 A. There's nothing subject to refund.

9 Q. Okay.

10 A. What was included in -- and we would use
11 this as our proxy. We've put in \$308 million of total,
12 that's Kansas and Missouri dollars in to the rate case,
13 and Missouri's share is 55 percent of that. So
14 approximately \$169 million was included in the rate case
15 for Iatan 1 and common.

16 Q. Thank you for bringing up the Missouri and
17 Kansas jurisdictional. If you look at Iatan 1, what
18 percent of the overall plant goes to Kansas?

19 A. Approximately 45 percent goes to Kansas.

20 Q. And then Missouri gets 55 percent?

21 A. Of Kansas City Power & Light's portion. So
22 you take -- you have to define it, you take 733 times 70
23 percent times 55 percent is how many --

24 Q. So that's just KCP&L. That is not GMO or
25 Empire?

1 A. That's correct.

2 Q. So Empire doesn't get 12 percent of the
3 55 percent, they get 12 percent of the overall?

4 A. That's correct.

5 Q. Thank you. Thank you. So how much -- what
6 was the dollar amount that you said was added to KCPL's
7 rate base?

8 A. For Missouri, it was \$169 million.

9 Q. 169?

10 A. And that's a very -- I mean, it's very
11 close, but it's taking the 308 that we defined and taking
12 55 percent of it.

13 Q. So of that 169, if you were to compute that
14 out by percentages, comparing it to the 484, how much is
15 not included in rate base that KCP&L believes should be
16 included in rate base?

17 A. There's a remaining amount for the Missouri
18 operations of about \$111 million, of Iatan 1 and common.

19 Q. So -- so would it be a fair statement that
20 the prudence and invoice audits that we're really talking
21 about here with the Staff report that are subject in this
22 case, potentially the next case, amount to approximately
23 111?

24 A. Well, it's unclear from the Staff's audit
25 report. You could say that -- when you look at 169 and

1 111, it equals 280 million. You could argue that it's --
2 the audit deals with 280 million. You could argue -- you
3 don't know what it's going to deal with, but --

4 Q. So there's not --

5 A. -- theoretically, the deduct would come
6 from -- in rates would come from the 111 if you -- if they
7 had a disallowance you would take it off. So you would
8 not be increasing 111. You'd increase some portion of it.

9 Q. And what is your understanding of what
10 Staff has proposed to be disallowed just in this audit?

11 A. Well, they -- they would have in the audit,
12 it references that there's, for example, \$30 million that
13 they've identified that's questionable. Some of it needs
14 to be moved to Iatan 2. Some of it's incorrectly
15 addressed. Some of it is disallowance. And then they say
16 that there's another 60 million that they just haven't got
17 around to looking at.

18 Q. Okay.

19 A. And then -- but that's -- it's unclear if
20 you look at it whether they're talking about the
21 484 million that I just referenced or whether they're
22 talking about Iatan 1 and common, which is 733. So
23 there's just a lot of -- you don't -- you can't read the
24 audit and say here's what it is, and I think they
25 described that they're not done yet.

1 Q. Would it be fair to say that on a going
2 forward basis from Staff's perspective, and I know I'm
3 asking you to review Staff, but I'm trying to get a sense
4 of how you interpret it, that it leaves 90 million in
5 play?

6 A. That could be what -- you could read that
7 pretty easily.

8 Q. That the rest would be some degree
9 considered prudent and would be added to rate base in the
10 next case --

11 A. You could.

12 Q. -- to speak very generally?

13 A. You could read that. You could say -- I
14 mean, you could make a discussion that -- remember we
15 talked about the control budget estimate versus the 484
16 where we did a reforecast and update, and you could argue
17 that maybe that's in play. It's hard to define because it
18 doesn't say.

19 Q. Now, KCPL doesn't disagree that the
20 30 million that's been identified as a potential
21 disallowance, that would be fair game in the next rate
22 case?

23 A. Yes.

24 Q. You agree with that?

25 A. Yes.

1 Q. And that's where the parties will tee up,
2 they'll file testimony and there will be arguments over
3 that?

4 A. Sure.

5 Q. Now, from KCP&L's perspective, the concern
6 and uncertainty is with the 60 million or potentially the
7 difference between the over -- any amount over the
8 30 million disallowance?

9 A. It's all those things.

10 Q. So what does KCPL want to come from this
11 case?

12 A. I would say that we want -- this is me
13 speaking. I think we want three things. First of all, I
14 think we want to make sure that we're not causing a
15 problem with dispute on discovery. That's -- if there's a
16 problem, let's get it resolved. From the discovery thing,
17 I think we're trying to do everything we can to meet the
18 review process.

19 Second thing is, I think we want to
20 understand Iatan 2's budget. We would like to see it
21 basically concluded from the prudence review. I
22 understand they can do --

23 Q. Iatan 1?

24 A. Iatan 1. I'm sorry. Iatan 1. And I would
25 say that, you know, we need to say we're done with the

1 prudence side and we understand the issues and we move on.
2 Now, if that means, you know, I think they've looked at
3 probably the invoices through May. Maybe that's where
4 we're at and let them do the audit of -- of financial
5 aspects of it from then on. That would be the second
6 thing I would see us doing.

7 The third thing that I would suggest or I
8 would look at is I would hope that we would get an
9 understanding of what's going to happen to Iatan 2. We're
10 going to be filing a rate case, and I don't want to have
11 to be back here addressing these kind of concerns a year
12 after this rate case -- next rate case is completed,
13 trying to say we've got a problem because we don't know.
14 We don't want anything subject to refund. We want to make
15 sure we get some definitive answer. So we would like to
16 be able to address prudence for Iatan 2's rate case in
17 Iatan 2's rate case.

18 Q. It sounds like a road map for what's going
19 to happen with the next rate case?

20 A. That's right.

21 Q. Now, last question or last series of
22 questions. We're -- these dollars that we're talking
23 about, we've got \$30 million disallowance. Is that
24 \$30 million disallowance for just KCP&L or is that -- is
25 that all of the Missouri?

1 A. That actually is the entire project. So --
2 but I'm not certain. I mean, that's for the whole
3 project, so that would be --

4 Q. Let's look at it this way. You've
5 identified the 30 million specific disallowance, the
6 60 million that there is uncertainty or that you're
7 suggesting, that 90 million, what would be the KCP&L's
8 share of that?

9 A. Roughly 70 percent of that number.

10 Q. 70 percent of the 90 million. So that
11 would be associated with KCPL rates, and then do you know
12 how to compute that 70 percent of 90 million, since we're
13 going into rate base, how would that compute in an annual
14 revenue requirement increase? What does that mean in
15 revenue dollars?

16 A. If you took the dollars, took 70 percent of
17 90 million, you get \$63 million. You essentially take
18 that times about 15 percent, and that would give you the
19 answer. That's typically kind of the cost with
20 depreciations and all of that, what it would have for a
21 revenue impact. So you're probably talking 10 or --

22 Q. Nine or ten? Nine or 10 million --

23 A. Ten or 11. Yeah, in that area. On a
24 revenue requirements base, but you have to deal with the
25 plant side of it.

1 Q. And just a quick, what -- that 10 million,
2 what is the revenue requirement for KCP&L only right now?

3 A. How many dollars does KCPL revenue?

4 Q. Annual revenue requirement.

5 A. Over \$600 million. It's about 600 and some
6 million dollars.

7 Q. Okay.

8 CHAIRMAN CLAYTON: I don't think I have any
9 other questions. Thank you very much.

10 THE WITNESS: You bet.

11 JUDGE STEARLEY: Any other questions from
12 the Bench?

13 COMMISSIONER GUNN: I'm not going to ask
14 any questions.

15 JUDGE STEARLEY: Before we come back for
16 recross and redirect, I think this is a good breaking
17 point. We'll take about a ten-minute intermission and
18 we'll come back on the record.

19 (A BREAK WAS TAKEN.)

20 JUDGE STEARLEY: Recross from Mr. Dottheim
21 based on questions from the Bench?

22 MR. DOTTHEIM: No questions.

23 JUDGE STEARLEY: Thank you, Mr. Dottheim.
24 We are back to you, Mr. Hatfield, for redirect.

25 MR. HATFIELD: Thank you, Judge. I do have

1 just a few, and I'm going to stand if that's all right, so
2 I can see.

3 REDIRECT EXAMINATION BY MR. HATFIELD:

4 Q. Mr. Rush, I just want to go back through.
5 Do you have the exhibits that Mr. Dottheim provided to you
6 there in front of you?

7 A. I do.

8 Q. I just want to go through and sort of
9 chronologically make sure I understand and the Commission
10 understands Staff Exhibits 10 and 11, which are these
11 e-mail exchanges between you, Mr. Schallenberg and then
12 you and Mr. Majors.

13 A. Okay.

14 Q. And first of all, on sort of a high level,
15 you're getting these e-mails, these two e-mails that are
16 Staff Exhibits 10 and 11 in November of 2009; is that
17 right?

18 A. Right.

19 Q. Now, the case, the rate case had concluded,
20 let's just say, in June of 2009?

21 A. That's correct.

22 Q. Why didn't you tell Staff, we're not
23 answering these, we're not going to -- we're not doing DRs
24 anymore, case is over?

25 A. Well, we continued doing DRs through the

1 entire process, and it was attributable to what we thought
2 was the Iatan audit that was going to be completed at the
3 end of the year.

4 Q. And related to that, now you're aware at
5 some point a wise RLJ raised the issue of whether
6 subpoenas might be a more appropriate method to proceed.
7 Do you recall that?

8 A. I am aware of that.

9 Q. And has the company ever insisted that,
10 rather than a DR process, the Staff go and get subpoenas?

11 A. The Staff did go get some subpoenas
12 initially, but it was very few. We went ahead and
13 responded to the data request process just to make sure we
14 were trying to be as compliant as we could and
15 accommodating as we could.

16 Q. Now, on Staff Exhibit 11, I believe is the
17 earlier one in time, this is the e-mail again from you to
18 Mr. Schallenberg, and I just want to talk about yours, I
19 think.

20 A. Okay.

21 Q. But if we need to refer to
22 Mr. Schallenberg's, let me know. In the first, second,
23 third paragraph that begins, in your e-mail below, are you
24 with me?

25 A. Uh-huh.

1 Q. The last sentence, and the document's in
2 evidence, I believe, says, to that end, I request that the
3 matters you outlined in your e-mail be addressed in the
4 upcoming meeting with Judge Stearley that is scheduled for
5 Thursday, November 12th.

6 A. Right.

7 Q. To what were you referring there?

8 A. If I'm not -- if I remember correctly, we
9 had a meeting with Judge Stearley which Mr. Fischer and I
10 attended where we went through a number of discovery
11 issues. I believe that was the timeframe associated with
12 that.

13 Q. Now, were the matters in this e-mail
14 discussed in that November 12th meeting with Judge
15 Stearley?

16 A. I believe so, yes.

17 Q. And was that your suggestion that it be
18 taken to Judge Stearley? Did you think that was
19 consistent with what Staff had said in their preliminary
20 audit report about let's not keep arguing about these,
21 let's just take them to the judge?

22 A. I think that would be, yes.

23 Q. All right. Staff Exhibit 10 is this e-mail
24 from Mr. Majors to you?

25 A. Right.

1 Q. And then your response, I guess, to that.
2 Okay. So Mr. Majors there in the first, second, third
3 e-mail, that's November 3rd, says, I've been instructed to
4 send you a list of data requests that KCPL has objected to
5 or that Staff considers nonresponsive updated as of
6 today --

7 A. Yes.

8 Q. -- is that right?

9 A. Yes.

10 Q. Did you ever -- did you ever gain an
11 understanding of who had instructed that that be prepared?

12 A. I was informed that it was Bob
13 Schallenberg.

14 Q. And so just so we're clear, what is it
15 that's attached, this big spreadsheet that's attached?

16 A. Well, it is a summary of what Staff
17 interpreted to be data requests or it was defined as ones
18 that we had object -- KCPL in some fashion had initially
19 objected to in the -- after they were initially received.

20 Q. So was this -- did this spreadsheet, is
21 this something that Mr. Majors sent you and then you added
22 comments or is this a spreadsheet --

23 A. That's correct. I'm sorry.

24 Q. So just to be clear then, so for example,
25 the columns DR, objection type, official objection, date,

1 status per Staff, those are Mr. Majors' comments?

2 A. Right. That's what he filled out, and
3 then -- or someone filled out, and then I responded with
4 the KCPL comments.

5 Q. All right. And as I read page 1, and I'm
6 asking if this is your recollection of where we were,
7 we've got attorney/client privilege objections and Iatan 2
8 objections?

9 A. I would agree with that.

10 Q. And what is your understanding of what an
11 Iatan 2 objection was?

12 A. As I said earlier, this is dealing with the
13 rate case timeframe. This is back in January. We were
14 dealing with the Iatan 1 going into rates. That was the
15 issue that was before us, and we indicated that having
16 Iatan 2 was not relevant to the subject that was before
17 us.

18 Q. Okay.

19 A. And so we argued that. We objected to it
20 because of that.

21 Q. All right. And then on the next page we've
22 got some more -- I guess that's attorney, there's a typo
23 there, but attorney/client objection, some Iatan 2
24 objections. Then we have -- we've got some different
25 ones. We've got an unduly burdensome objection.

1 No. 630.2A refers to materials not in the company's
2 possession. Do you have any recollection as to what that
3 was?

4 A. No.

5 Q. That's fine. And then we've got another
6 unduly burdensome 637.1?

7 A. Right.

8 Q. Just says -- do you have any recollection
9 of what that one was?

10 A. No.

11 Q. And then 651, mediation?

12 A. Right.

13 Q. Cannot produce under Missouri law. Other
14 questions answered by, do you have any recollection what
15 that was?

16 A. I really don't, no.

17 Q. Now, here's what I want to get to. We've
18 got a whole list here starting with 735, I counted 27 DRs
19 that Staff says you have refused to provide information in
20 response to those 27 DRs.

21 A. Right.

22 Q. I want to give you an opportunity to
23 explain to the Commission what those DRs were and why you
24 would refuse to provide information. well, first of all,
25 is that a correct characterization of your position that

1 you were simply refusing to provide the information?

2 A. We indicated that it was unduly burdensome
3 to address that. We did not necessarily refuse. We tried
4 to explain the basis for which the information was not --
5 would not be responsive to what they were looking for, and
6 we attempted to do it that way. This dealt with what's
7 called --

8 Q. Let me make sure --

9 A. I'm sorry.

10 Q. Can we explain all of the rest of these
11 that are listed all the way through the end, are they all
12 of one?

13 A. They're all generally dealing with one
14 issue, which is what's called the gate log or the
15 electronic gate information at the Iatan 2 site or
16 Iatan -- yeah, well, it's the entrance to Iatan, the
17 construction site, Iatan 1 and 2. And essentially it
18 dealt with Staff's attempt to essentially get all of the
19 logs of every person's entry into Iatan construction site
20 where if you went in to the site, construction site, you
21 may or may not use a swipe card, some kind of a card to
22 identify that you have come to the site.

23 Now, we use that for contract work. I
24 mean, the purpose behind that was to assure that the folks
25 that we were paying were there. It was not used as the

1 gospel approach to checking every person that came on to
2 the site. It was used as the -- essentially a
3 construction measurement device. And so there was
4 confusion when the Staff was trying to identify whether,
5 for example, Mr. Downey came to the site and whether he --
6 he swiped his card and whether he was actually at the
7 site.

8 There were other means -- and then they
9 were trying match that to an expense report, for example,
10 was there a trip actually taken to the site. There were
11 other means by which you could enter the site that didn't
12 dictate that. You might stop at the safety location which
13 was not within the gate area. You could go through the
14 other -- another entrance if you were going to Iatan 1.

15 So it was multiple means of not actually
16 swiping your card. In fact, I -- when I would go up
17 there, I did not routinely swipe my card because I went
18 through a -- in a vehicle and I may be with someone else
19 and they would swipe their card and I wouldn't. So it
20 wasn't a good means of addressing that information.

21 Q. All right. I'm just going to call that the
22 gate log dispute.

23 A. But it was very difficult to be able to
24 retrieve all that information also, so it wasn't a proc --
25 and it wouldn't produce a result they were looking for.

1 Q. So how many employees would be involved in
2 that if we were to say, give me the gate logs that show
3 every employee?

4 A. Well, you have employees and contractors,
5 so you had roughly 5,000 folks coming in and out of a site
6 every day, and you're not sure that every one would or
7 would not be there, and now we're getting into the
8 detail I probably don't know enough about when we go
9 beyond that.

10 Q. I'm done, except to ask, did that dispute
11 ever go to the RLJ, the gate log dispute?

12 A. I don't believe it did, and I think we
13 ultimately resolved by getting the information for them.

14 Q. And then I just want to talk a little bit
15 about these attorney/client privilege issues that
16 Mr. Dottheim addressed with you, and I really --
17 Commissioner Clayton asked you a little bit about what
18 Orders have been entered, and I know that Judge Stearley
19 is familiar with some of the Orders, but I just want to
20 make sure it's clear for the record.

21 So I want to ask if you're familiar with an
22 Order that was issued by this Commission on December 9th
23 of 2009 regarding staff's motion to compel?

24 A. I am, yes.

25 Q. And I want to ask you a couple things and

1 just make sure that the Commission and your testimony are
2 on the same page reading from the Order. On September
3 14th and 15th, the RLJ held a discovery conference with
4 the parties concerning thousands of pages of invoices, a
5 small percentage of which contained redactions.

6 A. Right.

7 Q. Is that consistent with your recollection?

8 A. Yes, it is.

9 Q. Is that consistent with your testimony or
10 your memory of the percentage of documents that were
11 redacted?

12 A. Yes, it would be.

13 Q. Says, during that conference KCPL waived
14 certain claims of privilege and the RLJ found the
15 remaining asserted privileges appropriate?

16 A. That's right.

17 Q. Was that your understanding of what this
18 Commission ruled?

19 A. Yes.

20 Q. And then I want to ask you about this.
21 After that the Order says, the Commission directed its
22 Staff to identify specific invoice numbers and the page
23 and line number of redactions in the much smaller number
24 of documents that remain in dispute. Is that --

25 A. Right.

1 Q. -- your recollection of how it's to work?

2 And did Staff comply with the Commission's
3 direction to do that?

4 MR. DOTTHEIM: Judge, I'm going to object
5 to that. I think the Commission's Order speaks for
6 itself, and I don't believe Mr. Rush is doing anything
7 other than agreeing that that is what is being read in to
8 the record, and it's the -- it's the Commission's Order in
9 this proceeding.

10 JUDGE STEARLEY: Mr. Dottheim, you raised
11 all these specific issues with regard to these specific
12 data requests. The Order I believe directs -- directly
13 impacts on those specific numbers of data requests. In
14 fact, you opened the door to this, and I'm going to
15 overrule the objection. Mr. Hatfield, you can continue.

16 BY MR. HATFIELD:

17 Q. So Mr. Rush, I think where I was is that
18 the Commission directed its Staff to identify specific
19 invoice numbers and the page and line number of redactions
20 in the much smaller number of documents that remained in
21 dispute.

22 A. That's right.

23 Q. And my question to you was whether the
24 Staff complied with the Commission's directive?

25 A. Yes, they did.

1 Q. So the Order says, on November 9th the
2 Staff filed its response claiming that it could not comply
3 with that Order?

4 A. Right. Right.

5 Q. And you said --

6 A. There was some issue that they were having.
7 I think it was all resolved at the end, is my knowledge.
8 I do remember that they did respond that they couldn't do
9 it because of some issue that existed around it.

10 Q. I guess that's what I'm trying to get at,
11 is your understanding of the negotiations here since
12 Mr. Dottheim has raised the issue of how you handled
13 attorney/client privilege.

14 A. Right.

15 Q. The Order says that Staff simply stated
16 that it was challenging every redaction?

17 A. That's correct.

18 Q. Is that the way the negotiations with you
19 were handled with regard to attorney/client privilege,
20 we're just challenging all of them?

21 A. It really was. I mean, they challenged
22 things, but it wasn't that we took them to the RLJ. They
23 would ask for information, we would provide them things --
24 redact, you know, logs of information, I'm not sure that I
25 would say they were coming to Judge Stearley for

1 everything.

2 Q. No no, I meant --

3 A. I'm sorry.

4 Q. -- when they were talking to you about how
5 to resolve these disputes.

6 A. Okay.

7 Q. Did they just say we're challenging every
8 redaction or did they say, well, we'll tell you
9 specifically which ones we have a problem with?

10 A. In that process they were challenging all
11 of them.

12 Q. All right. Thank you. And then as to the
13 motion to compel, I just want to make sure that your
14 testimony, that you don't think something different
15 happened than what the Commission did.

16 Well, before we come to the conclusion, it
17 says, what remains in dispute with respect to, it says DR
18 0631 specific request, are approximately 41 documents of
19 which there are approximately 168 pages that bear some
20 redacted language. Is that consistent with your
21 recollection?

22 A. Yes.

23 Q. Commissioner Clayton asked you about how
24 many objections there had been, and he was kind of trying
25 to walk through some of the construction -- or I'm sorry

1 the timing, I think, of some. I believe that if the Judge
2 were to take notice of the EFIS filings, he would find
3 that there have been since December 31, 2009, 86 DRs
4 issued in 0089, and 159 DRs issued in all three cases
5 combined. I should say it the other way, 159 cases in
6 all -- 159 DRs in all three cases, 8990 and 259.

7 A. Okay.

8 Q. And of those, 86 were in 0089 since
9 December 31, 2009. Do you think that's --

10 A. That sounds right.

11 Q. Totally different topic. On the
12 conversations you were having with Commissioner Clayton
13 concerning, well, let's just say costs and revenue
14 requirement, you and Commissioner Clayton were discussing
15 the cap in the Stipulation & Agreement that resolved the
16 last rate case. Do you recall that?

17 A. I do.

18 Q. And you discuss that there's a \$30 million
19 cap for Kansas City Power & Light?

20 A. That is Missouri jurisdictional.

21 Q. And that's the thing that I want to make
22 sure was clear for the record, that the \$30 million cap,
23 your understanding, stipulation says what it says, is
24 Missouri jurisdictional?

25 A. That's correct.

1 Q. If there were a \$30 million disallowance,
2 what would the Missouri jurisdictional impact on revenue
3 requirement be?

4 A. Well, if you -- if you just simply took
5 that approach, there could be as much as a -- about a four
6 and a half million dollar revenue reduction as my, you
7 know, it would be -- that would be an estimate, but it
8 would be about that.

9 Q. And then, I mean, we could easily do the
10 same math for GMO?

11 A. Right.

12 Q. Which is that the cap there again is
13 \$15 million.

14 Q. And so if there was a \$15 million Missouri
15 jurisdictional disallowance, that's your understanding
16 what that cap is?

17 A. Right.

18 Q. What would the revenue impact on GMO be?

19 A. It would probably be about \$2.3 million.

20 MR. HATFIELD: That's all I have, Judge.
21 Thank you.

22 JUDGE STEARLEY: All right. Thank you very
23 much, Mr. Rush, for your testimony. You may step down.

24 THE WITNESS: Thank you.

25 JUDGE STEARLEY: As with the other

1 witnesses, the exception of Dr. Nielsen who we cut loose
2 yesterday, I will not fully release you at this time in
3 case the Commissioners would like to recall you for
4 additional questions.

5 Before we continue, let me inquire of the
6 parties. I believe, KCPL, we have Mr. Cline as your next
7 witness.

8 MR. FISCHER: Yes, sir.

9 JUDGE STEARLEY: How long do you anticipate
10 his examination is going to be?

11 MR. FISCHER: We can get that done before
12 noon, I think, the direct.

13 JUDGE STEARLEY: Mr. Dottheim, are you
14 anticipating extensive cross-examination?

15 MR. DOTTHEIM: No.

16 JUDGE STEARLEY: The reason I ask is, the
17 Commissioners have instructed me to change the order of
18 the witnesses for this afternoon due to conflicts they
19 have in their schedule. They would like to hear from
20 Mr. Schallenberg as our first witness back following lunch
21 today. If we can go ahead and get through Mr. Cline's
22 testimony before noon, break for lunch, we'll pick up with
23 Mr. Schallenberg at approximately 1:30 then.

24 All right. Let's go ahead and call
25 Mr. Cline to the stand.

1 (Witness sworn.)

2 JUDGE STEARLEY: Thank you. You may be
3 seated. You may proceed.

4 MR. FISCHER: Thank you, Judge,

5 MICHAEL CLINE testified as follows:

6 DIRECT EXAMINATION BY MR. FISCHER:

7 Q. Please state your name and business
8 address.

9 A. Michael Cline, C-l-i-n-e, 1200 Main, Kansas
10 City, Missouri 64105.

11 Q. By whom and in what capacity are you
12 employed?

13 A. Great Plains Energy. I'm the Vice
14 President of Investor Relations and Treasurer.

15 Q. Can you explain briefly what your
16 responsibilities are in that capacity?

17 A. Sure. I'm the primary officer with
18 day-to-day accountability for discussions with the
19 investment community, fixed income investors,
20 institutional investors. I also have primary
21 responsibility for our rating agency relationships as well
22 as our commercial bank relationships. I handle all the
23 financing for the -- for the company as well as get
24 involved in regulatory matters from a financial
25 perspective.

1 Q. I noticed you're a graduate of one of the
2 universities that knocked off the University of Kansas in
3 the NCAA, Bradley University; is that right?

4 A. I am indeed. That is correct.

5 Q. Do you also have an advanced degree?

6 A. I do. I have an MBA from Illinois State
7 University.

8 Q. Okay. Have you previously testified in a
9 proceeding at the Missouri Public Service Commission or
10 before other utility regulatory agencies?

11 A. I have.

12 Q. Could you just briefly indicate which areas
13 you testified in?

14 A. I've testified before this Commission in
15 KCP&L's rate cases in 2006, 2007, 2009, also in the Aquila
16 acquisition case and similar matters in front of the
17 Kansas Corporation Commission.

18 Q. Are you aware that the companies in this
19 docket have filed a March 25 filing which basically
20 stated, continuing the uncertainty associated with the
21 prudence review of the company's investments in Iatan 1
22 and common plant beyond the timeframe ordered by the
23 Commission in its June 10, 2009 Orders has a potential to
24 increase the company's cost of capital to the detriment of
25 the companies and their customers?

1 A. Yes, I'm aware of that.

2 Q. Do you have a comment regarding that
3 position that the companies have taken? Do you have a
4 view on that?

5 A. Yes, I do.

6 Q. What is your opinion?

7 A. My belief is that if we do not resolve the
8 prudency issues around Iatan 1 and common, that it will
9 have a detrimental effect on the companies' cost of
10 capital.

11 Q. Can you explain why that would be the case?

12 A. Well, I think there are a couple of issues
13 at play here. First of all, the specific Iatan 1 and
14 common case and the dollars that we've been talking about
15 I wouldn't say are specifically a huge issue for the
16 investment community.

17 I think the way that investors view this
18 particular case is that a cap was established in last
19 year's settlements, and they haven't really paid that much
20 attention to the back and forth that's been happening
21 through this -- through this docket. I mean, most of the
22 information that -- in fact, almost all of the
23 quantitative information I believe in Staff's 12/31/09
24 report is highly confidential, so, therefore, investors
25 don't have visibility into the numbers at this point.

1 I think their view is that while they
2 understand that some back and forth is happening, that the
3 maximum exposure to Great Plains Energy and KCPL GMO is
4 \$45 million in terms of disallowance.

5 The cost of capital detriment that I refer
6 to is a bigger issue. I think there's a precedential
7 issue here that needs to be considered. The failure to
8 resolve prudence on a timely fashion has repercussions
9 I think in a couple of different ways. First of all,
10 investors want to know and rating agencies, banks, the
11 other financial stakeholders that I deal with want to know
12 that when a commission issues an Order such as it did in
13 this circumstance on June 10th, 2009, compelling the Staff
14 to take a particular action, that that action will be
15 taken.

16 The language was quite clear, and I think
17 investors believe that there is a certain deliverable that
18 Staff needed to provide as a result of that, and to the
19 extent that that does not occur, I think it potentially
20 could damage the Commission's credibility, the ability of
21 investors to rely upon Commission orders. And to the
22 extent that there is tainted credibility, that raises the
23 cost of capital for the companies that operate in this
24 jurisdiction, including ourselves.

25 Q. Mr. Cline, in the last Kansas City Power &

1 Light Company rate case, do you recall that there was a
2 recommendation from the Staff that a portion of the rates
3 be put into effect on an interim subject to refund basis?

4 A. I do recall that, yes.

5 Q. And do you recall what that portion was
6 related to, related to plant, or what was that interim
7 subject to refund issue about?

8 A. It was the -- I believe it was the
9 difference in Iatan 1 and common costs filed by the
10 company compared to the control budget estimate.

11 Q. Is it your understanding that the Staff was
12 recommending that because they hadn't completed their
13 constructions audit --

14 A. Yes.

15 Q. -- of Iatan 1?

16 A. Yes. That's my recollection.

17 Q. Do you recall what the financial
18 stakeholders that you're talking about, how they would be
19 reacting to something like that?

20 A. I believe I filed an affidavit to that
21 effect, that it would be certainly viewed in a detrimental
22 way, absolutely.

23 Q. In the event that a similar occurrence
24 happened in the Iatan 2 rate case, how would you expect
25 financial stakeholders to react?

1 A. That's where I was going in my earlier
2 response. That's the second element here. The first is
3 just an overall question of when the Commission issues an
4 Order, will Staff comply. The second is with respect to
5 how will prudence be dealt with in Iatan 2.

6 Mr. Rush dealt with this a little bit
7 earlier in his testimony. Here the stakes are far
8 greater. The difference between the current top end of
9 the publicly disclosed cost range for Iatan 2 and the
10 original control budget estimate is I believe just north
11 of \$300 million. That's total project. So obviously the
12 stakes are very high here, and delays in dealing with
13 prudence similar to what we've experienced in this case
14 would clearly harm the company in terms of its needs to
15 raise capital.

16 And there is an extensive calendar that we
17 have in that regard over the next 12 to 18 months that we
18 think would be impacted.

19 Q. If I were to ask you to summarize your
20 testimony today in three or four points, what would they
21 be?

22 A. I think I would say that with additional
23 risk comes a higher cost of capital. That's a well
24 accepted tenet of finance, I think probably well known to
25 this Commission.

1 Secondly, the failure to resolve the
2 Iatan 1 and common prudence does have significant
3 ramifications from a cost of capital perspective for Great
4 Plains Energy. The first is investors' ability to rely
5 upon Commission orders, that they'll be complied with by
6 Staff, particularly in a situation like this where it's
7 very clear.

8 And secondly, the ramifications with
9 respect to Iatan 2 where the dollars involved are much
10 more significant and the risk is higher.

11 MR. FISCHER: Thank you, Mr. Cline. I
12 would tender the witness for cross.

13 JUDGE STEARLEY: Thank you, Mr. Fischer.
14 Cross-examination by Staff?

15 MR. DOTTHEIM: Yes. Thank you.

16 CROSS-EXAMINATION BY MR. DOTTHEIM:

17 Q. Good morning, Mr. Cline.

18 A. Good morning, Mr. Dottheim.

19 Q. Mr. Cline, did Standard & Poor's raise its
20 outlook of GPE, KCPL, GMO from negative to stable on
21 April 9, 2010?

22 A. Yes, sir, they did.

23 Q. Did Standard & Poor's also raise KCPL's
24 short-term debt rating to A2 from A3 on that date?

25 A. Yes, sir, they did.

1 Q. Did KCPL file an 8A at the U.S. Securities
2 and Exchange Commission regarding the Staff's filing on
3 December 31, 2009?

4 A. No, sir.

5 Q. Did KCPL GMO issue a press release
6 regarding the Staff's filing with the Commission on
7 December 31, 2009?

8 A. No, sir.

9 Q. Has Standard & Poor's, Moody's or Fitch
10 referred in any report to Staff's December 31, 2009
11 filing?

12 A. No, sir.

13 Q. Has GPE, KCPL or GMO provided a copy of
14 Staff's December 31, 2009 report to Standard & Poor's,
15 Moody's or Fitch?

16 A. No, sir, we have not.

17 Q. Has anyone associated with GPE, KCPL, GMO
18 discussed the Staff's December 31, 2009 filing with the
19 Commission with Standard & Poor's, Moody's or Fitch?

20 A. Only with Moody's.

21 Q. Okay. And what was the nature of that
22 discussion?

23 A. I was the party that had the discussion. I
24 was talking with our company's analyst at Moody's, a
25 gentleman named Jim O'Shannessey. We were talking, it was

1 right after we issued the 8K in January related to the
2 delays in Iatan 2, and so he reached out to me to talk a
3 little bit more about that, and in that context asked if
4 the Staff had filed its December 31st report as required
5 by the Commission and what the outcome had been.

6 Q. So the concerns that you've expressed today
7 haven't been communicated in any way to Standard & Poor's,
8 Moody's or Fitch?

9 A. As I said earlier, I'm not sure that at
10 this point there has been a significant amount of focus on
11 this matter.

12 Q. And Standard & Poor's, Moody's and Fitch
13 haven't contacted GPE, KCPL or GMO and specifically raised
14 the concerns that you've addressed just a few minutes ago?

15 A. They are aware of the cap that was
16 established in the stipulation, and as such, no, they have
17 not contacted us about that.

18 Q. And when I was asking, you they haven't
19 contacted KCPL about the specific concerns that you've
20 raised this morning in your testimony to the Commission?

21 A. As far as treatments of Iatan 2 or -- no,
22 they have not.

23 MR. DOTTHEIM: If I could have a moment.
24 Thank you, Mr. Cline.

25 THE WITNESS: Thank you.

1 JUDGE STEARLEY: All right. Questions from
2 the Bench.

3 COMMISSIONER JARRETT: Good morning,
4 Mr. Cline. I don't have any questions but I thank you for
5 your testimony.

6 THE WITNESS: Thank you very much.

7 COMMISSIONER GUNN: I don't have any
8 questions.

9 JUDGE STEARLEY: All right. There will be
10 no recross then based on questions from the Bench. Any
11 redirect?

12 MR. FISCHER: No redirect.

13 JUDGE STEARLEY: All right. Very good.
14 Thank you very much for your testimony, Mr. Cline.

15 MR. CLINE: Thank you.

16 JUDGE STEARLEY: As with the other
17 witnesses, I will not fully excuse you yet just in case
18 the Commissioners wish to recall you.

19 THE WITNESS: Sure.

20 JUDGE STEARLEY: All right. At this point
21 we're going to go ahead and break for lunch. Let's plan
22 on being back in the hearing room at approximately 1:20,
23 and we will pick up with Mr. Schallenberg as our next
24 witness.

25 MR. FISCHER: Judge, could I inquire

1 whether we're going to use basically the same procedure
2 we've used with the other witnesses, take cross first and
3 then take Commissioner questions, or was there another
4 order contemplated?

5 JUDGE STEARLEY: Well, Mr. Dottheim can do
6 some direct questioning as well. But we'll start with his
7 direct, questions from the Bench, followed by cross. The
8 Commissioners may, as Mr. Hatfield's invited with your
9 witnesses, jump in during Mr. Dottheim's direct asking
10 questions as well.

11 MR. FISCHER: Okay. Great. Thanks.

12 (A BREAK WAS TAKEN.)

13 JUDGE STEARLEY: All right. We are back on
14 the record, and we are picking up with Staff's first
15 witness, Mr. Schallenberg.

16 (Witness sworn.)

17 JUDGE STEARLEY: Thank you. You may be
18 seated. And, Mr. Dottheim, as I indicated before we took
19 a break, you may begin with some direct, but also alert
20 everyone that the Commissioners may join in the
21 questioning early.

22 MR. DOTTHEIM: Yes. And Mr. Schallenberg's
23 credentials have been previously filed. Staff has no
24 direct. The Commission's Orders have indicated that Staff
25 who participated in the audit should be available. The

1 company identified as witnesses Mr. Schallenberg,
2 Mr. Hyneman and Mr. Majors. And the Staff would tender
3 Mr. Schallenberg.

4 JUDGE STEARLEY: All right. Very good.
5 And do the Commissioners wish to start before I give KCPL
6 a round of cross?

7 CHAIRMAN CLAYTON: Judge, I guess I want to
8 be clear. I had talked to the judge about making sure
9 that Mr. Schallenberg got on in time today, rather than
10 wait 'til potentially the evening, as things went late
11 last night. I didn't intend to -- if there are points
12 that the Staff wants to make with Mr. Schallenberg, I
13 mean, that's important and I don't want to invade that
14 space. I also don't want to invade the space of the other
15 attorneys to question, but I do think it's important, the
16 way things have gone, it's taken time with the hours
17 passing by, I wanted to make sure that the Commission had
18 a chance to visit with Mr. Schallenberg.

19 MR. DOTTHEIM: The Staff has not altered
20 its approach. The Commission's order and also the
21 Commission's agendas indicated that the Commissioners had
22 questions for the Staff. Kansas City Power & Light made
23 filings with the Commission, in particular the March 22
24 and March 25 filing, where they requested two days of
25 hearings before the Commission and specified

1 Mr. Schallenberg, Mr. Hyneman and Mr. Majors as
2 individuals who they wanted to submit to
3 cross-examination.

4 So the Staff determined that it would
5 provide Mr. Schallenberg, Mr. Hyneman and Mr. Majors to
6 testify and let the Commissioners and KCPL ask their
7 questions.

8 JUDGE STEARLEY: Very well. We'll begin
9 with the Commissioners.

10 ROBERT SCHALLENBERG testified as follows:

11 QUESTIONS BY COMMISSIONER CLAYTON:

12 Q. Mr. Schallenberg, are you the lead
13 Staff person working on the report as part of Case
14 No. ER-2009-0090?

15 A. Yes.

16 Q. Okay. And there are two other utility
17 services staff working also on this report?

18 A. Yes.

19 Q. That would Mr. Majors and Hyneman; is that
20 correct?

21 A. Yes.

22 Q. All right. How many people from utility
23 operations participated in this construction audit?

24 A. In this audit, we would have collected
25 information from -- well, I'll say Mr. Elliott. I'm not

1 sure if it's all Mr. Elliott's or if it comes from others,
2 but our primary contact in operations was Mr. Elliott.

3 Q. Okay. Is it typical for an audit of this
4 type to be sponsored almost entirely or entirely by the
5 utility services staff rather than utility operations
6 staff, or is this typical?

7 A. I'd have to give you a yes and no. It's
8 probably typical that adjustments that would come from
9 prior Commission -- Commission Staff audits or prudence
10 reviews would be -- the adjustments would be sponsored by
11 the auditing department staff, because they would have the
12 accounting schedules and they would be proposing to make
13 an adjustment of X and, therefore, they'd have it.

14 At times there may have been some companion
15 testimony from someone from operations, depending on the
16 nature of the adjustment they were proposing. But I think
17 at all times you have utility services division or
18 auditing more specifically involved in sponsoring the
19 adjustments, and at times there may have been testimony
20 from an operations division person.

21 Q. When it comes to making a decision on
22 prudence at a high level, a decision to -- a decision of
23 the company to build a coal plant versus a gas plant, the
24 size of a plant, the number of megawatts of capacity, the
25 location, high level prudence, are those decisions made on

1 prudence by the services staff or by the operations staff
2 or a combination?

3 A. I would say today that probably stems from
4 the information we get through the integrated resource
5 planning process, and to the extent -- I'd have to say,
6 outside the regulatory plan, because the regulatory plan
7 specifies that the decisional prudence to do those
8 projects at the very beginning was addressed in the plan
9 that the parties agreed they will not challenge the
10 decision to make those investments that are specified in
11 the regulatory plan on the basis that it was imprudent to
12 proceed.

13 Outside of that process, you would have
14 discussions by the Staff, and that would be both
15 divisions, as we became aware that they were making the
16 decision to proceed.

17 One that comes to mind, I know, for
18 example, we're now -- I mean now, we have been looking at
19 doing similar work for Taum Sauk, Sioux and Plum Point,
20 and in each of those cases we would have gotten together
21 with operations, and you do a -- probably an initial
22 discussion to see if there's anything about the decision
23 that causes us to have to spend a lot of time. And
24 because of the IRP process, I don't recall us having to
25 deal with decisional prudence in the last five years.

1 Q. When you say we don't have to deal with
2 decisional prudence, what do you mean by that?

3 A. That the Staff hasn't found an issue or a
4 matter of concern that has raised to the level that the
5 Staff would be investigating and maybe proposing that the
6 initial -- that the decision to make that investment was
7 imprudent.

8 Q. Okay. So do I take from that that the
9 Staff, because of the comprehensive energy plan, because
10 of the integrated resource planning process, that the
11 Staff at a high level in terms of prudence review as it
12 relates to the type of plant, the type of improvements,
13 the location, the site, that at a high level the Staff
14 deems these investments in general prudent, that
15 decision's already been made?

16 A. Yes. Now, you mentioned site. Since South
17 Harper, there have been some cases that have come before
18 the Commission where there are requests for -- I know it
19 as certificates of necessity and convenience. I don't
20 know if that's the current name, but where the site has
21 come in, and in those cases the site's location is brought
22 up at the time when that request for Commission approval
23 has been done. And that's a post South Harper option, so
24 I don't know that we look necessarily at the site.

25 Q. I'm talking about in this instance. I

1 mean, there's no question that these types of investments
2 needed to be made to Iatan 1?

3 A. That's -- that was part -- yes.

4 Q. So basically, is there another type of
5 analysis that Staff performs? Would it be more of an
6 executional prudence? Is that something that you look at
7 in how the company executes its plan for these site
8 improvements?

9 A. Yes. At the time when the regulatory plan
10 was finalized, there was -- at that time the term
11 decisional prudence was one that was basically negotiated
12 in the agreement such that the parties agree that at the
13 time these projects were completed, they would not -- they
14 would not argue that the initial decision was imprudent.

15 Now, the regulatory plan does provide for a
16 certain amount of oversight and monitoring that the
17 company was responsible for. So to the extent that from
18 the time the decision was first implemented or started to
19 be implemented, the company had a responsibility to
20 monitor that to see if a different type of decision was
21 needed and make the other signatory parties aware of that.

22 Q. When you say a decision, a different type
23 of decision, what do you -- give me an example.

24 A. The decision to continue with the project
25 to the extent that -- for example, I remember when we were

1 doing the regulatory plan, the cost of gas was a big
2 factor that we couldn't anticipate. I still -- excuse me.
3 We couldn't with certainty get our hands around. So
4 obviously depending on what the price of gas does, a new
5 coal plant can be -- the economics of a new coal plant can
6 be challenged.

7 So that would have been a factor that if
8 gas prices would have plummeted, that would cause us to
9 have to review whether they should continue to build
10 Iatan 2.

11 Q. Has Staff made a conclusion about whether
12 the company should continue with its improvements to
13 Iatan 1 or not? As you just mentioned, is there any
14 question that they should have completed this project?

15 A. You mean not completed the project?
16 There's no question to the Staff. The Staff is not
17 asserting that either in the Iatan 1 environmental
18 upgrades or in terms of the continual building of Iatan 2.

19 Q. We're not talking about Iatan 2. Focus on
20 1. That's what we're here about today, right?

21 A. Okay. The Staff has no -- no qualm with
22 the decision to put the environmental equipment on at
23 Iatan 1.

24 Q. And forgive me. I'm just trying to
25 understand, simplify how Staff looks at this. Basically,

1 Staff doesn't have a problem with the overall decision of
2 these types of improvements. There's no question as to
3 that. So basically, it is prudence as it relates to the
4 different decisions within implementing the plan or
5 executing the plan?

6 A. Yes.

7 Q. And then looking at the overall cost in
8 determining prudence. Is that a fair representation?

9 A. Yes, to the extent that when you say look
10 at the overall cost, we would examine the cost and then
11 decide what's the proper amount that we would support
12 would be included in the company's rate case.

13 Q. Okay. Now, as part of the comprehensive
14 energy plan that was passed, I think in 2005, the
15 stipulation was filed, the Commission approved it, it
16 contemplated a rate case that would address the
17 improvements to Iatan 1, specifically the AQCS projects;
18 is that correct?

19 A. Yes, in the sense that it had a placeholder
20 for Case No. 3. But Case No. 3 wasn't a required case, so
21 that to the extent the company felt the conditions
22 warranted, they did not have to file a Case 3.

23 Q. So there was an optional case where the
24 company could file for a rate increase, and that optional
25 case was to be timed with the improvements at Iatan 1

1 becoming completed and fully in service. Am I getting
2 that language right? It's not used and useful, it's --

3 A. Fully operational and used for service.

4 Q. Thank you.

5 A. There were four cases in the regulatory
6 plan that in each of those cases there is mention of major
7 infrastructure investments that the case was anticipated
8 to address. And Case 3, in essence, I know has the
9 Iatan 1 AQCS investment in it. But that wasn't -- Case 2
10 and 3 were optional. Case 1 and 4 were mandated by the
11 agreement.

12 Q. Okay. But the stipulation and the
13 comprehensive energy plan, even though it was an optional
14 case, it contemplated when these improvements would go
15 into service and that there could be an optional case that
16 would address their inclusion in rates?

17 A. Yes, based on at the time what was expected
18 to be the in-service dates.

19 Q. Okay. Now, KCP&L -- last night I went
20 through with Mr. Giles the filing date, roughly September
21 of 2008 for KCP&L's last case. Is that accurate, do you
22 recall?

23 A. I remember --

24 Q. Close?

25 A. I remember September of 2008.

1 Q. And the in-service date for the Iatan 1
2 improvements would have been, what, right around April
3 22nd of 2009?

4 A. There's two dates that are floating
5 around. April 19th is the day that it satisfied the --
6 excuse me. April 19th of 2009 is the date that it
7 satisfied its in-service criteria. I think the Staff made
8 that verification on April 26th of 2009.

9 Q. Okay. Was that date within the true-up
10 period?

11 A. Yes, as modified during the development of
12 the rate case.

13 Q. When the case was filed, did the parties
14 anticipate that Iatan 1 improvements would be included in
15 that case and that an audit would be conducted during that
16 case addressing those improvements relating to prudence,
17 cost and everything?

18 A. I would say that there was an anticipation
19 of the Iatan 1 investments. The question of the audit
20 would be, at the time, whatever the customary practice had
21 been for prior cases. I don't know that there was any
22 specific mention of an audit or any discussion to say, you
23 know, what the audit would be or anything like that, but
24 it would be considered with all the other items being
25 addressed in the rate case.

1 Q. So in September there was an anticipation
2 that Iatan 1 improvements would be in service either
3 during the test year, or I guess the test year was the
4 prior calendar year, so that wouldn't be possible, but it
5 would be included because of the true-up date, and
6 obviously the true-up date changed on several instances
7 and that was on purpose, as I understand it, to
8 incorporate costs associated with Iatan 1?

9 A. Yes. At the beginning of the case, the
10 Iatan 1 AQCS investment was included in the company's
11 filing so everyone was on notice. I would say that during
12 the earlier part of the case, there was question about
13 whether it would be completed within the true-up. I think
14 there was even a procedural issue within the case as to
15 what the true-up would be and how to address the
16 uncertainty about when Iatan 1's AQCS would be completed.

17 Q. Did Staff take a formal position -- and I'm
18 sure that it did and I just -- I don't recall. What was
19 Staff's formal position with regard to changing the
20 true-up date in the case that would accommodate Iatan 1
21 improvements, do you recall?

22 A. I don't believe it was the one that was
23 adopted because, as I recall, the Commission adopted a
24 procedural schedule that gave KCP&L the option to pick the
25 true-up by a date I think in January. And I don't -- I

1 don't believe that was the Commission Staff's proposal.

2 Q. Do you recall what the Staff's proposal
3 was?

4 A. Not right now, no.

5 Q. Was Staff opposed -- during the last rate
6 case, was Staff opposed to the idea of including the
7 Iatan 1 improvements or at least extending the true-up
8 date that would accommodate inclusion of those costs in
9 rates?

10 A. As I recall, I think the Staff wanted a
11 fixed date in order to conduct its activities. Now, I
12 don't remember whether that -- that date was -- I know it
13 wasn't designed to exclude the Iatan 1 investment. So --
14 but I know -- I know as a matter of course in terms of
15 processing a case, having that certainty in the case helps
16 a lot in preparing and doing the -- meeting the deadlines
17 that come within a rate case.

18 Q. Did Staff take a position or make a
19 decision about the latest possible time that Iatan 1 could
20 go into service in which Staff would be able to conduct
21 all of its work to address prudence and the amount of
22 costs that went with it?

23 And I guess as an example, did Staff make a
24 conscious decision that if Iatan 1 improvements went into
25 service January 1, we've got time -- the way the case is

1 timed out, that we've got time to do our work, we could
2 make a recommendation for inclusion of costs associated
3 with Iatan 1 and be able to make decisions relating to
4 prudence in those expenses versus the in-service date
5 being put off to April 1st or late in April, it just
6 wouldn't give the Staff enough time. Was there a
7 conscious decision or position taken by Staff in that
8 regard?

9 A. No.

10 Q. So the in-service date doesn't make any
11 difference in terms of an audit not being conducted as to
12 prudence in the last rate case on the Iatan 1
13 improvements?

14 A. Well, the service date would make a
15 difference as to the practicality of being able to do a
16 construction audit or -- and a prudence review, but it's
17 not necessarily the -- it's not -- that's only one factor.
18 Obviously the scope of what you have to look at is much
19 different.

20 Q. Well, is there a date -- if the in-service
21 date would have been January 1, would Staff have been in a
22 position to complete a full prudence audit with
23 recommendations to conclude that rate case as they relate
24 to Iatan 1 improvements? Is that the problem? Is it the
25 April date that was a problem for Staff or was it -- or is

1 there no problem, it wouldn't have been done regardless?

2 A. What I would say is the way the case was--
3 the way that case and cases prior to that had been
4 processed, with the exception of Wolf Creek, the audit of
5 additional investment is considered within the audit of
6 all the other components that are done to put the case
7 together. Now, one of the key components that we have to
8 do is a fully operational and used for service, and that
9 always comes out of operations. So when you're making
10 that decision, you're looking at obviously the big
11 additions to plant in service which will include something
12 like Iatan 1 and any other ones, and then you're looking
13 at that in relation to your other activities. And then to
14 the extent that you find some item that's inappropriate,
15 imprudent, then you would propose an adjustment.

16 If you don't, then at least it's been the
17 Staff's practice to say we didn't finish it. Don't assume
18 that the non-adjusted basis is prudent in everything else.
19 We just didn't -- we didn't complete that.

20 Q. Okay. So that would be your answer if I
21 asked just the straight-up question? You have an
22 in-service date of infrastructure plant that was within
23 the true-up period in a given rate case. Why did Staff
24 not conclude a prudency review and full audit of that
25 investment for the Commission to consider on whether it

1 should be included in rates or not?

2 A. In that case, I would say the reason that
3 didn't get completed was, one, we did not pick that as a
4 fixed product that we had to have in processing the case,
5 so we didn't have anybody assigned to do that.

6 And then as the resources that were doing
7 the case started processing the case, they got diverted
8 into other areas. At least from services, I know that to
9 be the case. I do know that in the early part, I was, in
10 essence, attempting to get a more formalized process for
11 the Staff developed by putting out some of audit scopes
12 and things like that. But in that process I could see, as
13 you weren't getting any commitment or buying in from
14 either one of the divisions. I mean, they would do a
15 piece of it, but they weren't going to have a complete
16 one.

17 Q. For a project such as Hawthorn, Wolf Creek,
18 Callaway, in the past, who has been the lead division,
19 or -- is it an Auditor 5? Is it an engineer? Is it an
20 attorney or is it the division director that is the
21 ultimate party driving the train on an audit?

22 A. I would say until after this issue came up
23 in the case, and the Staff at least has the perception
24 that the Commission expects in all cases with major
25 additions a construction and a prudence review, I was

1 under the impression that the lead group to do that was
2 the energy department. It had a predecessor back around
3 before while Wolf Creek was being built, that the
4 Commission had always -- was inclined to use the
5 operations division to be the lead for these efforts in
6 the past, and that services would provide assistance.

7 In fact, as I mentioned earlier, when we
8 started getting all these projects, which was Sibley,
9 Jeffrey, Taum Sauk, Sioux, Iatan 1 and Iatan 2, I remember
10 Lena Mantle talking to me about we need to do something
11 more formal. We're going to have a bunch of these coming
12 in. How are we going to do that?

13 That's when I started trying to develop a
14 scope to try to get the work more defined and formalized
15 and then figure out who was going to do what.

16 Q. Let me go back. The first point that you
17 made, that the reason why it wasn't going to be
18 accomplished in that case was that it wasn't -- I think
19 you said it wasn't clear that that piece of their plant
20 would be included in that case. Did I accurately restate
21 what you told me?

22 A. That was a factor when we're looking at the
23 allocation of resources is that if we devote a lot of
24 resources to a construction audit/prudence review and the
25 plant misses that, then we, in essence, are making

1 sacrifices in other areas.

2 Q. That was the -- that was kind of the --
3 well, I thought that maybe was your second point. I took
4 from the first point, the first factor that you mentioned
5 that it wasn't clear to the Staff that Iatan 1
6 improvements were going to go into service during the
7 update period, and would not -- and it wasn't clear that
8 those costs would be included in the rate case evaluation.
9 Did I -- is that accurate?

10 A. Yes.

11 Q. What I said?

12 A. Yes.

13 Q. But I thought the comprehensive energy plan
14 fully contemplated and, in fact, had this optional case
15 for that very purpose. Isn't that correct?

16 A. It did.

17 Q. So how do -- how do you explain with that
18 document out there how it wasn't anticipated from the
19 Staff's point of view? Was it a question of the
20 in-service date? Was it a question whether it would be
21 complete? Is there some reason or did somebody not bone
22 up on the CEP?

23 A. We were -- well, we have those quarterly
24 meetings. We get discussions of when the in service -- we
25 get the official in-service date. We also get project

1 schedule information that tells you how the project's
2 working, which will show us the first indications of
3 delay.

4 We were aware that the Iatan 1 AQCS system
5 was pushed beyond its original in-service date, which
6 would be what was in the regulatory plan, which would put
7 pressure on the in-service dates contemplated in Case 3.
8 So we were aware of that,

9 And then actually as the case developed,
10 other issues developed on Iatan that, in essence, created
11 the impression that the plant would be done much later
12 than it actually turned out to be.

13 Q. You mentioned that there was a question of
14 who would actually, I think, be conducting the work
15 associated with this part of the project; is that correct?

16 A. Who would be the lead.

17 Q. And when you say a diversion, I think you
18 mentioned that there was a diversion of other projects
19 that perhaps took away from the focus on this case. Can
20 you give me an idea of what type of cases those would have
21 been without divulging --

22 A. I remember within the case off-system sales
23 became a huge change factor from when we started the case,
24 and probably I would say was the key factor to pull the
25 parties together and actually to reach the settlement.

1 And so as the Staff was uncovering that, this was changing
2 dramatically, a lot of attention was spent in trying to
3 find out what's the appropriate number for off-system
4 sales.

5 So I remember -- in fact, for example, I
6 know Mr. Featherstone was occupied a great deal in that
7 area at the time. And traditionally in cases he has been
8 the person who interacted with Mr. Elliott.

9 Q. Who was the lead staffer for the case, the
10 rate case overall, the lead auditor? Would it have been
11 you, Mr. Featherstone, someone else?

12 A. It wouldn't have been me because I wouldn't
13 have been involved in the case specifically unless some
14 unusual things come up that I have to step in and become
15 an auditor again.

16 Mr. Featherstone was the case coordinator
17 for the services division. I'm not sure whether he had
18 the role as the case supervisor for auditing or if someone
19 else had that. I don't recall that.

20 Q. Is there a lead person from operations also
21 assigned to each rate case?

22 A. All big -- all major cases where you're
23 going to have significant involvement from both divisions
24 will have a case coordinator, and in other cases it's just
25 the operations department is the case coordinator and

1 services interacts with their department manager.

2 Q. Do you recall who would have been the case
3 coordinator from KCP&L's last rate case?

4 A. Yes, I think it was Curt Wells.

5 Q. Okay. Are you familiar with the terms of
6 the settlement that came out of the last rate case?

7 A. Yes.

8 Q. Okay. There was some discussion last night
9 as well as discussion that I had today with Mr. Giles last
10 night and Mr. Rush today on some dollar amounts associated
11 with Iatan 1 improvements and how they are included in
12 rates. Are you aware of how much of the Iatan 1
13 improvements have been added to rate base that are
14 included in rates today?

15 A. As of today?

16 Q. Yes. That could be tied directly to the
17 Iatan 1 AQCS improvement project?

18 A. I have -- I have that number downstairs,
19 because I have the most current cost report for Iatan 1.
20 So I -- I have that information and I don't believe -- the
21 only hesitancy is, I'm not sure that common plant number
22 includes the auxiliary boiler or not, which you have to
23 subtract if you want to get just the Iatan 1 piece. But I
24 have current information on that.

25 Q. Let me ask the question a different way,

1 and your answer may be the same. If we're talking about
2 both KCP&L and GMO, how many dollars associated with the
3 Iatan 1 AQCS project, including common plant, the Iatan
4 common plant share are not in rates, are not in the
5 companies rate bases today?

6 That would be the difference between the
7 total project cost share for KCPL and GMO less what is
8 included in rates for their shares today.

9 A. I know we worked on trying to get a
10 baseline number because the agreement allows them to have
11 construction accounting or carrying costs, so that in
12 terms of truing that up, because whatever isn't --
13 whatever is above that number they get to accrue carrying
14 costs. That's not -- I don't think that's the term in the
15 agreement, but they get to accrue an AFDC-like feature,
16 and that will stay in effect. But I don't recall. But I
17 know we had some effort trying to get a starting point of
18 what would be in their case or what would be subject to
19 this.

20 Q. So you -- I follow exactly what you're
21 saying, but is the answer you don't know? You don't know
22 the difference in -- what is not included? What did they
23 not get in the last case that is still on the table for
24 discussion as part of this audit?

25 A. I'm not sure that there's a formal number

1 that we agreed to. I know we were working towards one,
2 and -- but I don't remember -- I don't remember that the
3 number -- we reached the state of agreement that we could
4 say this is the number. I think we have an agreement as
5 to a starting point we would use.

6 Q. Well, aside from an agreement -- I mean,
7 just -- we've had some numbers thrown out. I mean, just
8 general figures, trying to get a sense of what Staff's
9 perspective is, with -- let me ask you this question:
10 Does Staff deem the dollars that have been added to rate
11 base associated with the Iatan 1 AQCS project, the dollars
12 that are in rate base today, are those deemed prudent and
13 are in for good and cannot be removed?

14 A. Not by -- not by the Staff.

15 Q. So the Staff -- those were added, but the
16 Staff still sees those dollars as being on the table for
17 possible disallowance if a lack of prudence were found?

18 A. Yes.

19 Q. Is there any dollar amount in Iatan 1
20 improvements that the Staff could identify that is not on
21 the table that is included in rates and that -- for
22 example, can we identify the budget control number, the
23 original budget control number prior to the project's
24 being started, does Staff agree that those dollar amounts
25 would be prudent or are those still subject to additional

1 review?

2 A. I don't know. When you say there's --I
3 don't -- I don't envision the Staff supporting a number, a
4 prudent number less than that number. Now, what that
5 number would be at this stage, I'm not sure.

6 Q. So in terms of the Iatan 1 AQCS cost and
7 the common costs that are attributed to Iatan 1, basically
8 we're talking in play in terms of prudence would be the
9 dollars are over that budget control number, a little over
10 \$100 million?

11 A. Well, there's a feature -- I will say that
12 there's a negotiated part of the agreement that would
13 cap --

14 Q. The CEP or the last rate case?

15 A. The stipulation and agreement in the last
16 rate case.

17 Q. Okay.

18 A. That would cap, assuming there's no
19 conditions, that the corresponding conditions are met,
20 that would cap a disallowance. And I think that's total.
21 I don't think there's a number that says it's just
22 prudence. I think any kind of disallowance, at
23 \$30 million for KCPL. I think it's \$15 million for GMO.
24 So --

25 Q. So if we're looking at total dollars, how

1 would those -- if we're looking at a total project cost of
2 \$484 million, basically you just have the pieces of KCP&L
3 and GMO, I mean, would that represent the total cost
4 overrun from the budget control number of -- I think it
5 was Mr. Giles said 353 and Mr. Rush I think said 370. I'm
6 not sure.

7 A. I'm trying to do the math. It's -- I use
8 about a 30 -- about a third, 35 percent to take the
9 numbers that are charged to the Iatan cost budget, about a
10 third of those is a Missouri jurisdictional number.

11 Q. KCP&L jurisdictional or total KCP&L GMO
12 Missouri jurisdictional?

13 A. It would be KCP&L Missouri jurisdictional,
14 because it's 70 percent times a factor somewhere between
15 50 and 55 percent.

16 Q. So a third of the total cost dollars is
17 what you use to identify the KCP&L piece. So if the total
18 overrun or revised budget estimate was -- the difference
19 was 114 million, then a third of that would be KCP&L
20 Missouri jurisdictional?

21 A. Yes, because I think the overrun for --
22 overrun potential right now is something in the
23 neighborhood of \$87 million, at the Iatan 1 level, and
24 that's got common plant in it, so that would have to be
25 extracted.

1 Q. When a prudency audit or construction audit
2 is conducted, are there -- are there pieces that you will
3 go through and sign off and say, we are done with this
4 pile of money, move it on, or is basically the audit is
5 not over until the whole thing is over? Can it be done
6 piecemeal or does Staff look it in terms of an overall
7 project and the entire audit's got to be done before you
8 sign off on anything?

9 A. If it was -- if it was an audit that the
10 Staff was doing, that in given parameters that it has to
11 do this or any restriction on it, the Staff would start by
12 looking at the areas that are most significant to any
13 potential concern of the disallowance overrun or
14 improvements. And as do you those areas and you work
15 through them and say you don't find any adjustment or you
16 find an adjustment, you kind of put that aside and keep
17 working through.

18 Now, in that process sometimes you find
19 that you need to go back and revisit something before you
20 close everything out, but you progressively move through
21 the more troublesome areas as you do the audit, and then
22 you pull that all together.

23 So, yeah, you -- yes, you do complete
24 areas, but I don't want to say they're definite and put
25 aside because if something else comes up during the audit,

1 you would go back and revisit that area.

2 Q. Can you identify a handful of categories
3 that would make up the difference between the original
4 budget control number and the revised budget estimated,
5 roughly 114 million?

6 A. As I remember, the budget is in -- the
7 budget is in three pieces, procurements, construction and
8 indirects. Of the 107 million, construction is probably
9 60. It's about two-thirds what indirects is. But as we
10 go forward, indirects are still growing in terms of
11 potential cost overruns, and construction is basically
12 nil.

13 Q. Is there any way for the -- let me ask you,
14 in terms of the Staff, has the Staff concluded a review of
15 any of those three categories where your review is done,
16 you've made your recommendations for disallowances, and
17 you're not going to look at again? Can you say that with
18 certainty with any of those three categories?

19 A. I can say the first two pieces, and the --
20 I mean, the only reason I can't say it for the third
21 piece is because of the interrelationship when we look at
22 Iatan 2. I know from what we've done to date that when
23 you look at Iatan 2 you are going to find items that
24 impact Iatan 1. In fact, if you look at what we've done,
25 in some cases, we moved dollars from Iatan 1 and put it

1 into Iatan 2. We anticipate that when we look at Iatan 2,
2 we're going to find dollars that should be put back into
3 Iatan 1.

4 You say can I close it out? I would say I
5 can do that any time, just say it's done, I'm not doing
6 any more work. But if you're asking for what we know as
7 of today, we know the Iatan 2 work will, in essence,
8 create numbers that will impact the numbers to date for
9 Iatan 1.

10 Q. Well, if I ask this question, from what
11 you've just said, does that mean Staff really doesn't want
12 to sign off on any of the pieces of Iatan 1 because of the
13 interrelationship between Iatan 1 and Iatan 2? Is that a
14 fair statement?

15 A. In the Staff's view, the completion of
16 Iatan -- yes. The answer to your question is yes.

17 Q. So Staff doesn't want to complete Iatan 1
18 without having Iatan 2 also being conducted, is that --

19 A. I don't know I would say want. What I
20 would say is, if you're looking at trying to have a
21 complete picture of Iatan 1 and its cost, you need to
22 complete the Iatan 2 piece to allow for the transfers of
23 the Iatan 2 piece that belongs in Iatan 1.

24 Q. Is it possible to put a dollar amount that
25 you would anticipate potentially shifting back and forth

1 between Iatan 1 and Iatan 2 costs? Can you say with some
2 degree of certainty that, yeah, we're going to have some
3 give and take going between the two projects but we're
4 never going to have a variation of, say, \$30 million. Is
5 it possible to identify a number such as that?

6 A. I would say you could -- you could do an
7 analysis that you put a range.

8 Q. What do you think -- you haven't conducted
9 that analysis?

10 A. No. And one of the reasons I hesita-- I
11 mean, I could give you, you know, an off the top of my
12 head guess, but because we've been looking at Iatan 1,
13 we've been looking at numbers on a smaller scale. So
14 until you get done with Iatan 2, I haven't been working at
15 a scale -- and that's going to be bigger numbers, but it
16 could be done.

17 Q. What do you anticipate the size of the
18 Iatan 2 project to -- just within \$100 million, what is
19 the project cost for Iatan 2 going to run?

20 A. When I answer this, I'm talking about just
21 the dollars in Iatan 2's budget. There's a separate piece
22 which is KCP&L's case. I think right now that's going to
23 come in -- I expect it to be around \$2 billion.

24 Q. \$2 billion. So is there any way you could
25 do a -- how much interplay in cost would go between

1 Iatan 1 and 2? Could you say with certainty that there's
2 not going to be a shift of 50 to \$100 million going
3 between the two projects?

4 A. I could say that's not expected.

5 Q. That's not expected, but without -- you
6 don't know for sure?

7 A. Right. And the reason I say that is
8 probably the area that has the most potential to have
9 Iatan 1 cost in it is the indirects. There's some
10 potential in construction, but the indirect category. And
11 because that's a much bigger base than what Iatan 1 had,
12 if you said would I expect the transfer of 50 to
13 \$60 million from Iatan 1 to Iatan 2, I don't expect that
14 here today.

15 Q. If Staff believes that there are costs that
16 may be interchangeable or may be transferred among Iatan 1
17 and Iatan 2, explain how Staff would see the final rate
18 case being processed as part of the comprehensive energy
19 plan that would contemplate Iatan 1 and 2.

20 In the next rate case, should we anticipate
21 that all Iatan 1 and 2 numbers will be completed and ready
22 for analysis or be ready for a decision of whether they go
23 into rate base, whether they're prudent or not?

24 A. It would be -- when you say all, I am not
25 sure -- well, I'm pretty confident not all of the Iatan 2

1 costs will be known at the time that we have a true-up or
2 a cutoff for Iatan 2 given that at least all indications
3 are we will still have Iatan 1 expenditures throughout
4 2010, but I will say that seems to be related to an
5 auxiliary boiler, which right now I can tell you the
6 Staff's position is that belongs in common and it
7 shouldn't be in the Iatan 1 numbers anyway. So I can tell
8 you we'll be making that adjustment as soon as those
9 dollars start showing up.

10 So I think Iatan 1 will be known, and if
11 it's anything outstanding, it will not be big, in the next
12 case. There probably will be a significant amount of
13 expenditures still outstanding from Iatan 2 in the next
14 case, and I think all the common costs will be -- well,
15 by the way they're measured, the common cost estimates
16 aren't actual dollars anyway, so the common cost numbers
17 will be known in the next case.

18 So there's three buckets at the Iatan
19 project. So I would tell you Iatan 1, if anything is
20 outstanding in the next case, it's going to be minor.
21 Common, should be -- should be known. Maybe a little bit
22 of an estimate if we're still doing any indirects from
23 Iatan 2. And the Iatan 2 number will be the most
24 significant amounts of outstanding expenditures.

25 Q. Following the last rate case, the

1 Commission issued an Order directing the Staff conduct a
2 construction audit. From Staff's perspective, do you
3 believe the Staff has complied with the Commission's Order
4 that came after the rate case?

5 A. Yes. But in your question you said they
6 issued an Order after the case?

7 Q. Was it after or during? I can't remember.
8 I thought it was after the stip, but --

9 A. I use the April 15th -- I use -- I'm sorry.

10 Q. I'm sorry. He just said it may have been
11 the same day. I don't remember the timing between the
12 stip being approved, the conclusion of the rate case.
13 Then there was another Order that talked about dealing
14 with the prudency audit associated with Iatan 1. I'm
15 sorry.

16 A. The audit was ordered before the case was
17 settled, and that's April 15th of 2009.

18 Q. Okay.

19 A. And then on the day after the stip was
20 presented, there was a motion presented to take the
21 deadlines, the filing deadlines from the April 15th order
22 and have those moved to the filing dates of -- I think
23 it's the Staff's direct in the Iatan 2 case. And then on
24 June 10th, the Commission modified -- modified those --
25 gave -- there's an extension to December 31st for Iatan 1,

1 and there is -- but we still had to meet the June 19th,
2 but it was now a preliminary report.

3 And then the Commission canceled the filing
4 dates for Jeffrey and Sibley, which were in -- they
5 canceled it and never gave us any more filing dates for
6 Jeffrey and Sibley. I look at the order -- excuse me --
7 the construction audit prudence review was ordered on
8 April 15th. The timetables for filing the results of that
9 construction audit were modified on June 10th of 2009.

10 Q. So do you think Staff complied with that
11 Order?

12 A. Yes, I do.

13 Q. Even though the report doesn't reach a
14 conclusion, a full conclusion on the Iatan 1 upgrade?

15 A. I think it reaches a conclusion consistent
16 with what the Commission requested us to do on April 15th.

17 Q. What in your -- what do you see the
18 Commission asking to do on April 15th?

19 A. On April 15th, the Commission asked us to
20 do construction audit/prudence review based on the
21 information that the Staff had under its control on
22 April 15th. At the same time, the Commission also ordered
23 the company to provide the Staff invoices through a
24 true-up date, I believe, of June 8th.

25 So I -- I viewed that the Commission had

1 ordered a prudence audit to be based on information that
2 we had in our house under our control April 15th, 2009.
3 And there is some debate. What I will say is I perceive
4 that those invoices were also supposed to be used as a
5 part to conduct that construction audit/prudence review
6 through June 8th.

7 Q. Okay. Of a project cost of a total of
8 around \$484 million, how many dollars of invoice -- what
9 is the total amount of dollars on invoices that were dated
10 after that June 8 date? How big a number is it?

11 A. I can give you -- there's that exhibit that
12 was put in yesterday, the CEP report. I don't remember.

13 Q. Just a ballpark. I mean, is it 10 million,
14 \$20 million, less than that, more than?

15 A. There's 40 million listed for 2010 out of
16 the 484.

17 Q. 40 million for 2010?

18 MR. HATFIELD: Page 41.

19 MS. VAN GELDER: May I approach?

20 JUDGE STEARLEY: Until such time as you
21 tell me that number is not highly confidential --

22 CHAIRMAN CLAYTON: I really don't want to
23 get to --

24 THE WITNESS: You had about 17 --

25 JUDGE STEARLEY: Hold on just a moment,

1 Mr. Schallenberg.

2 CHAIRMAN CLAYTON: I just want a total
3 dollar amount post June 8. Is that a confidential number?

4 MR. FISCHER: Judge, I think the number
5 itself is still confidential. I think we've talked about
6 a percent that was not.

7 CHAIRMAN CLAYTON: If you have a
8 percentage, that's fine, too.

9 MR. FISCHER: Judge, I'm told it's the
10 amount to be spent that is particularly confidential, yet
11 to be spent.

12 JUDGE STEARLEY: Very well. If we want
13 those particular numbers, we can go in-camera.

14 CHAIRMAN CLAYTON: So if I ask the question
15 what is the total dollar amount of invoices that are dated
16 after June 8th, 2009, is that a confidential number? Or
17 if I ask the -- if I ask the question invoices or expected
18 expenditures, that may --

19 MS. VAN GELDER: If you're asking -- if I
20 understand your question to be, what was the amount that
21 was already invoiced, already invoiced as June 8?

22 CHAIRMAN CLAYTON: I could have asked the
23 flip side.

24 MS. VAN GELDER: That question is not
25 confidential.

1 BY CHAIRMAN CLAYTON:

2 Q. Well, we can do the math otherwise, but do
3 you know that dollar amount, how much had been billed or
4 invoiced by June 8th out of the 484 million?

5 A. Well, if you go to page 10 of the Staff's
6 report -- and unfortunately I don't have the updated
7 version.

8 CHAIRMAN CLAYTON: Is this HC? Is the
9 report HC?

10 JUDGE STEARLEY: Yes.

11 BY CHAIRMAN CLAYTON:

12 Q. So the total that's listed on page 10, says
13 total with contingency?

14 A. Right. It says total with contingency
15 without AFDC and property tax, that gives you a baseline
16 against the -- I guess is the 484 secret?

17 MR. DOTTHEIM: Yes.

18 THE WITNESS: Whatever -- you have a total
19 number for the project. If you're looking at May 2009,
20 you have a total there of what was considered in this
21 audit report.

22 BY CHAIRMAN CLAYTON:

23 Q. I mean, this is the vast majority of costs.
24 I mean, if you're looking at a total project cost of 484,
25 and the vast majority have been spent up to that point, is

1 it reasonable or unreasonable for Staff to complete an
2 audit at least on those dollars that had been spent and
3 then conduct additional reviews for the remaining
4 outstanding amounts, or is that not practical or
5 appropriate?

6 A. You're talking about the number that's in
7 the Staff's report?

8 Q. Yes.

9 A. As of right now, we would tell you we have
10 conducted that audit. We have made adjustments, but the
11 trouble is, we have also tried to point out there is an
12 outstanding liability that can change those numbers, which
13 is the Iatan 2 audit.

14 Q. So of that dollar amount that's listed on
15 page 10 of the Staff report -- and we talked about the
16 amount of disallowance with either Mr. Giles or Mr. Rush
17 last night, but I don't know what's public and what's
18 private.

19 A. I can tell you pages of the report.

20 CHAIRMAN CLAYTON: Let's just go in-camera.
21 Obviously this isn't going to work.

22 JUDGE STEARLEY: It's the simplest.

23 (REPORTER'S NOTE: At this point, an
24 in-camera session was held, which is contained in
25 Volume 4, pages 489 through 498 of the transcript.)

1 JUDGE STEARLEY: All right. Please
2 continue.

3 BY CHAIRMAN CLAYTON:

4 Q. There was a suggestion that there was maybe
5 a little less than 500 data requests that have been issued
6 by Staff to KCP&L associated with the Iatan 1 construction
7 audit. Would you agree with that number or disagree?
8 There was a 440, plus an additional 45 at one point.

9 A. Well, I would say it depends. There was
10 probably around 100 to 150 that were placed in the general
11 body of the rate case. Now, when I say that, that would
12 include not only Iatan 1, that would have included
13 Iatan 2 and it would have included Jeffrey and Sibley. So
14 there's that kind of a number prior to the Commission's
15 April 15th Order.

16 Q. So 650 would be a more realistic number,
17 roughly 500 plus another 150?

18 A. It would be for all of those projects, yes.

19 Q. That relate to the Iatan 1 AQCS?

20 A. Iatan 1, Iatan 2, Jeffrey and Sibley.

21 Q. Okay. Mr. Rush suggested that less than
22 20 were actually objected to. Do you agree with that
23 number?

24 A. That would seem low. You say objected to
25 for reasons other than attorney/client or --

1 Q. I think that was focused on
2 attorney/client. Now, I asked how many related to
3 attorney bills and how many did not relate to attorney
4 bills, and his suggestion was that most of them were
5 attorney bills, I believe, and then there were a few that
6 there was attorney/client privilege, as I recall.

7 A. And the number you asked me about was?

8 Q. Less than 20.

9 A. Oh, I'm -- I'd be pretty sure we had more
10 than 20 objections to data requests.

11 Q. Can you give me some examples of data
12 requests that you made to the company that did not relate
13 to attorney's bills or invoices that you did not receive
14 cooperation or that you did not receive -- let's start
15 with that.

16 A. Well, we started -- when we first started,
17 we received a series of objections to providing Iatan 2
18 data. So there's -- I was thinking that's -- that's at
19 least 10, 20 there that we got.

20 Q. Were those ever answered?

21 A. The company subsequently gave it to us I
22 think a couple of months later for the Iatan -- they're
23 not making any objection currently and haven't for a while
24 that we can't have Iatan 2 data.

25 Q. Are you saying that Iatan 2 data is

1 essential for conducting an audit for Iatan 1?

2 A. Definitely. I mean, the project was done
3 as one -- one project, with Iatan 2 and Iatan 1 being
4 segments. In fact, some of the contracts -- the Alstom
5 contract is one contract that does both Iatan 1 and 2
6 work. So the project -- in fact, a lot of the reports
7 show the Iatan project, not Iatan 1 and Iatan 2.

8 Q. Is it your testimony that the audit of this
9 case has been conducted in the same fashion as past
10 large-scale infrastructure or capital projects for
11 utilities or has it been atypical of the norm when
12 auditing large projects?

13 A. It would be more focused than what we have
14 done probably.

15 Q. What do you mean more focused?

16 A. It's focused on actually having a report
17 done by a certain date with the adjustments in compliance
18 of April 15th order. Subject to -- since Wolf Creek, I
19 don't believe we have done this type of an audit in
20 between that time period.

21 Q. So conducting an audit outside of a rate
22 case, is that what you mean?

23 A. This actually started in a rate case, and I
24 think the April 15th Order actually specifies that the
25 need was because of the rate case. So, I mean, it

1 continued after the rate case was settled, but I didn't
2 consider this to be an outside the rate case audit. It
3 just got done after the rate case was over. But you're
4 right, it continued after the rate case. It got separated
5 from the rate case.

6 Q. How many rate cases does Staff believe have
7 to take place for addressing inclusion of expenses
8 associated with Iatan 1 and Iatan 2 in total?

9 A. You're talking about cases where both of
10 them have to be completed or just one or the other?

11 Q. Yes, where --

12 A. I would say unless there's some new
13 development besides this auxiliary boiler, the amount of
14 expenses that will be left in Iatan 1 will be minimal. We
15 still have some outstanding expenses on LaCygne, and
16 that's not causing any concern that anybody's looking at
17 that. So I have every expectation unless there's some
18 unusual event that --

19 Q. That's Iatan 1. What about 2?

20 A. See, Iatan 2 -- and a lot of this will also
21 depend on the in-service date in relation to the true-up
22 and how many extra costs we can get. I would expect -- I
23 still expect Iatan 2 will need one more case to get the
24 lion's share of all of its cost.

25 Q. So is it impossible to conclude Iatan 2 in

1 the next rate case, is that what you're saying, with the
2 expenses that are in -- we have an in-service date that is
3 within the true-up date?

4 A. Well, I don't -- in my experience in the
5 regulatory environment, there's nothing that's impossible.
6 If you want to put the budget in the rates in the next
7 case and then true that up, I mean, I think that's how
8 Kansas' proposal -- you could, in essence, put the budget
9 in and, you know, true-up from the budgeted amount.

10 Q. What's the difference between, as you say,
11 what happened in Kansas versus what Missouri did in the
12 last rate case?

13 A. It was my understanding Kansas, in essence,
14 puts the budgeted amount in rates and audits the budgeted
15 amount, and then depending on how the dollars come out
16 afterwards, if it's over, I think they have to eat it, if
17 they go over the budget. And I think if it's under, they
18 give it back with, I think, some interest.

19 Q. You mean the reforecasted budgets number or
20 the original budget?

21 A. Oh, in Kansas it would be the current
22 budget.

23 Q. Current. So the reforecasted --

24 A. Yeah, I think Iatan 2 has two reforecasts.

25 Q. So it would be the second reforecast?

1 A. That's why I use current. I think they're
2 using the most current budget for Iatan 2. So if you
3 wanted to put -- I mean, if that was the goal, I don't
4 know how you could do it outside of using budgeted numbers
5 because all the actuals won't be known.

6 CHAIRMAN CLAYTON: I don't have any other
7 questions. Thank you.

8 JUDGE STEARLEY: Commissioner Jarrett.

9 COMMISSIONER JARRETT: Judge, if you don't
10 mind, with your leave, I will withhold any of my questions
11 that I might have until after the company has crossed. I
12 may not have any questions after they --

13 JUDGE STEARLEY: That's fine.

14 COMMISSIONER JARRETT: -- finish their
15 questions.

16 COMMISSIONER GUNN: I do have some
17 questions.

18 CROSS-EXAMINATION BY COMMISSIONER GUNN:

19 Q. Thanks, Mr. Schallenberg, for coming. I'm
20 concentrating more on the process issue here, because I
21 understand, and tell me if I'm wrong, that essentially
22 Staff's position is that -- is that we completed the audit
23 that we could, but because there are additional expenses
24 that are coming in after December 31st of '09, we want to
25 keep it open, and we need to do that because what was

1 demonstrated yesterday is, besides the fact that someone
2 isn't a very generous tipper, that there are expenses that
3 are potentially wrongfully charged to Iatan 1 and that
4 without this type of audit, those would be not captured in
5 a normal rate case audit. Am I summarizing the position
6 correctly?

7 A. What I would say is, the not big tipper, I
8 think as you referred to that item as, those are risks to
9 the audit regarding the accuracy of the accounting and the
10 level of possible inappropriate and maybe worse type
11 expenses, but they're not significant, and I don't recall
12 an adjustment for that.

13 Q. That's not what I'm talking about. But
14 it's those types of things, the inappropriate -- because I
15 agree. I don't think, you know, whatever that number was
16 yesterday, but you mentioned in the report that part of
17 the reason that this mileage issue that was discussed and
18 this other issue that we just discussed, are reasons
19 why -- well, you mentioned in the context of getting
20 significant opposition from the company, but these are the
21 types of things and other significant items that you want
22 to make sure that you can capture or determine a prudence
23 about at some point.

24 Let's just -- let's take those aside and
25 let's talk about significant charges. There could

1 possibly be significant items that are beyond that
2 December 31st, 2009 date that would not be captured in a
3 normal rate case. Is that -- and so if we said complete
4 your audit, determine prudence, as of December 31st,
5 2009, and then we had a period of time before a rate case
6 was filed that there would somehow be or potentially be
7 things that would not be captured in that, and that's the
8 reason why you can't -- you have to keep this open?

9 A. Yes, I -- when you say keep it open, what
10 we're saying is there are things out there that are going
11 to take place relative to what we're auditing.

12 Q. Well, part of the argument in the opening
13 was that the Order of -- the June 10th Order, which said
14 finish the construction audit, the prudence audit, didn't
15 really mean that because the stipulation said that you
16 have the right to keep that open up until the period --
17 until a rate case is filed.

18 And I agree the wording is awkward, but I
19 think the intent was, is that that would be captured in an
20 audit and then you could keep it open up until that point.
21 So the -- the June 10th Order didn't contemplate a finding
22 of prudence completely, because there are items that
23 needed to be captured or that would somehow be outside of
24 the reach of a prudency review if we said cut it off here.
25 And that's essentially what --

1 A. I guess what I would say is, if you take
2 the April 15th Order, it mentions two audits, and the
3 Commission in the April 15th gave us an audit and gave us
4 parameters and deadlines to get that done.

5 Q. Correct.

6 A. And so the Staff proceeded to get that
7 audit done. Now, in the April 15th Order, I think it also
8 mentions that Staff's audit was going to be done in the
9 next case, and so when we get to the stip the Staff looks
10 at, it was addressing that audit, you know, trying to
11 resolve issues regarding processing that.

12 When we looked at the -- or I'll say I.
13 When I looked at the April 15th Order, I looked at that as
14 a special audit that the Commission wanted done because it
15 was in the rate case, other parties were making
16 adjustments and it needed something from the Staff in
17 order -- or wanted the Staff to weigh in. So we were --
18 we were going to have to produce that order by June 19th.

19 When I look at the June 10th Order, I took
20 the June 10th order saying, okay, I know you've been
21 working on this, I know the rate case is gone. We want to
22 see those results. We don't want to wait. We want to see
23 those results, and we understand that by giving you some
24 more time you can dress up that audit. That's how I
25 viewed that.

1 When I say that, I'm sure it's in the
2 report, we have to move on to Iatan 2, I mean, with
3 Iatan 2 on point, so we're not looking at keeping anything
4 open.

5 Q. I understand. And that's -- that's really
6 what I'm trying to get to is what -- what -- when you do
7 an Iatan 2 audit for when the new rate case is filed,
8 okay, there are going to be items in Iatan 1 -- or in the
9 Iatan 2 review that the Staff is going to say belongs
10 really in -- to be charged towards Iatan 1?

11 A. Yes.

12 Q. Now, what part of -- and what the Staff's
13 position is, is that that is the reason why we're not
14 willing to say that we are going to stop -- do the meat
15 cleaver on December 31st, 2009, because if we do that,
16 then those cannot be -- then we lose those items that
17 would probably be charged to Iatan 1 in the rate case?

18 A. Yeah. I mean, I guess the answer is yes,
19 because we still perceive that if you look at -- what I
20 was going through with the Chairman, those buckets, what
21 we perceive the audit should be is having all the buckets
22 together where you can see the dollars go from one bucket
23 to the other or see the dollars come out of the bucket and
24 be a disallowance and then put that out and say that's how
25 you get to the number.

1 Q. Right. So -- and I guess I'm not as
2 concerned about the actual numbers. I'm concerned about
3 the process here, because prior to the April 15th order,
4 Staff basically said, we're not doing a construction audit
5 until Iatan 2?

6 A. Yes.

7 Q. So we're not even -- we're not even --
8 we're not -- Mr. Featherstone testified and it's in the
9 Order that we did not contemplate and we weren't going to
10 do any audit, any construction prudence audit. And so it
11 wasn't until April 15th -- as you said, you viewed it as a
12 special audit, although I think the Commission viewed it
13 as an audit that needed to be done for the -- to be able
14 to make a proper ruling in the rate case that was pending.

15 So I don't think we -- I'm not sure. And
16 I'm speaking for myself. I'm not speaking for anybody
17 else. I didn't view it as a special audit. I viewed it
18 as being able to get information to make the proper
19 decision in the rate case. But you decided not -- the
20 Staff made a determination that that was not going to be
21 done, and that it would be done when Iatan -- in Iatan 2?

22 A. The --

23 Q. Essentially April 15th you commenced an
24 audit, or someone commenced it?

25 A. Well, what I've got to say is, I don't

1 remember if it was on that date, before or after, in
2 sitting down with Natelle, I realized that if we say we're
3 doing things right now, it's going to be happenstance
4 whether we're going to get any audit done because people
5 get pulled back and forth and you have to stay focused.
6 So that's when I made the commitment to get construction
7 audits done for all those projects.

8 Q. And this was unique because services
9 typically -- or operations typically did it with services
10 providing support, as you said earlier?

11 A. That's -- that was my understanding from
12 the procedure that we had in place.

13 Q. Previously?

14 A. Right. Now, they call what they do an
15 engineering review. So they don't call it a construction
16 audit. They don't call it a prudence review. They call
17 it an engineering review, and I have -- I mean, I know
18 what comes out of that is always the in-service date
19 criteria, that they come up and say this is the date.

20 Q. And your team that you put together, which
21 initially was just you, had no engineering involvement at
22 least initially?

23 A. I wouldn't say that, because the Commission
24 Order said I had to use the data that was available to the
25 Staff on April 15th. So I had to go to operations and

1 collect their data and talk to them about issues and what
2 they had seen, so when --

3 Q. Had they been actively asking for data
4 requests and touring the plant and taking notes and doing
5 everything you think you would do from an engineering
6 perspective to make sure something is prudent?

7 A. My understanding from the prudence part
8 that they provide is that they provide assurance that
9 other facilities being built up there at Iatan, they're
10 not building something that just doesn't make sense.

11 Q. Let me ask you what you actually got from
12 them. When you went and said, all right, I now have taken
13 this upon myself because we don't have the resources or
14 whatever to do this, I'm going to do this, and so give me
15 what you've got on this, did they give you engineering
16 reports, notes that they had taken, photographs? What did
17 they give you?

18 A. They gave me change orders. I think it was
19 change orders above \$50,000. They gave me some contracts.
20 I remember they gave us the Alstom settlement. That's the
21 -- and when I say they gave, they had talked to us about
22 what they had.

23 Q. Summarized it, gave you their perspective
24 on it?

25 A. Right. I remember they identified the

1 Alstom settlement as being a big ticket item. They gave
2 us that. And then they -- oh, I know. And then they also
3 had some correspondence on different issues that had taken
4 place up there. And as I said in my deposition, it comes
5 up over a banker's box of the materials.

6 Q. So it was about a banker's box of
7 information from them?

8 A. Yes.

9 Q. From the engineers? Okay. Now, I think in
10 Mr. Fischer's opening there, he said that part of the
11 reason why you did this initially for yourself by yourself
12 is because there had been an expression of -- or I should
13 say there were other folks that were not enthused about
14 performing this function, and that you thought you would
15 rather do it yourself than have people who were not
16 enthused working on this. Is that accurate or is that --
17 do you want to ex--

18 A. I'm sure I said enthused. It would be that
19 they were not committed to the project. They could be
20 assigned to the project, but they weren't committed to the
21 project.

22 Q. And why weren't they committed to the
23 project, because they didn't want to do it or because they
24 had other things going on?

25 A. I would say those two, plus the third one

1 is because we had never really done a project with, like,
2 a report like that has -- pulling together, you know, just
3 the format and how to put one together, I -- that I'm not
4 going to use the word chaos -- is not having any prototype
5 to work from. There are certain Staff members that aren't
6 comfortable doing something that we've never done before.
7 I think there's a certain reluctance to get involved in
8 something like that.

9 Q. And that reluctance is allowed? You took
10 that into account when you were putting together --

11 A. Well, I think it's one of the things you
12 consider, because you have to consider how much are you
13 going to get in terms of making these deadlines. Because
14 at the first we have a June 19th date, so if you're going
15 to have somebody that's not fully committed and you're
16 going to have to spend a lot of time, hey, why don't you
17 do this, and now they get done, give you something,
18 they're not going to be helpful to making our June 19th
19 date.

20 Q. Were you troubled at all by the June 10th
21 Order which ordered you to order the Staff to complete the
22 audit with the wording, or did you just not think that
23 there was a potential conflict with the stipulation?

24 A. I -- when you say troubled, I wasn't
25 troubled. I mean, it's just another Commission Order that

1 I have to comply with. But I -- but I never anticipated
2 the connection that the stip -- I looked at this as being
3 the completion of that April 15th Order to the Staff. I
4 was just going to have to do one on December 31st that I
5 would have had to address in the next rate case.

6 Q. But you never contemplated it to be any
7 sort of final or closing of Iatan 1 charges or
8 adjustments?

9 A. What I would say is, that would be in name
10 only because I was aware that there was still going to be
11 outstanding items after 12/31/09. So, I mean, even if I
12 was doing our own audit, I would have known that by that
13 cutoff I'm still going to have some overlap, and I also
14 know -- I knew then and I know even more now, the
15 interrelationship to Iatan 2 was always going to keep, you
16 know, anything done by just looking at Iatan 1. I did
17 misgauge common. Common is the third bucket that came up,
18 so I did misgauge that.

19 Q. Well, so here's -- and I'm going to take
20 some liberties here. Here's what my issues are. Okay.
21 We have -- we have an Order that we sent out, and from a
22 substantive point of view, it makes perfect sense what has
23 been explained, I think much clearer here than it ever has
24 been before. Because we talked about completion of an
25 audit, we were told that six months you could get it done.

1 We found out yesterday that that six months
2 was not even the back of a napkin estimate. And it was
3 not even the back of a napkin estimate, but it was also
4 based on being fully staffed and having as many resources
5 devoted to it as possible, so we -- that was represented
6 to us. There was no mention that we know -- as far as I
7 can recall, and maybe I'm not recalling it properly, that
8 they said, well, no, we can complete the audit, but you
9 have to understand, it's not really completed. We're not
10 really closing this down because there's still going to be
11 plenty of adjustments.

12 And the wording of the Order is pretty
13 clear, but nobody said to us, well, we have to understand
14 that you have to read this Order, and the way we read this
15 Order is in context of the Stipulation & Agreement, and
16 they both appeared to happen simultaneously. Maybe that's
17 part of the problem.

18 But we have an Order saying do an audit,
19 complete -- and then we have order saying complete the
20 audit. We have a brand-new -- and this is a Iatan 1,
21 which we've talked about the total cost of this project,
22 which is huge, and we want to get that done because we
23 know that we've got Iatan 2 coming, which is enormous.

24 And yet it didn't appear to be viewed by
25 anybody that this was an important audit. As a matter of

1 fact, we decided to pull it out of the normal way that we
2 do it and have one person take it on themselves because
3 other people were so reluctant to take it on because there
4 was chaos, that they weren't -- they didn't do it.

5 So we have one person doing a -- trying to
6 do an enormous audit with an Order of the Commission that
7 potentially conflicts with a position in the -- in a
8 stipulation, which could theoretically, under what
9 Mr. Dottheim pointed out yesterday, unravel a Stipulation
10 & Agreement in an enormous rate case that we spent an
11 entire time on it, and no one is expressing this to the
12 Commission. No one is coming in and saying, we have a
13 problem here.

14 We're stumbling around in the dark. You're
15 putting Band-Aids on that stuff, trying to use the
16 resources that you have, trying to figure out a way to do
17 it, and no one is coming to us and saying, we don't have
18 the resources to complete this. It's just me. I've got
19 people that don't know what they're doing. Operations and
20 services can't get together and pull their stuff together
21 and come up with a single unified plan on how to deal with
22 this.

23 For whatever reason, no one's coming up and
24 saying, look, you guys may have really screwed this up by
25 putting in an Order which could unravel a stipulation and

1 agreement. We're all -- I mean, we can take people coming
2 up and telling us that we've screwed up. My wife does it
3 to me constantly. I am plenty used to it. But what we
4 avoid is, we avoid bringing people in and having hearings
5 for what may be a perfectly legitimate reason. But
6 instead of being perfectly clear and telling us that,
7 well, here's the reason why, the reason why is because we
8 never really -- not that we didn't intend to complete the
9 audit. There's this whole bucket of charges that we're
10 going to have to make adjustments, and if we close that
11 off, we lose that in any sort of capacity. Perfectly
12 simple and legitimate reason for not closing the books on
13 it.

14 And yet we can't see -- we couldn't seem to
15 get a straight answer as to why this stuff wasn't
16 happening and, in fact, we've got from people and
17 representations made by lawyer staff that this could be
18 completed in six months.

19 That's where the frustration comes from,
20 and that's why I'm talking about process issues. I want
21 to be able to figure out where in the system did this
22 break down, and what does the Commission need to do in
23 order to avoid these things in the future? And part of
24 it, I think, is putting the right resources together,
25 developing a standard plan that when things come in, we

1 know who's -- what group is responsible, who is
2 responsible. We tell Staff, look, I understand you're not
3 comfortable, you might be uncomfortable with this but,
4 quite frankly, you're going to have to do it anyway,
5 because this is important.

6 And the fact that the Commission issued two
7 orders on there -- on it should have let people know that
8 it was important to us.

9 Now, we may have been mistaken about how
10 important it was. We may have absolutely, you know, had a
11 misperception about how this stuff is going on, but to me
12 that's -- that's the fundamental -- I have after sitting
13 through here for a day and a half, that's -- my
14 fundamental question has been answered, that the audit in
15 and of itself is not the issue here. It is a systematic
16 breakdown of what we needed to do and what communications
17 were made to the Commission. So we didn't have good
18 information and we -- and we did stuff like this. I have
19 a much clearer understanding of this right now.

20 And so I think those are the -- those are
21 the issues that -- and, quite frankly, I'm glad that we're
22 having these two days so that we can help solve the
23 problem. And I would suggest to all the parties that it's
24 okay to bring these things to the Commission's attention.
25 We want to do it right. But to -- but to -- you know, to

1 say that the Order didn't really say what we meant it to
2 say or that we thought it was going to say is
3 inappropriate. It said what we meant it to say. We may
4 have screwed it up. We may have gotten it wrong, and it
5 may not have been in the context of what's going on. But
6 I don't know that maybe some of the -- some of the issues
7 with privilege or some of the discovery issues are as a
8 result because we were using a nonstandard process or
9 whether it was because our standard process broke down.
10 That's a difficult decision for me to make.

11 And I don't know whether, you know, it's --
12 it makes it very difficult for me to make a rational
13 decision and how all this stuff goes, because this was
14 seemingly kind of pushed aside and looked as outside the
15 normal chain when that's not how the Commission --
16 Commission viewed it.

17 So I apologize for going on and taking the
18 liberties here, but I think that to me that's the crux of
19 this, because I was listening earlier and -- to I think it
20 was Mr. Rush who said, what are the three things that
21 they're -- that they were looking for. Basically
22 absolution that they're not the cause -- they're not the
23 cause of this. They want that certainty on Iatan 1, which
24 is a very legitimate reason potentially not to give them
25 that certainty. And then an understanding about what's

1 going to happen going forward. And to me, those are not
2 fact-based judgments, those are process issues.

3 And the one thing this has done is made me
4 realize that we need to reexamine those processes and
5 standardize those processes so that everyone knows --
6 everyone knows what's happening. I also think it's
7 important that this has come out, and this is a very
8 general comment. This is not directed towards you or
9 anyone here, that I see an alarming trend, which is a
10 disregard of -- I won't say complete disregard for our
11 orders, but a view that our orders are somehow merely
12 advisory, that deadlines and, you know, when we say to do
13 something, well, they kind of mean it but we can always
14 get around it, we can kind of do what we want to do.
15 And I think that's a general comment, not just to not just
16 to you or anybody else.

17 So I appreciate the indulgence for my rant,
18 and I will stop now and say I have no further questions.

19 JUDGE STEARLEY: All right. I think
20 Commissioner Jarrett may have a couple questions for you,
21 Mr. Schallenberg. It may very well be that KCPL may cover
22 that ground and there's no need to duplicate it, so at
23 this point I'm going to open up cross-examination for KCPL
24 GMO.

25 MS. VAN GELDER: I'm sure it's going to

1 take me a few.

2 CROSS-EXAMINATION BY MS. VAN GELDER:

3 Q. Good afternoon, Mr. Schallenberg.

4 A. Good afternoon.

5 Q. Can I first say for the record that
6 Mr. Schallenberg was unbelievably cooperative, and I
7 believe that we had about a total of almost 13 hours that
8 you and I spoke; is that right?

9 A. It sounds -- it sounds about the correct
10 time period.

11 Q. And I think it's fair to say that during
12 that time we covered a lot of the issues that were the
13 Commissioners' questions, so maybe we can during this part
14 go through the process and see where the breakdown is at;
15 is that fair?

16 A. That's fair.

17 Q. Okay. So let's start with a comment from
18 Commissioner Gunn. Not the one about your wife. The one
19 that says -- that makes it clear that you did the audit
20 that the Commission ordered, but it's pretty clear now
21 it's not the Order -- it's not the audit that the
22 Commission thought was being ordered. Is that a fair
23 statement? Or at least the audit that Commissioner Gunn
24 thought was being done.

25 A. I'm not -- I'm not sure -- the reason I

1 hesitate on that is, I think in the Commission's Order
2 they used the term construction audit and prudence review
3 together. I never anticipated that there was a
4 distinction, a line in what they envisioned that was clear
5 that this is going to be a prudence review and this is
6 construction audit work. And I'm not sure today that's
7 the case either.

8 Q. Well, let's -- can we start way back, just
9 to set the scene for us. Okay. I'm going to show you --
10 and I think we have these. This will be Commission
11 Exhibit -- KCPL 4, and then No. 5 would be Sioux, 6 will
12 be Plum Point. We talked about the process before, and
13 you -- we determined it was what, June of 2008 --

14 A. Yes.

15 Q. -- you developed an audit plan, correct?

16 A. It was a draft audit scope that was
17 developed in June -- it was actually developed before June
18 of '04 because it was distributed on June 4th of 2008.

19 Q. So I'm going to show you one of them, if
20 this is working. This is the Plum Point audit scope,
21 correct? And can you -- I'll give you copies so you don't
22 have to turn your back.

23 And you've done Plum Point, you did Sioux,
24 you did Iatan, and also you did Taum Sauk, but you
25 couldn't find one?

1 A. Yeah, I -- I believe there was a Taum Sauk,
2 and then there was an Iatan 1 and Iatan 2.

3 Q. And when we received them, they were
4 stapled together. Okay. So we have -- we have four of
5 them, and there was another one that you think you had
6 done, correct?

7 A. One is Plum Point, one is Sioux, one is
8 Iatan 1 and 2 in one package, and one of them's Iatan 2.

9 Q. Now, one of them was -- Iatan 2 was done
10 later, you told us. The original one you did was this
11 Iatan 2, which I think we just gave you.

12 A. I just have Plum Point. And as I said, as
13 I remember, because within the scope of what the Staff
14 has, there was a Taum Sauk one.

15 Q. But since we're only here for Iatan 1 --

16 A. I'm fine with that.

17 Q. Now, what we're going to see, if you look
18 at them, is that there is an audit approach that you have
19 written, and that audit approach is going to be -- just
20 for ease, the audit approach is the same for all of them,
21 correct?

22 A. Yes. And I think I probably had to change
23 the name for the project, but it's fundamentally a pre-set
24 format.

25 Q. And these were for rate audits, correct?

1 You knew that there were projects coming up that
2 eventually you would have to audit for the rate hearings?

3 A. Yes, with that definition.

4 Q. And when -- what you were explaining to one
5 of the Commissioners before is that you can do any kind of
6 audit that anyone wants in any time frame, but the more
7 you ask for it to be condensed or quickened, the higher
8 the risk is that you might miss something?

9 A. That's correct. As well as the
10 independence of the audit results.

11 Q. Now, in this case, you've got a description
12 on Plum Point of what the project is, and then you have
13 the purpose, correct?

14 A. Yes.

15 Q. And the purpose for Plum Point is to
16 determine the amount of construction expenditures for this
17 project that should be included in the rates charged to
18 Empire?

19 A. Yes.

20 Q. And so right off the bat we know it's going
21 to be a construction expenditure review, correct?

22 A. That's correct.

23 Q. Now, the risk on this is to be determined,
24 correct?

25 A. Yes.

1 Q. Similarly on Sioux, same thing,
2 construction activities to upgrade the environmental
3 equipment at AmerenUE's Sioux coal plants, determine the
4 construction expenditures, risk to be determined, correct?

5 A. Yes.

6 Q. Okay. When we get to Iatan 1, you have
7 construction activities to upgrade the environmental
8 equipment at Iatan 1, correct?

9 A. Yes.

10 Q. Now, following up on a statement that was
11 made yesterday by the Judge, you're going in here knowing
12 that on Iatan 1 you're looking at the environmental
13 equipment that is being upgraded, correct?

14 A. At the time this was drafted, that's
15 correct.

16 Q. And in fact, the title of your December
17 audit is to do a construction audit/prudence review of the
18 environmental upgrades to Iatan and Iatan common 1?

19 A. Yes, that has common plant added to it.

20 Q. I'm looking -- I have to put an underline
21 here. I'm looking at environmental upgrades.

22 A. Yes.

23 Q. I'm not looking at transfers between
24 buckets. It's the review of the environmental upgrades.
25 Isn't that the name of your report?

1 A. Are you saying what the description was?

2 Q. Yes.

3 A. Yes.

4 Q. Now, again, let's go back to your Iatan --

5 this is now June of '08, it's to determine the

6 construction expenditures for the project that should be

7 included in rates to the different rate owners, KCPL,

8 Empire, and then it was pre-merger, it was Aquila?

9 A. Yes, those are the Missouri utilities that

10 were impacted by Iatan 1.

11 Q. Now, the audit risk, you say Iatan 1 has

12 exceeded its definitive estimate and will not be completed

13 by the date originally specified. You knew this in June

14 of '08?

15 A. Yes.

16 Q. Such results raise the risk that the

17 factors causing these overruns and delays were caused by

18 imprudent actions.

19 A. That's what it says.

20 Q. So -- and that means that, for instance, if

21 there was an accident, if there was an outage, if there

22 was a stoppage, you have to look at the decisions that

23 caused that accident, that outage, that stoppage and see

24 if the decision-making was prudent. Do you agree with

25 that?

1 A. I guess I would say is you have to find
2 those reasons first and then, once you find those reasons,
3 then you do an evaluation of whether imprudence existed or
4 not.

5 Q. And when you're looking at that decision,
6 what standard are you using?

7 A. It would be based on that prudence
8 standard. Now, I didn't have a prudence standard
9 developed yet, but if you look at our June 19th report,
10 that would have been the controlling prudence standard for
11 the Staff.

12 Q. What a reasonable person would have done?

13 A. Reasonable. I think there's -- I think
14 there's a careful or diligence sometimes added to it. And
15 I don't -- I don't have that in front of me, but whatever
16 that said would have been the standard we would have used
17 then. I didn't have a prudence standard developed at the
18 time this was created.

19 Q. Now, you -- but we can see, overrun might
20 be risk of an imprudence, so let's go to the next line.
21 Anonymous letters have been received by Commissioners
22 allegedly reporting mismanagement of the construction
23 activities. Now, that was the anonymous letter that was
24 introduced yesterday, correct?

25 A. That was one. I think there was more than

1 one, but that's the one related to the data request for
2 e-mails.

3 Q. In addition, prior audit activities have
4 identified that KCPL employees accept gifts and gratuities
5 from vendors seeking to or doing business with the company
6 that are offered based on their positions in the company
7 without adequate controls regarding the nature and the
8 extent of this activity. What prior audit activities
9 revealed that?

10 A. We got another anonymous complaint that
11 came in -- I know it's in the Price e-mails. You can see
12 it. But it came in, and I sent an inquiry to KCP&L to get
13 information about that, and there was, I think, one to two
14 follow-up discussions I had with KCP&L employees regarding
15 that.

16 Q. Was there a Staff conclusion in a prior
17 audit that KCPL employees accepted gifts from vendors
18 based on their position in the company?

19 A. Was there an -- you mean like a documented
20 audit?

21 Q. Yes.

22 A. There was no documented audit.

23 Q. So this conclusion, this statement is not a
24 conclusion, it's a statement that really says you have
25 information from -- coming over the transom that's telling

1 you that employees are accepting gifts, gratuities from
2 vendors based on their position?

3 A. Yes. And that's -- that's -- that was
4 noted at the time as something that would need to be
5 considered when you're doing the audit.

6 Q. Is it something that you need to be
7 considered when you're doing a construction audit?

8 A. I'd say yes.

9 Q. And indeed, your last sentence is, The
10 practice gives the appearance that these gifts are given
11 to solicit favorable KCPL concessions to these vendors
12 relative to contract administration, need for a contract,
13 or contract amendments.

14 A. Yes.

15 Q. Now, in your conclusions in your audit --
16 and we'll go back to that for a second. It's fair to say,
17 Mr. Schallenberg, so one of the risk factors going into
18 the audit was we're going to look at expenses and travel
19 and gifts?

20 A. That was a factor that you had to consider
21 going into the audit, yes.

22 Q. And you did this in June, and then you sent
23 it around to service, correct?

24 A. Well, that would have been sent to -- I
25 think you have the e-mail. It has operations people as

1 well.

2 Q. But also people within your division were
3 able to comment on this?

4 A. Yes.

5 Q. And this was -- then you also around this
6 time developed about 150 data requests that would be going
7 for this audit that you're now scoping out?

8 A. I think this was June '04. I believe the
9 data requests were --

10 Q. During the early part of '09?

11 A. Yes, within that timeframe, that's true.

12 Q. So the 150 data requests that talk about
13 Iatan 1 and Iatan 2 were based on this audit scope, which,
14 just to be clear, you did an identical Iatan 2 audit scope
15 with the same words?

16 A. Well, I would say that the data requests
17 were probably not influenced by this as much as they were
18 by -- I'm trying -- it's project management body of
19 knowledge and those courses. If you saw those work
20 papers, those classes, those data requests were influenced
21 more by that than they were this document.

22 Q. Let me flip the question around so we're
23 clear. The 150 data requests that you personally drafted
24 in late '08 or early '09 that went out in January were not
25 for the prudence review or the construction audit that was

1 ordered by the Commission in April?

2 A. No. I wouldn't have known about the April
3 order.

4 Q. And then there were discussions over those
5 data requests over time, but clarify this for the
6 Commission. You did the data requests, but it was
7 Mr. Featherstone who was in charge of the audit? He was
8 the case coordinator for the audit?

9 A. He was the case coordinator for the rate
10 case. I'm not sure -- someone asked me about the lead
11 auditor or the auditing supervisor. I'm not sure he had
12 that role or not.

13 Q. And Mr. Featherstone worked with Mr. Wells,
14 so they were coordinating, correct?

15 A. Yes, that was -- that's Mr. Featherstone's
16 counterpart in operations.

17 Q. And when you were doing the prudence audit,
18 the prudence review we'll call it, and construction audit,
19 did you not have a counterpart in operations?

20 A. When you said --

21 Q. In services. I'm sorry.

22 A. You're talking about the construction audit
23 prudence review from April 14.

24 Q. Yes.

25 A. That's correct. There's no case

1 coordinator in operations.

2 Q. And it's not that they didn't offer people.
3 We were talking about coercion earlier, you weren't
4 refused people from that section?

5 A. I mean, I wasn't refused. I don't remember
6 anybody being offered either.

7 Q. Well, you were offered and you said in your
8 deposition a number of times that you had the use of --
9 you could ask Mr. Elliott any question you wanted any time
10 and he answered it?

11 A. That's correct.

12 Q. Now, Mr. Elliott had been out at the plant,
13 as you say, a number of times, correct?

14 A. Yes.

15 Q. And he had the change orders, and he
16 continued to keep those change orders up to date and give
17 them to you, correct?

18 A. He continued to get those. I would have to
19 ask for the updates, but I would continue to get them,
20 yes.

21 Q. And he also had the contracts?

22 A. He had some contracts.

23 Q. And he had some correspondence?

24 A. Yes.

25 Q. How many times did you go out to Iatan 1?

1 A. Twice, as I recall.

2 Q. And just to get the -- so we protect
3 Mr. Fischer here, that he wasn't overstating, in your
4 deposition, you stated that you did not want to coerce
5 anyone. That was your word in the deposition, right?

6 A. I'll accept that.

7 Q. You also mentioned a few minutes ago, I
8 think it was in response to Commissioner Gunn's question,
9 that Mr. Elliott was doing something called an engineering
10 review, correct?

11 A. That's the description I received as to
12 what they were doing.

13 Q. And you also admitted in your deposition
14 that you don't know what an engineering review is?

15 A. Other than what the title gives you. I
16 don't have any -- I don't have any knowledge of the
17 specific objectives or goals or any of that, that's
18 correct. With the exception that, as I said earlier, I
19 know that group also comes out and tells the Staff when
20 the plant is fully operational and used for service.

21 Now, I don't know -- I don't know the
22 relationship between the engineering review work and that
23 output, but I do know that comes from that group.

24 Q. And you know that from what -- you know
25 enough that you can tell the Commission that they're

1 looking at whether or not what is being built is being
2 built solidly, correctly?

3 A. I know the way it's been described to me is
4 they know enough to tell me when they're, like, building
5 extra buildings or there's some extravagant item,
6 something going on at the site that's out of whack.

7 Q. And they know enough that when there is a
8 major settlement, they're the ones to tell you about the
9 settlement?

10 A. I'm not sure that would be true.

11 Q. Didn't you just tell us a few minutes ago
12 that he was the one that gave you the Alstom settlement?

13 A. He gave me one of the Alstom settlements.
14 I don't think at this stage he would be aware of the level
15 of settlements and input to the projects as I would be.

16 Q. He still went out to the project even after
17 you started your construction audit, correct?

18 A. Yes. I mean, -- I don't -- I don't get
19 notice when they're going, but I do know that we have
20 engineers or people who want to see the Iatan site, so we
21 do put in requests. And by that I mean utility services
22 division managers will put in requests to let us know when
23 they're going so people can go. So I'm aware that we have
24 people traveling with them up to Iatan at various times.

25 Q. Now, you also said today -- and I'm trying

1 to answer some of the Commissioners' questions before I
2 get into mine. You mentioned earlier that you thought
3 that Kansas did not use actual expenditures in their
4 Iatan 1?

5 A. I said they used budget expenditures.

6 Q. Are you sure about that?

7 A. That's the -- that's the impression I got
8 from a conversation with Mr. Rush.

9 Q. Okay. So you didn't read the Kansas order,
10 the Kansas audit?

11 A. I don't -- I can't say I've seen a report.
12 I have read pieces of testimony. It was in the context of
13 the last case related to the Iatan 1 issues.

14 Q. And did you -- did you read the Vantage
15 report that was done?

16 A. I know I've read -- I know I've been
17 exposed to parts of it. I'm not sure I've seen it all,
18 because the first thing we can acquire is the public
19 version and it's highly confidential. I'm sure by now we
20 have it, but I'm not sure I've read the highly
21 confidential version.

22 Q. Excuse me. I'm looking for my pages of
23 that. Have you read this (indicating)?

24 A. Doesn't look familiar.

25 Q. From your conversations with Mr. Rush or

1 from whatever you've looked at, are you aware that the
2 Vantage approach was that you didn't have to wait until
3 everything was in to do a report?

4 A. I'm not aware of that being their position.

5 Q. I'm going to show you their position and
6 I'll ask you if you agree or disagree with this. This is
7 one of those old ones. See where it says Vantage notes
8 that since the construction of Iatan 1 is not complete at
9 the time of this report, the exact cost schedule delays
10 will not be known until later in 2009 or beyond, but the
11 analysis used in this report should be applicable to such
12 future data from the project as it becomes known and
13 quantifiable.

14 Let me start off before I get into the
15 leads with the high question. If they can do it, you can
16 do it, correct?

17 A. Well, I don't know what they're doing,
18 so -- but as I said, I'm sure somebody can do it.

19 Q. Okay. Well, let's go with this. This is
20 your report that was -- and I'm now looking at the docket
21 89.

22 A. Yes.

23 Q. Was it Mr. -- was it Mr. Hyneman who had
24 the conversations with the Kansas Staff?

25 A. I had conversations once with them in

1 Topeka, and I had -- I had a phone conversation with them
2 in the last couple of months. Now, when you mention
3 Mr. Hyneman, I know he talks to them outside of me being
4 present.

5 Q. One of the things I want to go over today,
6 and we'll go over some of the audits and answers again, I
7 think at least to Commissioner Gunn's spoken frustration,
8 is that there are things that are written in these audits
9 that, if you read them, they may read differently than you
10 might think they are.

11 So I'll give you this. This is page 11 of
12 the audit, and although it's highly confidential, is what
13 I have marked, I think, your Honor, if I just fold the
14 page over, the confidential side is -- would be covered.

15 JUDGE STEARLEY: Very well.

16 BY MS. VAN GELDER:

17 Q. So I'm folding this over a little because
18 of the confidential part, but the part that says below,
19 this is what we did to fulfill the scope of the audit, to
20 finish the audit. We interviewed KCPL employees. Who did
21 those interviews?

22 A. It would be one or more of the three of
23 either myself, Mr. Hyneman and Mr. Majors.

24 Q. Which interviews did you -- which employees
25 did you interview?

1 A. I did -- I did a lot at the very beginning.
2 After I became aware that KCP&L had to know if I was
3 attending so they could make attorneys present, I probably
4 did not attend many meetings after that point in time.

5 Q. So you stopped attending because they had
6 attorneys there?

7 A. Well, I didn't want to -- I didn't want to
8 increase the cost, legal cost unnecessarily if I believed
9 the topic could be covered by Mr. Hyneman and Mr. Majors.
10 I can't say the attorneys intimidated me, but there is a
11 cost if they need to attend because I'm there.

12 Q. I never thought that the answer that you
13 didn't attend because of attorneys were there would be
14 that you had any intimidation by attorneys.

15 A. Okay.

16 Q. Do you know how many employee interviews
17 there were?

18 A. At the very beginning, I know there were a
19 lot, and why I say that, there were also employee
20 interviews on the GMO side as well, because we had Jeffrey
21 and Sibley, and especially just after we got started after
22 April 15th, there were a lot -- there were multiple
23 meetings in a given day. But I couldn't -- I know there
24 was a lot, but I couldn't tell you an exact number.

25 Q. Review minutes of periodic CEP oversight

1 minutes. Do you see that?

2 A. Yes.

3 Q. How did you receive those?

4 A. I have copies of those minutes from the
5 acquisition case that were updated through the rate case,
6 and I have those in a binder that I review periodically
7 when the subject matter is related to the CEP oversight
8 meetings.

9 Q. Meet with other regulatory bodies charged
10 with reviewing the appropriateness, reasonableness,
11 prudence of the Iatan construction project. Does that
12 mean Kansas?

13 A. Yes.

14 Q. And then look down to F, investigate
15 apparent discrepancies in KCPL responses and incomplete
16 KCPL responses to different jurisdictions. Is that
17 Kansas?

18 A. That would -- the second part would be
19 Kansas. The first part would be discrepancies in the data
20 that we're receiving from other pieces of data we've
21 already gotten.

22 Q. Okay. So, for instance, you might have
23 asked for a document directly and then when you're
24 reviewing the Dave Price e-mails, that document might
25 already be in there?

1 A. That -- that was more of a -- that one was
2 more of a discovery dispute. That would be more of -- I
3 remember a charge to Iatan that was related to some
4 description, visits, I think. It was -- it's the same
5 thing they use for the turbine. It's an analysis that's
6 done of an accident. There's a question in what was it
7 related to, and they told us it was about the crane
8 accident at Iatan 1, and when we looked at the date, the
9 date of the event was a year before that took place and
10 was related to two fatalities.

11 So that would be an example of trying to
12 figure out the difference between their answer and what we
13 had other information about.

14 Q. And I'm going to get to the different
15 responses, but the incomplete response to different
16 jurisdictions is comparing what was given to the Kansas
17 City -- the Kansas Commission versus what was here, right?

18 A. That, or in the review -- we would also be
19 reviewing CaseWorks to see information that Kansas had
20 gotten. One of it would be, do we have that same
21 information or do we need to supplement it for our use.

22 Q. Now, J says, visit the construction work
23 site, among other things, to interview appropriate work
24 site personnel to determine in-service status of costs
25 charged to the project, as well as examine construction

1 activities.

2 A. Yes.

3 Q. Who did that?

4 A. I know I did that because I had the
5 common plant issue that when the Commission gave us the
6 April 15th Order, they had disaggregated the common plant
7 between the piece just needed for Iatan 1. So I had to go
8 up -- and I think that was the July meeting. I had to go
9 up and actually interview and have Mr. Brent Davis take me
10 by to see all their common facilities in order to make
11 that determination.

12 Q. And that was one of the two times that you
13 went to the plant?

14 A. Yes.

15 Q. Okay. And Mr. Hyneman went two times?

16 A. Well, I've heard testimony that he made
17 another trip to measure some -- so I think he's been up
18 there more than twice.

19 Q. So more than twice being maybe three?

20 A. Yes.

21 Q. And Mr. Majors went how many times?

22 A. Well, I know he was at least one of the
23 meetings I was at, if not both. I'm not sure about the
24 earlier one. I would say he would be in the two to three.

25 Q. So for the total site visits for the whole

1 time, less than 10?

2 A. Sure. Yes.

3 Q. Now, let's go -- I want to talk about your
4 surrebuttal testimony, which I believe has already been --
5 has it already been entered into --

6 MR. DOTTHEIM: No.

7 BY MS. VAN GELDER:

8 Q. You filed a surrebuttal in April of 2009?

9 A. Yes.

10 Q. It was actually prepared April 7th, and we
11 will have this as KCPL --

12 (KCPL EXHIBIT NO. 4 WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)

14 BY MS. VAN GELDER:

15 Q. The purpose of this surrebuttal was to
16 correct Mr. Giles' testimony, if you go to page 5,
17 distortions and omissions of Mr. Giles' rebuttal
18 testimony, correct?

19 A. Yes.

20 Q. And one of the -- the first thing that you
21 addressed was, there is nothing sinister regarding the
22 fact that the Staff has not completed a construction audit
23 of Iatan 1 expenditures based on the facts of the
24 Commission, correct?

25 A. Facts and circumstances, yes.

1 Q. And what Mr. Giles said was, you didn't
2 conduct a construction audit of Iatan 1. That was the
3 factual distortion that you were to correct.

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. If you didn't start your construction audit
8 until after April 15th, then why was it missed -- and you
9 wrote this on April 7th, when was the construction audit
10 started?

11 A. There are multiple construction audit
12 activities going on for different scoped audits.

13 Q. Right. There's construction audit
14 activity, but what you -- this is a 16, 17 page document.
15 You didn't have to write this. So you didn't say
16 construction audit activity is ongoing and Mr. Giles is
17 wrong. You said, we haven't completed our construction
18 audit, correct?

19 A. That is correct.

20 Q. So if you haven't completed your
21 construction audit, wouldn't you assume that one had
22 begun?

23 A. That's correct. You don't have to assume.
24 One had been done.

25 Q. What you just said was construction

1 activity, audit activity?

2 A. Okay. If you've got construction audit
3 activity, you'd have to have a construction audit that
4 you're working on.

5 Q. Who was working on the construction audit?

6 A. I know Mr. Featherstone would have been
7 doing some of that work, because he was working on getting
8 the dollars put together so that we would have a dollar
9 amount to put into the case. Now, I'm not sure who else
10 was working on plant and those other things.

11 Q. Mr. Elliott was working on some things,
12 wasn't he?

13 A. You're asking about the construction audit?

14 Q. Right.

15 A. As I told you earlier, I've never heard
16 Mr. Elliott describe his work as -- as audit activity. As
17 I said, I've only heard Mr. Elliott describe his work as
18 engineering review. Now, whether that's used in
19 construction, in a construction audit, that would be a
20 different matter.

21 Q. You heard Mr. Featherstone say he wasn't
22 doing a construction audit yesterday?

23 A. I don't recall that statement.

24 Q. And you testified earlier that you -- is it
25 the construction audit began after the April 15th audit

1 order?

2 A. In order to comply with that order, we had
3 to start -- we had to -- as I think I said earlier this
4 morning or this afternoon, we had to get focused on
5 producing a report with adjustments that complied with
6 that order. That's a different activity.

7 Q. So is it fair to say it's your testimony
8 that there were activities relating to construction that
9 were part of the rate audit that were going on before the
10 Commission's order?

11 A. Yes. I think when we talked about it in my
12 deposition, I pointed out that usually in a rate audit,
13 you will find -- especially with a big construction
14 project, you will find items that have a relationship to
15 the construction project, and like I said, sometimes you
16 find expenses that should be capitalized and you find that
17 in the rate case activity.

18 Q. But nothing was focused until the
19 Commission's Order? You took it altogether and started
20 it?

21 A. Nothing was focused with the idea that with
22 a firm deadline, a date, that was going to be done with
23 adjustments and consistent with the other parameters that
24 were given to us.

25 Q. On page 5, lines 20 to 23, you say at the

1 bottom of the page, it is a false statement that no work
2 was conducted relative to the prudence of the
3 expenditures?

4 A. Yes.

5 Q. What you just told us was that there was
6 activity, but wasn't the activity then just data
7 collection?

8 A. No. I -- when you acquire data -- I think
9 that came up yesterday, there's analysis, a review that
10 comes up. In fact, I think Mr. Featherstone said that you
11 may get it and put it aside, but even then you still have
12 to understand you've got it and where to put it. So
13 there's always activity related to receiving the
14 information.

15 Q. What was -- when you came into this case on
16 April 15th, what was done that related to the prudence of
17 the expenditures of Iatan 1? What -- tell me what
18 project, what line item.

19 A. You're asking me about April -- the
20 April 15th date. Because I would have had some
21 information regarding prudence from the rate case audit to
22 start.

23 Q. Right. I want to know what -- what you
24 inherited. I remember you went through that whole line of
25 different things.

1 A. Yeah. I would have inherited the
2 information from the rate case relative to the Iatan 1
3 AQCS, one that -- and I would have inherited all the
4 information that came from the Aquila -- GPE's acquisition
5 of Aquila and those depositions, so I had that information
6 to use and had some information relative to prudence.

7 Q. How about if prudence, as Dr. Nielsen
8 testified yesterday, goes to the decisions, so, for
9 instance, the decision to pave or do the soil
10 stabilization, was there a prudence analysis done on that
11 when you received it?

12 A. No. The -- no. The prudence areas, what I
13 remember that comes to mind is the development and the
14 timing of the project execution plan, or I referred to it
15 as project management plan and the timing of that, and
16 then the upkeep of that, which came out of the information
17 the Staff received in the acquisition case.

18 Q. So you could have made on April 16th a
19 determination that that decision was prudent?

20 A. I could have made a decision that it was
21 untimely. I mean, the --

22 Q. Or imprudent?

23 A. Right. That's true. I'm saying I had
24 information about when that was finally done. I had
25 information about when it was planned to be done. I had

1 information after it was done, it wasn't maintained. So I
2 have that information. Now, unlike Dr. Nielsen, I don't
3 see that you can carve up these decisions and say this is
4 a decision that's a prudence review and this is a decision
5 that's not a prudence review. I'm still having difficulty
6 in understanding which decisions are prudence review
7 decisions and which decisions are construction reaudit
8 decisions. But I did have information that I viewed were
9 relative to a prudence inquiry.

10 Q. Now, do you agree with Dr. Nielsen that
11 prudence should not be viewed in hindsight?

12 A. I agree with that concept. I think, as I
13 pointed out in my deposition, the difficulty with that is
14 in real life you have trouble recreating what really took
15 place at a different time, especially when you don't have
16 documentation that's contemporary with the time the
17 decision is made.

18 Q. Well, if you have access, you have
19 interviews. You said you did interviews, correct?
20 Earlier when I showed you the list of things that you said
21 you did to prepare, you had access to people to talk to?

22 A. Well, I agree that you have --- I have ac--
23 well, I have access to certain people. Other people who
24 were around that made the decisions weren't around by the
25 time I'm doing it, but I don't consider an interview to be

1 a source that necessarily ensures that you're not using
2 hindsight because the person's state of mind at the time I
3 did the interview will be influenced by events that have
4 taken place and knowledge and depending, if they're
5 talking to me, they may have been prepped as to answers by
6 the time I do an interview.

7 Q. But you also have committee meeting
8 minutes?

9 A. Yes.

10 Q. Okay. And you have board of director
11 meeting minutes relating to construction projects?

12 A. I have access to those. I don't -- well,
13 on this, on this project, on the construction audit
14 prudence review project, I do not have the copies of those
15 board minutes. I do have copies of board minutes from the
16 acquisition case. Some of those I can use. I have to go
17 up to KCP&L to actually look at board minutes subsequent
18 to that.

19 Q. Because they're sensitive?

20 A. It's because that's KCP&L's position. I
21 don't -- I see board minutes being filed in cases all the
22 time, so I don't know -- I don't know that they're that
23 sensitive. It's just that's the way KCPL operates.

24 Q. But you have access to board minutes, and
25 as you say, relating to construction matters?

1 A. Yes. I have access to the board minutes
2 under those conditions I just -- I just mentioned.

3 Q. So just to hone in on how you deal with
4 prudence, I'm going just to take that soil. We have
5 talked a lot of that.

6 A. Uh-huh,

7 Q. So a crane tips over, and there is a soil
8 stabilization project to make sure that the crane doesn't
9 tip over or that the people don't feel like the crane is
10 going to tip over, correct?

11 A. Yes. I think when we discussed it in my
12 deposition, as I understand the events, there is a crane
13 that -- that as you point out tips over. There was a
14 question about whether the crane tipped over because the
15 operator had extended it beyond its operating range,
16 causing it to make it unstable, but it was -- and this
17 came from a meeting. It was that KCPL had made the
18 decision to invest in some soil work to make the soil more
19 firm for construction activities.

20 Q. And you would agree that that was a prudent
21 decision?

22 A. I don't -- yes. I felt when you look at
23 the project and given the situation and especially because
24 the biggest dollars are construction, that construction
25 productivity is very critical to the cost and meeting

1 schedule, and for the dollar amount that was being
2 discussed, that was a prudent decision to make that
3 investment.

4 But on the other hand, with the
5 understanding that you were going to work out with the
6 vendors, because you're already in a construction phase,
7 that you were not going to interfere with their work and
8 subject yourself either to lower productivity because
9 you're doing the work or claims that you've interfered
10 and, therefore, have change orders for that.

11 Q. And your review of this incident, as we
12 talked about it, the fact was, you were -- your question
13 was answered in that when they made the decision to do
14 this soil stabilization, they did take that into account,
15 the vendor, whether it would disrupt operations?

16 A. I believe they made that -- they said that
17 to me at the time they had the meeting. And I remember
18 this also came up at the -- my first site visit because,
19 as I remember, I think they were still showing the crane
20 and that came up as, that's the crane. And, as a matter
21 of fact, I think I remember Mr. Davis saying that they had
22 photos to show the operational feature that caused the
23 crane to tip.

24 Q. Now, with something like that, it's finite,
25 it's done, you pay the vendor to pave or to enhance the

1 soil and you move on. In your world of prudence, in
2 Mr. Nielsen's world of prudence, he would say that item,
3 that decision and the costs that are attendant to that
4 decision are reasonable, correct?

5 A. Well, I would say there's more decisions in
6 that tree than -- because the next thing you have to do
7 is -- and I think, List & Clark was one of the vendors.
8 After you make that decision you have to now, in essence,
9 contract to get the work done. You have to schedule the
10 work, and that's all part of whether the prudence
11 continuation takes place or you could have a break and do
12 imprudent things in that stage of the decision.

13 Q. But for you, where you're having difficulty
14 is that one decision begets another decision that goes
15 back and affects the first decision?

16 A. Well, you use -- and we've had this
17 discussion before. You use like they're separate
18 decisions. I look at when you're making a big decision or
19 a decision that has consequences, a prudent decision looks
20 at the consequences before it makes the decision. It
21 doesn't take the steps and break those in and then say,
22 this decision is prudent and then the corresponding
23 consequence has to be looked at separately or is just a
24 freebie that because the first step was prudent, the
25 consequent steps are prudent.

1 JUDGE STEARLEY: Excuse me, Ms. Van Gelder.
2 I hate to interrupt your examination, but we have been
3 going for about two and a half hours. I'd like to give
4 our court reporter a break and give the others in the room
5 a break. I'm hoping this is -- I'm not breaking right in
6 the middle of a line of thought here.

7 MS. VAN GELDER: No.

8 JUDGE STEARLEY: All right. We'll take
9 about a ten-minute break. I will note before we go on
10 break, though, we still have witnesses to follow
11 Mr. Schallenberg, and given that it's four in the
12 afternoon, we may all be planning to have another late
13 evening, so if you-all have plans that need to be made to
14 take care of for this evening, this is a good time to
15 start considering.

16 (A break was taken.)

17 BY MS. VAN GELDER:

18 Q. I'm going to go back to your surrebuttal,
19 and I'm directing you to page 6. And page 6, first of
20 all, this entire surrebuttal was put in just to correct
21 Mr. Giles' testimony, correct?

22 A. I believe that's correct.

23 Q. So go to page 6. You say, Mr. Giles
24 testifies that he would note that the utilities operations
25 appear to be responsible for reviewing the prudence of the

1 plant investment. Is this statement true? And you say
2 no. Each division has responsibilities. And you refer
3 to, in fact, a schedule, which you've attached. Just go
4 to that. That shows indeed the Commission has
5 coordination procedures, correct?

6 A. Had.

7 Q. But your testimony says we do have
8 coordination. At the time you wrote it, you said this was
9 the Commission's -- the Staff's coordination?

10 A. This was the coordination procedure that
11 the agency had related to construction audits, and I want
12 to make sure it's clear. We do have coordinating
13 procedures that supersede the ones that have all been
14 suspended. We do not have one yet for construction
15 audits.

16 Q. But you're saying something -- assuming
17 that they know what we're talking about, so I'll take it
18 step by step. Your testimony says that as illustrated in
19 this attachment, we have a coordination procedure,
20 correct?

21 A. We had a coordination procedure, yes.

22 Q. Going back, I don't want you to fight me.
23 Well, let's put it this way. This is written to say we
24 have a coordination procedure and here it is, correct?

25 A. I don't want to fight you.

1 Q. All right.

2 A. As I pointed out, we had -- we had internal
3 procedures that included for internal audits, and as I
4 pointed out, those procedures had been in total suspended.
5 Well, suspended's not a good term. Had been canceled.
6 But we hadn't put anything else in place, so for old
7 timers like myself, I'm still following the procedure even
8 though formally it has been suspended.

9 Q. Right. And so as you note in your
10 deposition, this was a mistake. This attachment was
11 suspended when you produced it in your testimony?

12 A. Yes. I mean, it's -- well, it's a mistake
13 on my part to believe that the practice from the two
14 divisions was still being maintained according to this
15 procedure.

16 COMMISSIONER JARRETT: Could I jump in?
17 I'm sorry.

18 MS. VAN GELDER: Yes.

19 Commissioner JARRETT: The judge had
20 mentioned -- I did have a question. Mr. Schallenberg,
21 you'd stated earlier, I believe, and if I'm correct, when
22 you were talking about the operations division, talking
23 about a construction audit, you said that you weren't
24 aware that they did construction audits, they called them
25 engineering reviews?

1 THE WITNESS: Yes.

2 COMMISSIONER JARRETT: I want to direct you
3 to number -- page 6, lines 11 and 12 of your surrebuttal.
4 Maybe get it put up there on the Elmo.

5 You state, and I quote, utility services
6 division has no greater role in conducting construction
7 audits than the utility operations division of the Staff.
8 Doesn't that say that utility operations division does
9 have an equal or at least no greater role than your
10 division in conducting construction audits?

11 THE WITNESS: At the time -- at this time,
12 in fact technically, at this time what my belief was prior
13 to the events in this case, is that they had actually the
14 primary role to do construction audits. But as I said in
15 my testimony, they don't use the term construction audits.
16 I haven't heard them use the term that we're doing a
17 construction audit. I've heard them use the term
18 engineering review regarding their work.

19 COMMISSIONER JARRETT: But that's a
20 construction audit?

21 THE WITNESS: It has construction audit
22 activities from my -- from my perspective, but I have not
23 heard them use the -- call what their work is construction
24 audits.

25 COMMISSIONER JARRETT: Okay.

1 THE WITNESS: If it helps, the problem I
2 found in my career is, accountants and auditors will look
3 at something and have a name and have a different
4 perspective of the same thing that an engineer might have
5 or an attorney, and they get -- they do put different
6 labels on things.

7 COMMISSIONER JARRETT: These are your
8 words. I'm just trying to understand what you said.

9 THE WITNESS: As an auditor, I'm familiar
10 with the construction audit. I'm not familiar with an
11 engineering review

12 COMMISSIONER CHAIRMAN JARRETT: All right.
13 Thank you.

14 Sorry to interrupt.

15 MS. VAN GELDER: No, no.

16 BY MS. VAN GELDER:

17 Q. Okay. I'm just going to show you your
18 deposition here for a second, just to remind you what you
19 said. Did I hear you correctly that you've come to find
20 out that this procedure was actually suspended, actually
21 all of these procedures have been suspended, and when were
22 they suspended?

23 I know it's prior to the rate case. I
24 can't recall whether they was suspended when Dale Roberts
25 was the secretary or at the beginning of when Colley Dale

1 was. That's your testimony?

2 A. Yes.

3 Q. Now, it doesn't say suspended and
4 superseded, does it?

5 A. Okay. Doesn't say that, that's correct.

6 Q. So what you gave the Commission was wrong.
7 You gave -- you publicly filed something that said, this
8 is the procedure, and it was wrong. It's not the
9 procedure that was --

10 A. Well, as I said, all these procedures were,
11 and now that -- after I look at the term suspended,
12 suspended isn't really accurate. There was never any
13 intention to put them back in, as far as I know, by the
14 secretary. But as I said, I was still operating, as a
15 practice consistent with this and did not know that
16 operations had moved in a different practice away from
17 this policy.

18 Q. Did you say that suspended was not the
19 right word?

20 A. Well, I think suspended means they can be
21 reinstated. I don't believe there was ever any intent by
22 the secretary to ever -- in fact, I do know not only was
23 there not an intent to reinstate these, there was a --
24 directive's not -- is too strong. There was an initiative
25 that these -- these procedures, wherever that -- that one

1 that's in my testimony, were to be converted over to
2 coordinating procedures, which are called CPs today.

3 Q. Well, let's go to this part, whatever it's
4 called. I asked you that, after you publicly filed
5 something, that had been a procedure that read as if
6 that's the procedure in the rate case and it was suspended
7 before the rate case, I said to you, did you make any
8 attempt to tell the Commissioners that you made a mistake
9 in your -- in your testimony. Do you recall that?

10 A. You said you asked me that question?

11 Q. Yeah. I asked you this question actually.
12 We'll go to the videotape. And after you found out that
13 those procedures were not being used, is that correct,
14 were not being followed, did you ever make any attempt to
15 correct that surrebuttal to the Commission?

16 No.

17 So this is a public filing that KCP&L
18 relied on, the Commission relied on, you never corrected
19 it?

20 A. That's -- that's true. I didn't take any
21 effort to -- I didn't know it was that significant.

22 Q. Do you think that when you file something
23 that is inaccurate, that there has to be -- it has to be
24 significant before you correct it?

25 A. Well, I'd say yes to the extent that you

1 have to be aware that what you've said is inaccurate
2 before you would even think about having to correct it.

3 Q. Well, don't you have to be aware before you
4 file something and attach something that it's accurate?

5 A. Yes, because you sign an affidavit for
6 that. But on the other hand, doing this many times, you
7 may not be aware because you haven't perceived it the same
8 way until you go through this process and see it or have
9 it shown to you that it is not correct or accurate.

10 Q. This process being the deposition or this
11 process being this hearing?

12 A. Or this questioning, yes.

13 Q. Has this occurred to you that the
14 statements that you make that say that a construction
15 audit has not been completed and you say, uh, there's just
16 a little activity going on here, that other people think
17 that there's an actual construction audit that has begun,
18 and maybe the Commission, when it does its April 15th
19 order, which we'll go to, thought that work was being done
20 so that there -- this wouldn't be so hard to say, get it
21 done by June. Did you that maybe the statement that you
22 made on April 7th could have affected their determinations
23 on April 15th?

24 A. I don't see the relationship between this
25 and the Commission's April 15th order.

1 Q. Do you think there's a relationship between
2 this -- well, I'll go on.

3 Later, that was June 8th when you testified
4 and said you could get something done. Let's go to the
5 April 15th order. So right now you get an Order on
6 April 15th, correct?

7 A. That's correct.

8 Q. Has that already been entered? I believe
9 it was the first day.

10 JUDGE STEARLEY: Yes, it has been.

11 BY MS. VAN GELDER:

12 Q. Now, you were surprised by the April 15th
13 order, correct?

14 A. Yes.

15 Q. In fact, it was unprecedented, I think is
16 the word you used, correct?

17 A. Yes.

18 Q. And what was unprecedented was not that you
19 had to do the audit, it's that you had to write a report?

20 A. Yes, in a -- in a rate case.

21 Q. And you recall that some people in your
22 section thought it was impossible to do in a time that it
23 was given?

24 A. I would say that's true. I think there was
25 even -- there may have been some comments from some of the

1 other parties that they -- they expressed that same
2 opinion.

3 Q. But you thought it could be done?

4 A. As you know from my deposition, I've said I
5 construct an audit to suit any objective, yes.

6 Q. And so you also said that this audit, the
7 April 15th audit is not the audit that you would have done
8 if you had done a construction audit or prudence review on
9 your own, correct?

10 A. Correct. It has features in it that I
11 would not have adopted in doing a construction audit and
12 prudence review.

13 Q. And while we're at it, let's go with what
14 the Commission ordered. No. 1, they ordered that you
15 shall complete and file the construction audits and
16 prudence reviews of the environmental upgrades to Iatan 1,
17 Jeffrey Center Units 1 and 3, and Sibley generating
18 facility Unit 3, including all additions necessary for
19 those facilities to operate, no later than June 19th,
20 correct?

21 A. That's -- yeah. This must be the GMO
22 order.

23 Q. And I have the KCPL order, too. They're
24 essentially the same, the orders?

25 A. I believe that to be true, with the

1 exception of Jeffrey and Sibley.

2 Q. Well, this one has Jeffrey and Sibley and
3 that one doesn't, correct? But let's talk about this.
4 What was the state of Jeffrey and Sibley on April 15th,
5 2009? Was there just construction activity or were there
6 actual construction audits being conducted?

7 A. For Jeffrey, I'm trying -- one of those
8 units, one of the Jeffrey units, I'm not sure was in
9 service or had been declared in service yet. But as I --
10 as I believe, as I recall -- and this is somewhat shaky --
11 I think one of the Jeffrey units and Sibley had been
12 completed, and I mean had been completed for a while.

13 Q. And have those construction audits and
14 prudence reviews, are they complete now?

15 A. I know the drafts are -- have been made. I
16 haven't had time yet to get with Mr. Majors, who's been
17 the primary Staff member on that, to look at them and see.
18 I think I mentioned I was doing Plum Point when all this
19 started, but I know we had drafts for Sibley -- I mean,
20 for Sibley and Jeffrey, but I haven't reviewed them to
21 determine their current status.

22 Q. Now, this is the KCPL order, which says
23 that the Staff of the Missouri Public Service Commission
24 shall complete and file construction audit and prudence
25 review of the environmental upgrade at Iatan 1, including

1 all additions necessary for these facilities to operate,
2 no later than June 19th, 2009, correct?

3 A. It's hard for me to look back here. I'm
4 trying get the order.

5 Q. I think you have the order in front of you.
6 If you don't, we'll give you a copy.

7 A. Is it -- are we looking at the 89?

8 Q. Yes.

9 A. Okay. I've got it.

10 Q. Now, first of all, let's just --

11 A. You want to ask me -- okay. You want to
12 ask me if order 1 says the Staff of the Missouri Public
13 Service Commission shall complete and file the
14 construction audit and prudence review of the
15 environmental upgrades at Iatan 1, including all additions
16 necessary for those facilities to operate no later than
17 June 19, 2009.

18 Q. Right.

19 A. That's what it says.

20 Q. And shall complete, correct?

21 A. That's what it says.

22 Q. And you thought you could complete this?

23 A. Are you talking about what my state of mind
24 was at this time?

25 Q. Yes.

1 A. Yes.

2 Q. Although others thought could never be
3 done. Impossible, I think was the word?

4 A. Yeah. I don't know. They got never --

5 Q. Impossible. I won't quibble with your
6 words. Now, let's just put on the record what the
7 environmental upgrades were. There was new equipment,
8 correct?

9 A. There is, yes.

10 Q. So there were burners that had to be
11 bought?

12 A. Low NOX burners.

13 Q. There was an overhead fire system?

14 A. Yes.

15 Q. There was a bottom ash conveyer system?

16 A. Yes.

17 Q. And there was a digital control system?

18 A. Yes. And that's -- that's the definition
19 of all the project. I don't know that all of those are
20 AQCS, but that's the definition of what was going to
21 constitute that project, yes.

22 Q. Now, all of those procurements are cost
23 centers that are available for review in the Iatan 1
24 construction audit, right? The decision to buy that
25 burner, the decision to procure that system, that's all

1 Iatan 1, that's not Iatan 2?

2 I'll ask it another way. I don't want to
3 confuse you were procured were procured for Iatan 1?

4 A. The reason I don't remember on all of those
5 whether they were separate Iatan 1 contracts and,
6 therefore, the vendors invoices were just for Iatan 1 or
7 whether any of those vendors actually were doing work on
8 Iatan 1 and 2, and so the invoice would come in and have
9 to be disaggregated. I can't recall on every one of
10 those. I know Alstom is a vendor on a substantial portion
11 of the Iatan 1 AQCS system and is also a significant
12 vendor on Iatan 2 and does that by virtue of the same
13 contract.

14 Q. But you're mixing labor with materials
15 here. I'm asking you on materials that were bought, that
16 were part of the design for Iatan 1, you could do a review
17 of the invoices and the decisions to use those materials
18 in Iatan 1?

19 A. You could do a review of the invoices, and
20 assuming the materials are clearly identified on the
21 invoices that these are materials for Iatan 1, you could
22 do that review, yes. And what was the last part of your
23 question?

24 Q. You could do your prudence analysis and
25 construction audit on those, on that portion of the

1 expenditures?

2 A. Well, maybe I'm -- I haven't associated the
3 invoice review as being part of the prudence part. For me
4 to have done -- for me, if you're looking at me and what I
5 would say is the prudence would have been the process to
6 define the project and what was included and what wasn't
7 included in the setting of the contracts and selection of
8 vendors and all of that. Once that's in place, you make
9 your decision, and then if there's imprudence, it's in one
10 of those steps. When the invoice comes in, and assuming
11 you can identify, you know, one to one to those decisions,
12 you just look and see -- if you've already made the
13 determination the contract was prudent, for example, then
14 the invoices that would come in associated with that
15 contract would be would be checked only to make sure that
16 they're in compliance with the contract.

17 Q. Right. So if an invoice was sent in 2005,
18 assuming if a procurement was made in 2005, you're looking
19 at that decision of that procurement, correct?

20 A. Yes. Now, if you're talking about --

21 Q. Go ahead.

22 A. -- procurement, though, there's overall
23 prudence, I mean, the decision that takes place is, how
24 are you going to go about this procurement process and are
25 we going to have competitive bids or are we going to sole

1 source, where does that fit in, we have to issue we call
2 them RFPs. They have a different name. But how are you
3 going to structure your request for proposals and all that
4 as part of that prudence -- that decision that you would
5 apply a prudence review to?

6 Q. Right. But what you just told me is that
7 you look at the review, and when the invoices come in, no
8 matter when they come in, they're going to be okay because
9 the decision was prudent?

10 A. What I said is, you would check those
11 invoices to make sure they're consistent --

12 Q. Okay.

13 A. -- with the contract and then if they're
14 not, that's a separate issue. But assuming they are
15 consistent with the agreement and the decisions that
16 you've made, and you've made a decision they're prudent,
17 then that would follow in that they would be -- they
18 wouldn't be adjusted.

19 Q. Right. And in fact, as a good auditor, you
20 might take if you had, for instance, 20 or 200 invoices,
21 you might do a sampling of those invoices to see if those
22 invoices were consistent and proper, and if you didn't
23 have a need to go further, you'd just make a general
24 assumption that this invoice process is going to go as
25 normal?

1 A. I mean, yes. As an auditor, I would do --
2 I would be doing some invoice review just in conjunction
3 with a top-down approach that I generally use. So I would
4 be following through, looking at some of the decisions and
5 consequently the invoices associated with those invoices.
6 But depending on how significant it was to the audit, I
7 may do a sample just of invoices of miscellaneous vendors
8 below a certain amount just to get an idea and see if
9 they're being reviewed and processed consistent with what
10 the policies and procedures are.

11 Q. So the decision on how to procure, whether
12 it's a time and materials or a fixed price, all of that is
13 done at the beginning of the process, correct?

14 A. I think that's a -- that's a decision like
15 when you fast track or you designed buy and build, that's
16 a decision that you make at the very beginning. Now, as
17 you begin to implement those decisions, you may encounter
18 conditions that what you thought was going to be the
19 conditions or you didn't anticipate the problems, that may
20 cause you to have to take pause and then reevaluate your
21 planned course of action.

22 Q. I'm not going to go back into prudence
23 because I promised the Judge I'd go fast. But if you
24 make --

25 JUDGE STEARLEY: You can break that promise

1 if you need to.

2 MS. VAN GELDER: Thank you, your Honor. I
3 am a lawyer.

4 BY MS. VAN GELDER:

5 Q. If you make that decision and it's prudent,
6 if you -- you'll never be able to render a decision of
7 prudence if you always think that down the road there's
8 something going to impact that first decision. When do
9 you stop?

10 A. Well, I believe it's imprudent to make a
11 decision, especially in a dynamic environment that lacks
12 the flexibility to allow you to change, you know, as
13 conditions change. I mean, I think that's part of the
14 decision and the prudence of it is how rigid is the
15 decision relative to the conditions that I have to execute
16 the decision in. And I think someone asked me earlier
17 about the way -- the regulatory plan.

18 We agreed not to challenge the prudence of
19 putting in the AQCS system at Iatan, and we don't -- we're
20 not challenging it today. But that didn't mean at the
21 time we did it that the decision that was locked in and
22 that they had to follow it.

23 In fact, there were modifications to the
24 decisions that were made at the time of the regulatory
25 plan. The environmental upgrades, for example, at

1 LaCygne, some of those were not completed because of a
2 change in market conditions, and so we're not -- I'm not
3 saying that not executing that was imprudent, but I would
4 definitely have not said it was prudent to continue the
5 follow the regulatory plan if facts and circumstances
6 showed at the time of execution you should take a
7 different course.

8 Q. Right. But if once you decided, let's say,
9 to follow it, then all of the expenditures that follow are
10 presumed to be reasonable?

11 A. Assuming that at the time you don't have
12 other alternatives that could allow you to change that
13 course. For example --

14 Q. I understand. We'll go on. Let's go back
15 to this. You thought this was a highly restrictive
16 request, to do this audit, correct? They put restrictions
17 on you?

18 A. I thought when you took the two basic
19 parameters, which was the data we had in-house on
20 April 15th, 2009, and then, as we discussed in my
21 deposition, I assume the prudence invoice review was part
22 of it, if you look at the language, you can get --

23 Q. Right. And direct us to the language that
24 you thought that this was a restriction. It's No. 3,
25 correct, Kansas City Power & Light is directed to

1 cooperate with the Commission Staff and provide all
2 pertinent invoices necessary for the completion of the
3 environmental upgrades of Iatan 1 and shall expedite the
4 provision any invoices for the true-up proceeding. All
5 true-up invoices shall be provided to the Commission's
6 Staff for review no later than June 8, 2009?

7 A. Yeah. I -- well, I interpreted that to
8 mean the construction audit and prudence review from this
9 order needed to include the review of those invoices.

10 Q. Right. And it might not -- your
11 construction audit on prudence review might not need a
12 true-up of all invoices, right?

13 A. Yes. On the other hand, a review of all of
14 those invoices wouldn't necessarily give you the
15 information to have completed a construction audit and
16 prudency review wouldn't have significant audit risk that
17 you've missed something.

18 Q. Right. So you read this and you say, if
19 this is what the Commission wants me to do, then I'll do
20 it?

21 A. Yes. It says this is what the Commission
22 wanted the Staff to do, and shortly after this came up,
23 the only way I believe I could make sure the Staff did it
24 was for me to get involved, yes.

25 Q. Now, by the way, let's put this on the

1 record, too. There were seven people -- at least seven
2 people on the rate audit, correct?

3 A. If you're talking about our discussion with
4 either myself or Mr. Majors about -- those were auditors.
5 There would be much more on the rate audit than just
6 people from the auditing department.

7 Q. But you had seven auditors on the rate
8 audit?

9 A. There were seven auditors, I think, on all
10 three cases.

11 Q. And on the prudence audit that was directed
12 by this order, you had three: You, Mr. Hyneman and
13 Mr. Majors?

14 A. That's correct.

15 Q. Now, a construction audit usually has three
16 different buckets, right? It has the procurement, it has
17 the construction and it has the indirect, correct?

18 A. The ones -- at least the ones that we're
19 dealing with here does. I've seen sometimes where
20 construction and procurement is combined and they just
21 do -- they make that one category and then they have
22 indirects.

23 Q. And who was doing the indirect?

24 A. Who was doing?

25 Q. On this -- on your little --

1 A. Oh, well, I would say, given the way the
2 case ended up or the way it evolved was Mr. Hyneman would
3 have been the one that would be primarily taking the
4 information and developing in it the detail findings in
5 that area. I had the common plant, and then Mr. Majors
6 would have had the AFDC issues and the -- and basically
7 also was bringing up the Jeffrey and Sibley audit report.

8 Q. So if he has the Jeffrey and Sibley and the
9 AFUDC, Mr. Majors, and if Mr. Hyneman is doing the
10 indirect and you're doing the common plant, who was
11 looking at the construction and the maintenance, the
12 construction of the procurement of Iatan 1? Who looked at
13 those invoices?

14 A. Well, Mr. -- when you say invoices --

15 Q. Who looked -- I'm sorry. Who looked at
16 those decisions?

17 A. Mr. Hyneman would have done the
18 construction and the indirect primarily. Now, when I say
19 this, because we were a small group, certain things would
20 come in at a general level that I would review that wasn't
21 necessarily directly related to one or the other, and then
22 I would direct that information to them. But Mr. Hyneman
23 would have had basically all the direct expenses for Iatan
24 1. As I said Mr. Majors would have had AFDC, and then I
25 would have had the common plant.

1 Q. Well, if you read this, and the Commission
2 was trying to be helpful to you to say that KCPL should be
3 helpful and cooperative and get everything you need to you
4 by June 8th, then you read it differently than that,
5 right? You read it as, oh, this is another layer I have
6 to do, I have to do invoices now?

7 A. Well, first of all, the order doesn't say
8 KCPL has to be helpful to me. It just says KCP&L has to
9 give me invoices by that date.

10 Q. Is a directive to cooperate, you don't
11 think that means be helpful?

12 A. You cut that sentence off. It's directed
13 to cooperate with the Commission Staff by providing all
14 pertinent invoices necessary for the completion of the
15 environmental upgrades at Iatan 1 and shall expedite the
16 provision of any invoices for the true-up proceeding.

17 Q. So do you think that the Commission, when
18 they wrote that, meant they could only cooperate in that,
19 but they didn't have to cooperate with anything else?

20 A. I don't think it -- it made sure that they
21 had to cooperate in giving -- giving the Staff those
22 invoices. I don't think they put anything in here that
23 they could not -- they didn't have to cooperate anywhere
24 else. But it didn't specify their level -- it specifies
25 that they are to cooperate in the provision of invoices.

1 Q. Do you remember when Mr. Blank testified
2 yesterday and he said, I offered to give them invoices up
3 'til December, you know, we want to give you invoices 'til
4 the end of the year so that you can finish your -- and
5 complete your audit. Do you recall his testimony on that?

6 A. I thought his testimony -- and since I was
7 the one he had the conversation with -- was through
8 November.

9 Q. Through November. And you told him, no,
10 I'm only going to do May?

11 A. Yeah. And I also told him I did not want
12 to have the Staff use this as an excuse for you to come
13 back and tell me that you approved an invoice that later
14 is found not to be processed correctly because you had to
15 meet this date. I said, I want you to process your
16 invoices on this project consistent with what you believe
17 is needed. Don't -- I did tell him, I'm not going to have
18 them because I have a May 31st cutoff date.

19 Q. Right. And how did you get that May 31st
20 cutoff date?

21 A. If you take the date that's in the
22 April 15th order, where I get -- I get a true-up of
23 invoices that are provided to the Commission Staff no
24 later than June 8, 2009. So that gave me a true-up of
25 when these invoices were coming in, and then somewhere in

1 the Order I'm required to -- oh, I think it's Item 2, is
2 that I'm supposed to provide a specific rationale for each
3 and every disallowance recommended in the construction
4 audit and prudence reviews. So therefore, if I'm going to
5 have to do -- if I want to do adjustments, disallowances,
6 I have to have a base that I can audit in order to make
7 these adjustments, and the closest cost basis to June 8th
8 is May 31st.

9 Q. So you picked May 31st and said, I'm going
10 to look at the invoices prior to May 31st?

11 A. I used May 31 as the cost basis for Iatan
12 that would be audited to fulfill these requirement, yes.
13 I mean, I don't get May 31st until -- I don't get the data
14 for 45 days, so it takes a while just to process them. In
15 fact, if I had not gotten the extension, I could not have
16 used May 31st.

17 Q. And remember a little while ago, you
18 talked -- I think it was one of Commissioners questions
19 where you talked about you got a banker's box of
20 information from Mr. Elliott?

21 A. Yes.

22 Q. Okay. And in that banker's box were change
23 orders over \$50,000, correct?

24 A. Yes.

25 Q. And you read this order to say that you had

1 to look at all invoices, so you had to go back and get the
2 invoices under 50,000?

3 A. I'm sorry. I'm not following. To the
4 extent that I had -- if you're talking about myself
5 getting that banker's box, I viewed that to be related to
6 the statement on page 5 of the Commission's order.

7 Q. Okay. That the Commission -- that the
8 Staff obviously has some data upon which to complete a
9 partial audit?

10 A. No. I'm looking at the part that says,
11 consequently, the Commission shall direct its Staff, based
12 upon the information Staff has received from KCP&L to
13 date, to complete a construction audit and prudence review
14 of environmental upgrades to Iatan 1. I interpreted I
15 guess -- it doesn't seem like the right verb -- but I
16 interpreted that as that I had to make sure that I was
17 using all the information Staff had received from KCP&L to
18 date, which would be -- part of that was those change
19 orders and that banker's box of material that Mr. Elliott
20 had.

21 Q. Now, on that statement that I read, Staff
22 has some data, don't you think that they were relying on
23 your statements that you were collecting data, that you
24 had not completed your audit but you must have had
25 something?

1 A. I think there's a footnote. I take it
2 back.

3 Q. Yeah, what's the footnote say? Robert
4 Schallenberg.

5 A. You're saying that footnote?

6 A. I'm looking at footnote 11.

7 Q. I'm looking at this. I'm looking at
8 footnote 11. We might not be on the same order.

9 A. I'm looking at the section of the order
10 that talks about how the Commission shall direct its Staff
11 based on the information Staff has received from KCP&L to
12 date. That's the part because you're asking about the
13 change orders. That's -- change orders are different than
14 invoices. Invoices are directly in the Order on Item 3
15 and 4.

16 Q. And I see what you mean, and I might have
17 misinterpreted your deposition testimony. But I'm making
18 a higher point. I'm saying there -- I asked you before,
19 did you think when you filed public testimony that the
20 Commission would rely on it? And you said, you didn't
21 think so. And now I'm asking you, don't you see even in
22 this order they're relying on your statements to base this
23 order?

24 A. I believe I wouldn't draw that conclusion
25 today because, as I remember, KCP&L was the one that had

1 put in testimony about the amount of information that we
2 had received to date. I don't think there's anything in
3 my testimony that indicates how much information we've
4 received to date.

5 Q. Okay. Well, let's see what the footnote
6 relates to. It relates to the very question and answer,
7 which goes over to the next page, that we talked about
8 before, which you said, Mr. Giles was wrong when he said
9 we hadn't started it. We just haven't completed it.
10 Can't you see that the Commission has relied on that
11 statement in making its order?

12 A. Are you saying that that statement -- what
13 paragraph? Are you talking about -- you're talking about
14 footnote 9?

15 Q. Well, it's footnote 11, surrebuttal of
16 Robert Schallenberg.

17 A. We must not be looking at the same one.

18 Q. I know. I told you I was looking at the
19 GMO order.

20 A. I'm looking it KCP&L.

21 Q. Same footnote?

22 A. Footnote 11 in the KCP&L order is talking
23 about the Commission notes that we've had 222 days, seven
24 months and ten days have passed between the date KCP&L
25 filed its case and the date of this order, a time period

1 in which the Commission has confirmed the Staff has been
2 receiving information, it needs to complete its audit.

3 Q. Right. And that goes -- but what they have
4 emphasized here, and I don't want to -- I'm not going to
5 belabor the point, is that they're emphasizing your saying
6 it is a false statement that no work was conducted.
7 They're relying on that statement, correct?

8 A. I don't -- I don't see that footnote or
9 that connection to that sentence. I mean, it may have --

10 Q. Forget about the footnote.

11 A. Okay.

12 Q. It's a real simple question,
13 Mr. Schallenberg. Is that your testimony?

14 A. You're talking about the underlined piece?

15 Q. Yes.

16 A. Well, actually it's all my testimony, yes.

17 Q. Exactly. And as we talked about in the
18 deposition, you looked at your testimony and you looked at
19 the order and it was the Commission that underlined this,
20 correct?

21 A. Oh, I'm sorry. You're talking now about
22 the section in my testimony that's in the Order?

23 Q. Yes.

24 A. Okay.

25 Q. So now that we're on the same page, and

1 maybe the same order, and maybe the same order on the same
2 page, I want to ask this question really directly. Seeing
3 all of that, do you understand that the Commission was
4 relying on your statements when it issued the April 15th
5 order?

6 A. No.

7 Q. Okay. Well, let's go to the next place.

8 The -- your position was this order basically stopped at
9 May 31st, because of the true-up provision, correct?

10 A. Wait. You're saying does the -- the order
11 doesn't stop at May 31st. The order only has -- the only
12 date that it has in it, obviously besides our filing
13 deadlines, is that the company has a date that it's
14 supposed to give me invoices and it's called a true-up.
15 And then I have a date by which I have to make a filing,
16 and then I believe there's a date on which KCP&L and other
17 parties have to respond. And May 31st isn't one of those
18 dates.

19 Q. Did you look at any invoices that were
20 filed after May 31st?

21 A. I'm sure I did, because we would get
22 invoices in and we got an update, we would get -- we would
23 get additional invoices after May 31st.

24 Q. I'm going to jump to the June 10th for a
25 second. Ask you a direct question about this. And this

1 is -- I'll use KCPL. By the way, at any time between
2 April 15th and June 10th, did you ever think that you
3 should go back and clarify with the Commission what you
4 thought their order was?

5 A. No.

6 Q. And you did -- were discussions that you
7 were -- you were a part of where people thought this just
8 can't be done?

9 A. Well --

10 Q. It is impossible?

11 A. I mean, there were people who responded
12 that that was the -- what the Commission's order said, but
13 I mean, I never -- now, I will also say in this period I'm
14 also involved in the settlement of the rate case, so I
15 don't want to create the impression that I was 100 percent
16 just doing this. So I was thinking about all those
17 things, but, no, I never had the thought that I needed
18 clarification.

19 Q. And it was also, as was mentioned before,
20 at this period of time your intention that you'd do a
21 better audit than the one that was required with the
22 restrictions?

23 A. Oh, yes. Well, the same time, though, at
24 the time this audit was ordered, I also knew how much
25 information we already had, because some of it I had been

1 involved with or my staff had been involved with, so I
2 knew from that information there were certain things that
3 could be used in the audit that was available to the
4 Staff.

5 Q. All right. Did you ever think to go back
6 to tell -- to the Commission, I can do it better than what
7 you're saying, I know what you want, you want complete to
8 the audit, and I can tell you the plan that will complete
9 the audit?

10 A. I did not -- I would not have had that
11 thought until I heard Commissioner Gunn's statement today
12 that, at least from his perspective, he -- he wants the
13 Staff to do that. Because when you work for the Staff,
14 you go through different stages with the Commissioners.
15 Commissions have a different philosophy. I was not aware
16 that -- and again, I'm still not sure it may be
17 Commissioner Gunn's view, until the rest of the Commission
18 tells us that, I was not aware that the Commission was
19 looking towards the Staff, in essence, providing its
20 feedback saying, look, this is not going to give you the
21 results you want, here's something you need to consider
22 and change. And also you've got to remember, in this
23 case, this order doesn't have a lot of spare time to get
24 something done, so, you know, I did not have that at that
25 time. I would consider it today as an option.

1 Q. Well, I'm not sure Mr. -- Commissioner Gunn
2 said he wants feedback, but I think that what he said was
3 if you don't understand it or you can't do it, then you
4 should come back. Did you ever -- and what you're saying
5 is, because of this particular Commission at this time,
6 you didn't feel comfortable doing that?

7 A. Well, personally I thought I understood it
8 and I believed I could do it, and I believe -- I believe I
9 have. So I mean, given those two conditions, there's
10 nothing that would cause me to think that I needed to go.
11 And besides, I've have to go through the General Counsel's
12 office. There was nothing that led me to believe that the
13 Staff needed to make a filing and ask for some
14 modification, because then I'd have to -- I'd have to come
15 up with what modifications am I going to ask for. I did
16 not do that.

17 Q. And did you ever tell KCPL that you thought
18 that this order was a restrictive order?

19 A. I don't think I ever really talked about
20 the order with KCP&L.

21 Q. So when you read all of these filings that
22 have been made in the last couple of months that said,
23 we're confused, we want clarity, we don't understand what
24 this audit is, did it ever occur to you that they, like
25 Commissioner Gunn, might have thought that the Order that

1 says completed was the complete audit that they wanted?

2 A. I mean, I have contact with KCP&L on a
3 regular basis. I don't have ex parte issues between KCPL
4 and myself. And I remember two meetings, one with
5 Mr. Blank and one with Mr. Downey, where general topics
6 came up, and they brought up the topics that were
7 important to them. I listened and I think I tried to
8 address those, and then at the end, I always brought up
9 the discovery situation when they would say, is there
10 anything bothering you, and I said, we still have those
11 discovery matters, I think we need to -- I don't want you
12 to take my nonanswer to these, but we don't have those
13 types of issues. Then I'd always hear, we should do this
14 again, we should have this discussion. So in any of those
15 meeting I never heard anyone ask, how's that construction
16 audit going, you know.

17 Q. You did testify a few minutes ago that you
18 were in that discussion with Mr. Blank where he said, do
19 you want more invoices, I give you more invoices?

20 A. Yes.

21 Q. And your reaction wasn't that they were
22 trying to help. Your reaction was, you're going to try to
23 trick me and later try to argue that you're slipping in an
24 invoice that hadn't been in the true-up?

25 A. No. I think I indicated that if I found an

1 invoice that was in that period, that was inappropriately
2 processed, their excuse would be the fact that I had
3 insisted that those invoices be processed quickly to meet
4 that date.

5 Q. In hindsight, and I know we're not talking
6 prudent so I can ask in hindsight, isn't that a cynical
7 reaction?

8 A. Skeptical, but auditors by profession are
9 skeptical. And I would say not only is it skeptical.
10 I've had many years of experience with KCP&L, so I would
11 not have had the same reaction with another company.

12 Q. Familiarity breeds contempt?

13 A. Yes, I do.

14 Q. So in that case, why didn't you get an
15 outside consultant? Why didn't you get a new face, a new
16 day, a new look with KCPL?

17 A. One is, an outside consultant would cost a
18 lot -- a significant amount of money and it takes a
19 significant amount of time just to get the -- as we talked
20 about in my deposition, I -- well, in fact, I don't
21 believe the meeting took place before the extension. So
22 that never -- you know, we've had that discussion.
23 Outside consultants there's a lot of overhead and cost,
24 and even after you have them, they still take a lot of
25 time to interact with. So I -- unless you have someone

1 that you have prior experience with that's familiar with
2 the Commission and familiar with the situation, I would
3 tend to say outside consultants aren't productive.

4 Q. I'm going back again to your testimony, and
5 I'm going to make sure I inadvertently have numbers there,
6 so I'm going to go up here. Staff did not entertain a
7 consultant for this endeavor because the work required to
8 develop the request for proposal, determine a qualified
9 vendor list, evaluate proposals, award a contract and
10 perform contract administration with related support would
11 require more than time if the staff performed the work
12 itself. Right?

13 A. Yes.

14 Q. Okay. Nothing about the cost?

15 A. Okay.

16 Q. Let's go back to the Order.

17 A. Which one?

18 Q. June 10th. This order extends your time to
19 finish?

20 A. Is this KCP&L's June 10th?

21 Q. I'm going -- let's make sure we're on the
22 right one. This looks like GMO. Let me get KCPL. Joint
23 motion of Staff, KCP&L and GMO to extend the filing of the
24 construction audit and prudence review is granted,
25 correct?

1 A. Now we're on page 2?

2 Q. I am.

3 A. Okay. And you're now looking --

4 Q. No. 1 of the order.

5 A. I'm at the same spot. And what were you --

6 what portion were you referring to?

7 Q. I'm saying that the Commission has granted

8 the motion to extend the date for your construction audit,

9 No. 1.

10 A. It says in part.

11 Q. Well, I was going to get to that part. It

12 says it's granted, doesn't it?

13 A. Well, yeah.

14 Q. Let's get to the part.

15 A. Because -- okay.

16 Q. And the part is that the deadline set in

17 the April 15th order that regard Jeffrey and Sibley are

18 taken out of the order, they're canceled, correct?

19 A. That's correct.

20 Q. That's major. Isn't that good?

21 A. Well, I mean, I guess it depends on your

22 perspective.

23 Q. And then it says, the Staff shall no later

24 than June 19th have a preliminary report of its

25 construction audit and prudence review of the

1 environmental upgrades.

2 A. That's what it says.

3 Q. Okay. Now -- and then once again, it has
4 that same last one, which is the Staff is directed to
5 provide a specific rationale for each and every
6 disallowance, recommendation in the audits -- construction
7 audits and prudence reviews, correct?

8 A. Yes.

9 Q. Now, it says, each and every disallowance
10 recommended?

11 A. Yes.

12 Q. How did you read that?

13 A. Each and every disallowance recommended.

14 Q. But is it recommended within the scope of
15 the review that you said May 30th or each and every for
16 the whole contract?

17 A. I could not go to May 30th until this order
18 was -- I could not have used May 30th -- excuse me --
19 May 31st. I could not have used May 31st until I got this
20 extension. I would have had to use February 28th if I was
21 still under the deadlines of the April 15th order.

22 Q. Well, you just went over a five minutes ago
23 that the April 15th said there was a true-up on June 8th
24 and that meant that you would using the invoices that were
25 May 31st?

1 A. No. I said that when I had the -- I had
2 the true-up date of June 8th, and after I got the
3 extension, I could actually get closer to the cost basis
4 for that. If I -- I don't get the cost basis for 45 days.
5 So I would have had to use February 28th to actually have
6 made the filing if I had to file on June 19th.

7 Q. But so on June 10th, though, you say
8 May 31st is the cutoff?

9 A. Yes.

10 Q. And that's okay because I'm going to
11 continuing to audit the post May 31st, and I'll do it up
12 until the rate case?

13 A. Well, I'll say I would be still auditing
14 some material, but I have to, in essence, focus on the
15 May 31st date because I have to make -- if I make
16 disallowances, I have to be able to explain those, and I
17 need a common cost basis to audit.

18 Q. Now, I'm taking it out of the final report,
19 but as of June 10th, 2009, your -- this is the scope that
20 you had regarding what was still to be done, Iatan post
21 March 31st?

22 A. I'm not following that question.

23 Q. I'll ask it in a better way. What is
24 your -- what was your read of this statement in the
25 June 10th order: In light of the parties' settlement, the

1 Commission finds it reasonable to extend the deadline for
2 Staff to complete the construction audit and prudence
3 review.

4 A. We're on the June 10th KCP&L first page.

5 Q. First page, paragraph that starts in light?

6 A. Okay. Yes.

7 Q. To extend the deadline to complete the
8 audit.

9 A. Yes.

10 Q. Okay. And it's your testimony that that
11 meant complete the audit as you understood it to be
12 limited to at first February 28th and now May 31st?

13 A. Well, you're -- I said that the only cost
14 basis that would be consistent that I could get in order
15 to meet the June 19th date -- the Commission's order
16 didn't say I was to use February -- was February 28th.
17 But that's not something that's in the Order. That's a
18 consequence of trying to do the Commission's order.

19 Q. Okay. But so -- but all of the DRs that
20 have come in after June and asked for information that
21 occurred after June 1st, that's for the newer, better --
22 that's for this?

23 A. What's this?

24 Q. The post May 31st expenditures.

25 A. Yes. Well, I say that. It's also used to

1 make sure that the information that we're using to make
2 the adjustments that are in the report are true and
3 accurate, or at least accurate or we have a good
4 understanding. Sometimes -- and the reason I say that,
5 sometimes you can see things that are changed subsequent
6 to your cutoff date, and therefore may cause you to have a
7 different opinion regarding what you need to do.

8 Q. Now, we saw an audit plan earlier, correct,
9 the audit plan of Iatan 1?

10 A. Are you talking about those draft audit
11 scopes?

12 Q. Yes.

13 A. You saw a draft audit scope.

14 Q. Did you ever draft another audit for the
15 construction audit and prudence review, another audit
16 plan, audit scope?

17 A. I drafted or I say it as I think I drafted,
18 Mr. Hyneman may have drafted, but we developed a draft
19 audit plan to use for the June 19th filing, and that's
20 part of the report.

21 Q. The part of the report is the language that
22 talks about risk?

23 A. Risk assessment, audit objectives, audit
24 scope.

25 Q. Let's look at the June 19th report. I'm

1 almost finished.

2 JUDGE STEARLEY: That's quite all right.
3 You've travelled a long way to get here. Ask your
4 questions, please.

5 MS. VAN GELDER: Can we make this an
6 exhibit, please. It's a public version.

7 (KCPL GMO EXHIBIT NO. 6 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 BY MS. VAN GELDER:

10 Q. And did you this -- well, first of all,
11 I'm going to ask, but I know, do you recognize this
12 document?

13 A. Yes.

14 Q. Okay. And did you draft this document?

15 A. I remember I -- I believe I had a lot
16 to do with drafting the document with the exception of
17 Section 3, which I think we discussed was drafted by
18 Mr. Dottheim.

19 Q. All right. And when you're talking with
20 the audit plan, what I'm saying you're calling it an audit
21 scope, you're talking about this language right here. And
22 I've blanked out the because it's -- this is the public.
23 It's on page 12.

24 A. You're saying when I talk about the audit
25 plan?

1 Q. I asked you two seconds ago if you ever did
2 an updated audit plan. You said, I had an audit scope and
3 I incorporated it in the June 19th order.

4 A. I thought I said that we -- those audit
5 scopes that we had discussed earlier, I had an audit plan
6 for this audit that was reflected in our June 19th report.

7 Q. Well, let's just go this way. I asked you
8 in discovery if you had an audit plan. Do you recall
9 that?

10 A. I don't remember that specific question.
11 Well, put it this way. I do remember you asking me a
12 specific question that was there a separate document
13 called an audit plan that I had, and I said no.

14 Q. It was more than that. I asked you if I
15 made a discovery request for an audit plan, did
16 Mr. Dottheim ever talk to you about a discovery request
17 for an audit plan?

18 A. I know there was a request that came from
19 KCP&L for an audit plan. I didn't know that you were the
20 source of that request. And I responded to Mr. Dottheim
21 that it's contained in the reports.

22 Q. And what we got back was, this is the audit
23 plan, which we now know is the superseded policy. Were
24 you aware that that is what was given to us in response?

25 A. No.

1 Q. Well, actually you were because you were at
2 the deposition when it was put on the record that it was
3 an incorrect response. But --

4 A. I don't remember it that way, but as you
5 said, it was 13 hours.

6 Q. OKAY.

7 A. So there's probably parts -- there's
8 probably substantial parts I don't remember.

9 Q. And then I asked for the audit plan, and I
10 got the Plum Point, the Iatan 2, I got that audit plan. I
11 got this.

12 A. That's what I said, is I didn't call this
13 an audit plan. I think it says scope.

14 Q. Okay.

15 A. And I remember telling you specifically
16 that this was drafted in order to solicit input and to see
17 about resources because, as you pointed out, if you look
18 at that scope document, there's a big portion at the end
19 that's just got to be determined.

20 Q. We're looking for your plan to implement
21 the audit that was ordered on April 15th, and was
22 reordered, although extended, on June 10th. Do you have a
23 plan that says, we're looking at this, it's going to take
24 X many hours to do that, we're testing this? Do you have
25 a plan?

1 A. A plan -- we had a plan. As I've told you
2 before, it was reflected in the June 19th report, and then
3 as modified when we filed on December 1st. The plan that
4 existed at that time was included in that report.

5 Q. So a long way to go back to where we were
6 three minutes ago. Is this the plan that you're talking
7 about?

8 A. Is that from the report?

9 Q. Yes, it's from your June 19th report,
10 page 12.

11 A. Okay. And this document on 12, that is a
12 part of the audit plan.

13 Q. But it's the part of the audit plan that's
14 telling you your approach?

15 A. Well, an audit plan includes more -- you
16 have to know your objectives, for example, in the audit
17 plan because that dictates the direction of what you're
18 supposed to be doing. So you need that. I don't know
19 that it's universal. I still believe you need an
20 assessment portion to your plan that that goes in, and
21 then you need an audit scope.

22 Q. How about a schedule for completion?

23 A. I mean, it could be. I mean, I would say
24 it's probably not as important in this one since it was
25 mandated. I mean, I don't have the -- I don't have

1 discretion, so I just have a date that I have to meet. If
2 I had discretion, that would be a key -- that would be a
3 key components of an audit plan.

4 Q. And because they gave you a date, you
5 couldn't do a schedule to backfill what has to be done
6 between June and December?

7 A. I mean, I didn't.

8 Q. So, in essence, the plan is, as I'm going
9 to go back to the title page so you can -- your plan is
10 your audit objective, your risk assessment, your audit
11 scope and your audit status, correct? That's your audit
12 plan?

13 A. I would say that I would consider in the
14 plan the information from 1, 2, 3, 4, 5 and 6, yes.

15 Q. Keep that there. If you move to page 14,
16 by the way, where in this -- in the audit objective -- and
17 I'll give you time to look through it. And the audit
18 status and the audit scope, where do you inform people
19 that you're only doing invoices up to May 31st?

20 A. I don't believe it's in here.

21 Q. And if it's not in here, how do we know?

22 A. When you say we --

23 Q. We the people who are producing the
24 invoices, which would be KCPL, we the royal we of the
25 Commissioners, the public who read the orders, the other

1 rate stakeholders, we everyone but you.

2 A. Well, we would see it -- the we's would see
3 it when it's filed, when the report's filed. If KCPL
4 wanted to know and they did find out -- they never asked
5 that question directly. I've never -- I've never heard
6 them complain that when they ask me something, they don't
7 get a response, so that we didn't seem to be -- it wasn't
8 a big issue to them, and everybody else -- I don't know
9 the plan, that there was anybody else that wanted to see
10 the plan. They wanted to see the report and the result.

11 Q. And you don't think that the filings and
12 the need for this hearing don't spell out to you that
13 KCP&L didn't know until they saw your December 31st audit?

14 A. Well, that wouldn't be true because, as you
15 pointed out, Mr. Blank talks about the meeting he had with
16 me before the report was filed and knew about the May 31st
17 date.

18 Q. No. He -- he was offering you invoices.
19 You said you were going to cut it off, but you didn't
20 explain to him the backup for that. It was just -- I'm
21 stopping at May 31st. You didn't say that that I'm not
22 completing the audit as envisioned by the Commission?

23 A. Well, I don't -- when you say as envisioned
24 by the Commission, unless the Commission added something
25 different than they reflected in the Order, that's what

1 I'm looking at what they envisioned, and I did do that.
2 Now, in terms of May 31st when I brought that up to
3 Mr. Blank, he had no follow-ups. I assume my answer had
4 been sufficient. If he wanted to ask what's your
5 thinking, why are doing that, he could have asked that. I
6 didn't feel -- I didn't feel comfortable in opposing extra
7 information with a KCP&L person.

8 Q. Let's look at it this way. You're doing an
9 invoice audit?

10 A. It's part -- that and the information that
11 we had as of April 15th.

12 Q. And he's expecting a prudence audit, so
13 even if you cut off for sampling purposes invoices as of
14 May 31st, it doesn't inform Mr. Blank that the decision,
15 the decisional portion, the prudence review and the
16 construction audit would not be completed. It just says
17 that invoice, I'm cutting that off at May 31st.

18 A. Well --

19 Q. He's expecting a prudence review, sir.

20 A. Well, put it this way: If he's expecting a
21 prudence review, he's ignoring the part of the Commission
22 order that says it's a construction audit and prudence
23 review. There is not an order to do only a prudence
24 review.

25 Q. Okay. And to do the prudence review and

1 the construction audit, you look at more -- I don't want
2 to retread it. You look at decisions, correct?

3 A. To do construction audit and prudence
4 review, you look at decisions, yes.

5 Q. So saying I don't need those invoices
6 doesn't inform Mr. Blank that I'm not completing a
7 prudence review and construction audit?

8 A. I don't see that -- I mean, that doesn't --
9 that doesn't make sense to me.

10 Q. Okay. And it doesn't -- Mr. Schallenberg,
11 you have been so cordial and cooperative, so I say this
12 without trying to be mean or glib, but it doesn't occur to
13 you because you are so convinced that you've read the
14 April 15th order and the June 10th order the way the
15 Commission intended it?

16 A. Well, like I said, I don't know -- I have
17 the Order. Now, I don't think I've ever said I know what
18 the Commission thinks other than what they put in their
19 orders, and I -- I've never tried to suggest that I can
20 talk for them. Now, I will say in response to that, you
21 know, I have the General Counsel's office that also sits
22 and advises me, and they've never said, Bob, you've got
23 that wrong, that's not what the Commission order says or
24 whatever. And I can tell you because of this event,
25 especially when we saw KCPL first make its first filing,

1 we spent a great deal of time making sure that --that
2 there was a collective understanding that we had read that
3 language right. In fact, as I remember our first
4 discussion during those depositions, I remember Mr. Blank
5 said he had never thought of the interpretation that the
6 April 15th construction audit was different, was different
7 than a complete Staff audit.

8 Q. When you heard the Commissioners yesterday,
9 their immediate visceral response, did you then think
10 maybe I misread their orders?

11 A. I don't know that I misread their orders.
12 I may not -- I may not have their understanding, but as I
13 said, I think to one of the Commissioners, I knew by -- I
14 was under the distinct impression that beginning with
15 their April 15th order, that the Staff's past practice of,
16 you know, maybe getting one done making some adjustments
17 or deferring it to a subsequent case was not going to be
18 acceptable for any future case.

19 Q. Do you remember the discussion which was, I
20 believe, in -- was referred to by Mr. Dottheim and
21 Mr. Fischer in the openings where you were asked by one of
22 the Commissioners, would you object if we order you to
23 complete this, and you said you have no objection?

24 A. I think I said I wouldn't object. I don't
25 think I said no objection. I think you've misquoted what

1 I said.

2 Q. I'm sorry. And is there a material
3 distinction between I won't object and I have no
4 objection?

5 A. Yeah. The way I answered that is, I'm not
6 in a position to object to a Commission directive.

7 Q. Do you think the Commissioners understand
8 when they're asking you if you can do something, that you
9 are in a position to object?

10 A. If that's their interpretation. I said, I
11 didn't take that as being that answer to that question,
12 and as we've talked about, you know, you've pointed out
13 other people think the task that they gave us on
14 April 15th was a doable -- I can't remember the term we
15 used -- impossible. As I've said several times this
16 afternoon to your questions, I don't -- I didn't hold that
17 view, and I don't believe the hindsight facts show that
18 view to be true.

19 Q. When we go to the December report, is it --
20 and I'm now taking way too long and I'm going to take a
21 break after I ask this question and caucus with my
22 colleagues. But when you filed the December report, you
23 did not believe that you had completed the construction --
24 you had not done a construction audit and prudence review?

25 A. That's not true.

1 Q. Did you think that you had completed a
2 construction audit and prudence review?

3 A. Yes.

4 Q. And did you think that what you filed on --
5 which is this, did you think that was -- that portion,
6 construction audit, prudence review, would close the door
7 on these questions, that you could move on to something
8 else? You've done the construction audit and prudence
9 review, you don't have to continue?

10 A. What I would say is, I believe this closed
11 the door on the order on the audit, construction audit and
12 prudence review that I had been -- Staff had been ordered
13 to do April 15th, as modified on June 10th.

14 Q. And is it fair to say that your
15 interpretation of the order meant that this is a partial
16 report, it only covers part of the time, part of the --

17 A. I mean, I don't think it's partial in
18 relation to what the parameters were that I was given to
19 conduct this construction audit and prudence review. Now,
20 that being said, there's always in almost all audit
21 reports a disclaimer or a notice as to outstanding items
22 that could affect the results of the report. So I don't
23 consider that because you have outstanding items and you
24 can actually -- and some of these are like preliminary
25 reports. I don't consider the fact that those things are

1 outstanding means that you haven't completed the audit you
2 were asked to do.

3 Q. But you stated in this order -- and I don't
4 want to go through 99 pages here, but you state, I can't
5 do a complete audit until I see every expenditure?

6 A. I don't remember saying I can't do a
7 complete audit until I -- I would have said that I can't
8 tell you that the audit is -- I mean, that you're going to
9 have final numbers, all the numbers are audited until all
10 the numbers are incurred and closed. I can't do that.

11 Q. So two last simple areas, and I'll finish
12 my questions. In your opinion, taking May 31st, 2009, can
13 the Commission close the book on the construction audit
14 and prudence review as of May 31st, 2009?

15 A. Well, this might be one of those no
16 objects. I mean, the Commission can order us to do
17 whatever it want to us do. So I mean, you had that
18 question to me if the Commission told me to stop auditing,
19 would I stop auditing. The answer is yes. If under that
20 scenario, if I'm told that I am to do no more audit
21 activity on this subject, I will do no more audit activity
22 on this subject.

23 Q. I will ask you this question: As an
24 auditor, are you familiar with the concept of confidence?

25 A. If you're talking about, like, the level of

1 confidence you have regarding audit risk?

2 Q. Yes.

3 A. Yes.

4 Q. Now, on this document, can you tell the
5 Commission what your level of confidence is that the items
6 that you have covered up until May 31st, 2009, do you have
7 an opinion as to the confidence of your report?

8 A. Yes.

9 Q. And what is it?

10 A. I think that for the items through that
11 date, based on Iatan 1 information and that -- that
12 limitation, I think the report covers the issues and stuff
13 that existed as of that day.

14 Q. Now, I have spent enough time with you that
15 I hear the word, with that limitation. What's the
16 limitation?

17 A. I haven't finished Iatan 2. You've heard
18 me say many times is, this is an integrated project,
19 contracts are, in essence, shared between the deals. And
20 I have not looked at Iatan 2 and, as you've heard me
21 testify today, I am confident that there are Iatan 2 costs
22 that need to be considered as Iatan 1 costs.

23 Q. But you also can take those costs and
24 ascertain them later and they can go into the next rate
25 case, can't they?

1 A. Well, they would be added to the results
2 that are here. In fact, I would not -- I would not use
3 May 31st. In fact, we had questions about what would the
4 Staff's next audit report look like? And as I said, I
5 would, given -- given the latitude, I would combine
6 Iatan 1, Iatan 2 and common into separate sections of the
7 same report.

8 Q. Okay. Well, of course, that's not what you
9 told the Commission on May 31st. Is that a new idea?

10 A. Well --

11 Q. I mean, on December 31st.

12 A. On December 31st I'm responding to their
13 April 15th, '09 order specifying what I'm to do.

14 Q. But also on December 31st, you're saying,
15 this is what I'm doing next. I'm just taking the post
16 May 31st, 2009 expenditures?

17 A. Yes.

18 Q. So I'm going to do that, and then I'm also
19 going to do -- and it's not in the Iatan inclusion of the
20 Iatan 2 in the rate base, it's in the next rate case,
21 you're going to do that separately?

22 A. As I said, I'm going to do all of that
23 within one report, so that, you know, as you heard our
24 prior discussion, I can, in essence, show you the plus and
25 minuses of where the dollars are, and you can identify

1 allowances and you can identify transfers in the format I
2 anticipate. But on the other hand, this May 31st date
3 that's in this report, we will -- in fact, we're in the
4 process of now of truing the entire Iatan project up to
5 March 31st of 2010. And I don't know that will be the
6 final update because I don't know what the procedural
7 schedule's going to end up for 2010, but I know that the
8 date for the next Staff report on this, assuming it's not
9 stopped, will be at least March 31st, 2010.

10 Q. So again, my client, KCPL, has no certainty
11 for when this is going to be over, even though you have a
12 high level of confidence that what you've done in here is
13 fine?

14 A. KCPL has not talked to me about this topic,
15 so I don't know, I don't -- KCPL still has outstanding
16 issues, if they want to discuss something, I have always
17 been open to discussing, if they want to have this
18 discussion, as I would say is, I believe a lot of this
19 came from not having this discussion, I am more than
20 willing to have this discussion and talk to them about it.

21 Q. With -- one of the last area. The
22 expenditures, the indirect costs, and that would be
23 employee expenses, travel, employee issues?

24 A. It has -- I mean, I don't want to -- I
25 don't want to intimate that there aren't employee costs

1 buried in construction, because there are. But if we're
2 talking about the area where you're talking about KCP&L
3 employees at corporate charging their cost, that is
4 indirects.

5 Q. And they are in indirect, and your
6 report -- and since I've got the highly classified one
7 here, the highly confidential one, you know that that is a
8 fraction of the total indirect, correct, labor and?

9 A. I think we discussed -- I don't know. We
10 discussed like -- is the number secret?

11 Q. Well, I'm going to ask you this. This
12 number won't be secret. I asked you to go back and tell
13 us, because I told you I was going to ask this: Of all
14 the employees, not vendor, not anyone else, the employee
15 travel reimbursement, meals, what is the total?

16 A. And I said it was a fraction of a number,
17 and I -- is the number secret?

18 Q. Right, but I asked you to actually go back
19 and tell me what that number was. Let's say I'm going to
20 make up a number. Let's say it's 7 million dollars. It's
21 a fraction of 7 million. I want to know what is a
22 fraction of 7 million?

23 A. You mean, like, you want to know, like,
24 5 percent, 10 percent?

25 Q. No. I'm wondering if you tell is that it's

1 a fraction, that you might have quantified what the
2 fraction was.

3 A. I have not. I apologize if you had asked
4 me to do that, I know I didn't respond to. But if you
5 thought that was a request that you were making of me and
6 you thought I had indicated I was going to do that, I
7 apologize. I have done nothing to try to put in another
8 data request To the company to get -- on their chart to
9 get the information for you to answer that question. And
10 I apologize if you thought -- I just took that as a
11 statement that you were trying to give me a warning that
12 you were going to ask about it today.

13 Q. I did. It was a warning. I did ask you,
14 and I expected that it was a question that the Commission
15 might want to know since so much of this audit is based on
16 employee reimbursements. I thought, don't you think it's
17 important when the Commission is looking at an audit and
18 in the time that is spent on audit, you know, the
19 auditor's time, that they might want to know how much time
20 Mr. Hyneman, for instance, spent or how many dollars?

21 A. Well, again, I think you're looking at that
22 work much differently than it was viewed by the Staff,
23 especially the three of us that were doing the audit. It
24 is not a dollar amount that drove that work. It is the
25 activities of the people at that level at KCP&L that drove

1 that work.

2 Q. Right. So you went into to the audit with
3 an audit scope that said people at KCP&L accept gratuities
4 and that became a red flag before this construction audit
5 and prudence review ever began, correct?

6 A. Well, not for this audit. The driver that
7 got into this audit was the infamous \$400 lunch, and the
8 finding out -- well, somebody said dinner. It's reported
9 as a lunch in the books and records that were given to us.
10 I don't -- I don't disagree that the -- there is a
11 discrepancy between what the records show and what the
12 truth is. That -- that because of the people involved and
13 the -- and there's two things. One is the people
14 involved, and the difficulty it took to get that
15 information is a red flag auditor, and I think -- I think
16 it's in one of our filings. I had at the time this audit
17 started believed that additional audit work would show
18 that to be an anomaly, and I was wrong.

19 And -- but on the other hand, after we
20 acquired that information, I felt that it was important --
21 and I don't believe it's an adjustment. I think it was
22 put in so that we could protect ourselves that to the
23 extent there are inappropriate activities going on at
24 KCP&L, they're made aware of it. So that's the purpose
25 for what you're calling those expenditures.

1 Q. You said something I want to make sure the
2 record is clear. You said you went in with an idea and
3 then you found out that it was wrong, right?

4 A. I went in with an assumption that I
5 believed that the audit work would show that what I had
6 encountered would be an anomaly.

7 Q. But if the assumption is that KCP&L people
8 are taking gifts from vendors, you have absolutely no
9 evidence that KCP&L employees are taking gifts from
10 vendors?

11 A. That's not true.

12 Q. You're talking about attending a meal?

13 A. No. That's not -- that's not what I'm
14 talking about.

15 Q. What page of the report are you talking
16 about?

17 A. That's not included in the report.

18 Q. Because it doesn't have anything to do with
19 Iatan 1?

20 A. Well, because it's at a more -- it's at a
21 higher level. It's probably more of an Iatan 2 issue than
22 it is a Iatan 1 issue.

23 Q. And your -- your position is going to be
24 that if somebody takes a meal with a vendor, that that's
25 going to compromise their?

1 A. The items I'm talking about aren't meals.
2 The items I'm talking about would be gifts or subsidized
3 trips and things like that. So I'm not talking about
4 somebody having a --

5 Q. So a trip. Is it your testimony that
6 somebody took a trip and then made a decision to award a
7 contract or to procure materials or to hire labor because
8 they took that trip?

9 A. I'm saying that people involved in those
10 decisions took gifts of more than nominal value from those
11 vendors.

12 Q. All right. And I'm saying, the decisions
13 that were made for all of the construction costs and all
14 of the invoices were reviewed by the CEP committee,
15 correct?

16 A. Could you repeat that?

17 Q. Yes. There was a committee that was
18 overlooking the reviewing all of the decisions and
19 invoices, correct?

20 A. There's a -- if you're talking about the --
21 the -- I call it the EOC, the executive oversight
22 committee, if you're saying did they review all the
23 invoices, the answer is no.

24 Q. Did they review all of the decisions to
25 make the procure fast track, fixed price?

1 A. I know -- I know decisions were made or
2 were given to them or decisions were, in essence, delayed
3 so they could -- they could approve it. Now, whether they
4 did all the decisions, I don't know.

5 Q. Has it occurred you to, sir, that because
6 of whatever information you have in your head from however
7 it came, that you are no longer an objective auditor when
8 it comes to KCPL?

9 A. No.

10 MS. VAN GELDER: I have no further
11 questions.

12 JUDGE STEARLEY: Thank you.

13 Commissioner Jarrett.

14 COMMISSIONER JARRETT: I don't have any
15 questions, thank you.

16 JUDGE STEARLEY: I have a few questions,
17 and then we'll come back. I guess we can do some recross
18 based on my questions and then, Mr. Dottheim, you'll have
19 an opportunity to question the witness as well.

20 QUESTIONS BY JUDGE STEARLEY:

21 Q. Mr. Schallenberg, the KCP&L GMO rate cases
22 were filed September 5, 2008. When they were filed and
23 the tariffs that were filed had an 11-month effective
24 date. Do you recall that?

25 It's yes or no, please.

1 If you don't recall, just tell me you don't
2 recall.

3 A. I don't recall.

4 Q. When rate cases are normally filed at the
5 Commission, don't they usually have a 30 day effective
6 date on the tariff?

7 A. That's a general course. I know there are
8 cases that have come in that don't follow that, so that's
9 why --

10 Q. Generally speaking?

11 A. Generally speaking, that's true.

12 Q. And if I told that you 11-month tariff
13 effective date was contemplated in the regulatory plan,
14 would you recall that?

15 A. Is your question was the regulatory plan,
16 did it address the nature of the length of time the
17 initial tariffs would be filed?

18 Q. Yes. Do you recall that, yes or no?

19 A. No, I -- no, I do not.

20 Q. So then you wouldn't recall whether or not
21 that 11-month operation of law date that was built into
22 the regulatory plan to allow additional flexibility for
23 the Iatan 1 upgrades to go online either, would you?

24 If you don't recall that being built.

25 A. No, I don't --

1 Q. I'm assuming you wouldn't recall the reason
2 it was built into the plan?

3 A. I -- as I recall the regulatory plan, it's
4 predicated on an 11-month operation of the law date, so if
5 that answers your question, I do have that understanding.

6 Q. So at any point during those rate cases,
7 Staff could have asked the Commission to suspend those
8 tariffs and could have been carried out an additional
9 11 months by state statute?

10 A. That seems to be a legal -- I've heard that
11 topic and been involved in it, but I don't know --

12 Q. You're not a legal expert, which I know
13 you're not. You don't have to answer that question.

14 So cases were filed on September 5th. When
15 did Staff decide it was not going to file a construction
16 audit or a prudence review?

17 A. Staff would have known that or come to that
18 conclusion shortly before its -- I think it's before its
19 direct filing in this case.

20 Q. Mr. Featherstone's direct testimony
21 indicating there would be no audit was filed on
22 February 11th, 2009. Does that sounds familiar?

23 A. Yes, so the understanding of that fact
24 would have been within two or three weeks of that date,
25 before that date.

1 Q. All right. And the original true-up date,
2 as I recall, was March 31st, which was then extended to
3 April 30th. Does that sound familiar?

4 A. Yes. I believe there was an option that
5 they got to choose, and then they made that choice and
6 then things changed, but that's my understanding.

7 Q. And we've heard testimony that the Iatan 1
8 upgrades were operational or the in-service date was
9 somewhere approximately April 22nd?

10 A. It was April 19th.

11 Q. April 19th?

12 A. That's the date it met the in-service
13 date -- excuse me. Met the certificate in service
14 criteria.

15 Q. What was Staff's plan, then, if the case
16 had not settled with regard to the audits?

17 A. If the case had not settled and we would
18 not have gotten the April 15th order, the Staff's plan
19 would have been to address Iatan 1 AQCS in the Iatan 2
20 case.

21 Q. So your plan would not have been to have
22 the tariffs suspended and just gain an additional
23 11 months time at that point?

24 A. No. I know when we first filed, we were
25 looking at options, and I think there was a proposal or

1 the examination of an option of a interim subject to
2 refund of some piece over the definitive -- or excuse
3 me -- the control budget, but as I remember, the Staff was
4 not holding onto that position as the case was proceeding.

5 Q. Hypothetically, if the tariff had been
6 extended that 11 months, which would bring us around to
7 around July 5th, 2010, would Staff have been able to
8 complete a construction audit and a prudence audit on the
9 Iatan 1 and all of the additions necessary for it to be
10 operational?

11 A. I'm sorry. What date are you -- did you
12 have in your question?

13 Q. If you had the date of July 5th, 2010. And
14 this is a yes or no question.

15 A. Given -- yes.

16 Q. All right. So you would have been able to
17 complete it in 22 months time without question?

18 A. Yes. I mean, yes. I say that because I
19 want to be clear. I believe audits can be designed to
20 meet almost any objective, so if that was the date, it
21 could have been done to meet that date.

22 Q. All right. If audits can be designed to
23 meet any objective, why did you say you were limited to
24 the May 31st cutoff date because the audit risk would have
25 been too great to go any further?

1 A. If I said that, the May 31st date was
2 picked because I had the true-up date of June 8th. That's
3 in the April 15th order.

4 Q. If an audit can be crafted under any
5 circumstance, and you just put a disclaimer identifying
6 the audit risk, then Staff could have prepared an audit
7 going through at least November of 2009, could it not?

8 A. It could -- it could have been designed to
9 make that modification, yes.

10 Q. All right. And Staff's pleadings in
11 response to KCPL's pleadings and their response to the
12 audit report, Staff complained that there was a 45-day lag
13 time in getting information from KCPL. Do you recall
14 that?

15 A. Yes.

16 Q. Why would that be relevant if you cut off
17 your audit at May 31st?

18 A. It isn't relevant. I mean, to the extent
19 that that's not a factor in completing the Staff -- the
20 way that Staff completed its audit.

21 Q. So is that just a frivolous argument placed
22 in that response?

23 A. I'd have to look at the context. I don't
24 know that. I mean, it wouldn't be meant to be.

25 Q. If the Commission had drafted the

1 April 15th and the June 10th orders where it listed the
2 prudence audit and the construction audit in separate
3 ordered paragraphs, how would your response be different
4 to what you filed?

5 A. I would have had to define what prudence
6 review -- I'm sorry -- is that the term you used?

7 A. Prudence audit.

8 Q. Prudence audit, prudence review.

9 A. I would have had to design a prudence audit
10 scope, what would be done to do that piece, and then I
11 would have had to design the distinction for how the
12 construction audit piece would be done.

13 Q. Okay. You've referred, I believe, a couple
14 of times in your testimony as your view that the
15 Commission was somehow ordering a combined audit so that
16 they couldn't be split off. You had to have all the
17 construction invoices in order to offer an opinion
18 prudence. Is that a fair characterization of what you've
19 said?

20 A. No. I said that because the Commission in
21 its April 15th had included the feature of the requirement
22 for KCP&L to provide all invoices related to Iatan 1 and
23 common -- related common plant through June 8th, I felt
24 that an invoice review was a part of that construction
25 audit and prudence review.

1 Q. Didn't the Order say pertinent invoices?

2 A. I don't -- I'll check. I don't remember it
3 saying pertinent. I'm looking at the 90 one. Item 4 says
4 company provides all true-up in invoices. It does say all
5 pertinent invoices on page 6 on in the 89 order. I see
6 that.

7 Q. Should the Commission be allowed to assume
8 that when it issues order like that that Staff will
9 understand what it's speaking about, or should the
10 Commission get an auditor on the ninth floor to help draft
11 the orders so Staff can understand them, that we're
12 speaking the same language?

13 A. I don't know.

14 Q. Staff did not request an extension of time
15 for filing its December 31st report, did it?

16 A. No.

17 Q. Why not?

18 A. Staff didn't perceive the need to do so.

19 Q. Staff didn't ask for any clarification of
20 the Commission's April 15th or June 10th order, correct?

21 A. Yes.

22 Q. Why not?

23 A. Staff didn't see the need to do so.

24 Q. Where does the Staff derive its authority
25 to take any action, Mr. Schallenberg?

1 A. From the Commission.

2 JUDGE STEARLEY: All right. We're going to
3 do a round of recross based on questions from the Bench,
4 and then we'll come back to you, Mr. Dottheim. At this
5 point we've been going for almost two hours again. We
6 will take a very short break and come back.

7 (A BREAK WAS TAKEN.)

8 JUDGE STEARLEY: All right. We are back on
9 the record, and we're going to do a round of recross based
10 on questions from the Bench. And then, Mr. Dottheim,
11 you'll have an opportunity to question this witness.

12 MS. VAN GELDER: I have no questions. I'm
13 just cleaning up.

14 JUDGE STEARLEY: No questions.

15 MR. KCPL: No. I'm sorry.

16 JUDGE STEARLEY: None from KCPL for
17 recross, any questions?

18 Very well. Mr. Dottheim, you may proceed.

19 MR. DOTTHEIM: Yes. Thank you.

20 REDIRECT EXAMINATION BY MR. DOTTHEIM:

21 Q. Mr. Schallenberg, I'd like to refer you to
22 the Staff report filed on December 31, 2009, filed in Case
23 No. ER-2009-0089, and refer you to page 6.

24 A. Yes.

25 Q. Are you there?

1 A. Yes.

2 Q. I think earlier today you were possibly, I
3 think, identifying adjustments that were transfers to
4 Iatan 2, and you were indicating that you thought there
5 might be one other that you were just not remembering at
6 the time. Might that be Adjustment 8?

7 A. Yes, it is.

8 Q. Okay. And that Adjustment 8 is addressed
9 in part on page 29, is it not? I mean, it's also on
10 page 28, but it's on -- I guess really should refer to it.
11 And also on 27. I'm looking in particular on 29, on
12 line 14 to 15, where there's direct reference, I think, to
13 transfer to Iatan 2.

14 A. Yes. The entire adjustment is referenced
15 starting on page 27 through page 29.

16 Q. Okay. Earlier this afternoon -- or I guess
17 maybe it's already evening, there was a question or
18 questions from Chairman Clayton about I think attorney
19 bills, and I'd like to be ask you in particular about the
20 Schiff harden voices. Would you please explain the
21 Staff's rationale for seeking access to the Schiff harden
22 invoices?

23 A. The shift expenses are a -- are contained
24 in the Iatan 1 construction costs, as well as in the
25 Iatan 2 indirect that are transferred -- or a portion that

1 are transferred to the common plant related to Iatan 1.

2 Q. And what is the nature of -- at least from
3 the Staff's perspective or knowledge regarding Schiff
4 harden or Schiff harden 's work for Kansas City Power &
5 Light?

6 A. It appears, as of our knowledge as of
7 today, that it is performing legal services and some other
8 project support activities, but I think that's the
9 distinction that's still somewhat unclear today as to what
10 nonlegal services Schiff harden is actually providing.

11 Q. Earlier today you were asked about the
12 Vantage report that was filed in Kansas. In fact, I think
13 you were actually directed to a page from the Vantage
14 report that was filed in Kansas. Were you in the hearing
15 room yesterday when Dr. Nielsen testified?

16 A. Yes.

17 Q. Do you recall Dr. Nielsen testifying that
18 Vantage changed its recommended amount of disallowance in
19 its filed testimony in Kansas?

20 A. Yes.

21 Q. Mr. Schallenberg, there have been various
22 questions to you regarding Mr. Elliott of the Staff's --
23 the Commission's operations division earlier today; is
24 that correct?

25 A. Yes.

1 Q. Okay. Do you know whether Mr. Elliott is a
2 licensed professional engineer?

3 A. Yes.

4 Q. Is he a licensed professional engineer?

5 A. No.

6 Q. Do you know what his status is?

7 A. I know his title.

8 Q. What is his title?

9 A. He's an Engineering Specialist 3, and
10 that's not his title. That's his classification.

11 Q. Classification. Judge Stearley had a
12 number of questions for you a just a short while ago, one
13 regarding the Staff's position relative to the Commission.
14 By the Commission's rules, is the Staff a party in
15 Commission cases?

16 A. Yes, unless we notify the Commission
17 otherwise.

18 Q. Are you aware of the Staff counsel's office
19 recently hiring a chief litigator for the Staff counsel's
20 office?

21 A. Yes.

22 Q. Do you draw any inference by the Staff
23 counsel's office filling a position titled chief
24 litigator?

25 A. No.

1 Q. If I understood correctly, Judge Stearley
2 asked you a question. I'm not sure I heard it entirely.
3 I was distracted slightly. But I think he made reference
4 to the tariff sheets in KCPL's last case, ER-2009-0089. I
5 think he referenced that they were filed with their
6 effective date 11 months beyond the -- or at least their
7 issuance date were 11 months beyond their -- the date they
8 were filed, such that they could possibly be suspended
9 with an effective date that ultimately would be 22 months;
10 is that correct?

11 A. I think he asked me a question whether I
12 knew that could be done, and I think indicated I did not
13 know.

14 Q. Pardon?

15 A. I think I indicated I did not know.

16 Q. Okay. Could I have a moment, please?

17 JUDGE STEARLEY: Certainly.

18 BY MR. DOTTHEIM:

19 Q. Mr. Schallenberg, you're familiar with the
20 various statements and auditing standards, are you not?

21 A. Yes.

22 Q. Okay. Are you familiar with there being
23 any reference in any of the statements on auditing
24 standards regarding the importance of exercising
25 professional skepticism?

1 A. Yes, I am.

2 MR. DOTTHEIM: Thank you. I have no
3 further questions.

4 JUDGE STEARLEY: Thank you, Mr. Dottheim.
5 I believe that concludes your testimony, Mr. Schallenberg.

6 MS. VAN GELDER: Can I ask four questions?
7 It will be four, based on what Mr. Dottheim asked.

8 JUDGE STEARLEY: I will allow that only if
9 I allow Mr. Dottheim another round to follow it as well.

10 MS. VAN GELDER: I only have four.

11 JUDGE STEARLEY: Oh, if you restrict it to
12 four questions, I'll allow it.

13 RECROSS-EXAMINATION BY MS. VAN GELDER:

14 Q. Mr. Dottheim asked you what Schiff harden
15 was doing?

16 A. Yes.

17 Q. Okay. And you have their contract on
18 page 39 of the report, correct?

19 A. Yes.

20 Q. Mr. Dottheim asked you if you heard
21 Mr. Nielsen say that Kansas adjusted the amount of the
22 disallowances?

23 A. As I understood, what Mr. Dottheim asked me
24 is if Vantage had adjusted its position from an initial
25 position.

1 Q. And you said?

2 A. It did.

3 Q. And --

4 A. Excuse me. That he said it did.

5 Q. And I'm asking you, is what he said was
6 that they adjusted the amount but they did not change the
7 reason for the disallowance, so as additional invoices
8 came in, the amount would be adjusted, but the underlying
9 prudence reason was not changed?

10 A. I don't recall that.

11 MS. VAN GELDER: That was probably a
12 compound question.

13 BY MS. VAN GELDER:

14 Q. When was the first time you read the yellow
15 book?

16 MR. DOTTHEIM: Well, excuse me. I think
17 that that question's beyond the scope of what I asked,
18 unless you're --

19 MS. VAN GELDER: Auditing standards. I'll
20 rephrase the question.

21 BY MS. VAN GELDER:

22 Q. Books that you've read, do they also talk
23 about objectivity?

24 A. I'm -- are you talking about in terms of
25 auditing standards?

1 Q. Yes.

2 A. Yes.

3 MS. VAN GELDER: That was four.

4 JUDGE STEARLEY: All right. Mr. Dottheim,
5 last call.

6 MR. DOTTHEIM: No questions.

7 JUDGE STEARLEY: Very good. Thank you,
8 Mr. Schallenberg. You've been on the witness stand a long
9 time today and I appreciate your time.

10 I believe we're doing Mr. Hyneman next; is
11 that correct?

12 MS. VAN GELDER: Yes. Take your time,
13 Mr. Hyneman.

14 JUDGE STEARLEY: Mr. Dottheim, if I
15 understand, you did not want to pursue any direct
16 initially.

17 MR. DOTTHEIM: Correct.

18 JUDGE STEARLEY: Commissioner Jarrett, did
19 you have any additional?

20 COMMISSIONER JARRETT: I think I will pass
21 until after the cross.

22 JUDGE STEARLEY: All right. We'll go
23 directly to cross-examination, Ms. Van Gelder.

24 We'll get Mr. Hyneman here.

25 (Witness sworn.)

1 JUDGE STEARLEY: Thank you. You may be
2 seated. And you may proceed, Ms. Van Gelder.

3 MS. VAN GELDER: Thank you, your Honor.

4 CHARLES HYNEMAN testified as follows:

5 CROSS-EXAMINATION BY MS. VAN GELDER:

6 Q. Good evening, Mr. Hyneman.

7 A. Good evening.

8 Q. When did you start on the construction
9 audit and prudence review?

10 A. When did I start?

11 Q. Yes.

12 A. I believe it was sometime April of last
13 year.

14 Q. And you volunteered for it, correct?

15 A. Yes, I did.

16 Q. And you volunteered for it because, in your
17 words, construction audits usually go into litigation?

18 A. No, I don't believe I said that.

19 Q. You don't think you said that?

20 A. No.

21 Q. We'll get to that and we'll keep going
22 because we don't want to keep anyone waiting.

23 You had conversations with Mr. Elliott?

24 A. In the past?

25 Q. To do this audit, did you have

1 conversations with Mr. Elliott?

2 A. Yes.

3 Q. And did you have conversations with
4 Mr. Lange?

5 A. I don't recall any.

6 Q. Don't recall that?

7 A. I don't recall having any specific
8 conversations with Mr. Lange about the audit. I spoke
9 with Mr. Elliott primarily to retrieve the change orders
10 that was in his possession.

11 Q. Do you know Mr. Lange?

12 A. Yes, I do.

13 Q. Is he a licensed professional engineer?

14 A. I don't really know.

15 Q. Mr. Taylor, Mike Taylor?

16 A. I don't know him.

17 Q. You --

18 A. I'm sorry. I know of him and I know he's
19 an employee with the Public Service Commission. I don't
20 know him personally. I may have had conversations with
21 him.

22 Q. So, see what you said. A construction
23 audit of this size has the potential, you know, to end up
24 in litigation and, you know, be challenging, and it's not
25 something that everybody gravitates to. And I don't want

1 to sound sanctimonious, but I saw a need that needed to be
2 filled and I knew I could do it, so I volunteered.

3 A. Correct.

4 Q. So did you, when you started this
5 assignment, think that this could go into -- end up in
6 litigation?

7 A. Yes.

8 Q. Okay.

9 A. But I think you asked me if that's the
10 reason I volunteered, and that is not the reason I
11 volunteered.

12 Q. And as we did in the deposition, correct me
13 if I say something, then go on with that.

14 But you knew -- and it was you and it was
15 Mr. Majors and it was Mr. Schallenberg, correct?

16 A. At that time, it was just Mr. Schallenberg
17 and I.

18 Q. Now, did you think that this could be done
19 in -- from April 15th to June 30th? Did you think the
20 audit could be completed?

21 A. I may have been one of those at the time
22 that believed it was impossible.

23 Q. And then did Mr. Schallenberg explain to
24 you --

25 A. Yes.

1 Q. -- how he was scoping it?

2 A. Well, he explained to me that if that's
3 what we're ordered to do, then we'll have a report done at
4 that time.

5 Q. And did you agree with Mr. Schallenberg's
6 reading of the Commission's Order on April 15th?

7 A. If you can summarize what his understanding
8 was, I can tell you if I agreed with that.

9 Q. That it had the restriction that he was to
10 do invoices, a true-up of invoices?

11 A. When I read the Order, I noticed that those
12 were the parameters of the Order. I don't know if I
13 thought they were restrictions, but I know that's what we
14 were supposed to do.

15 Q. When you read the Orders, did you believe
16 that you were supposed to the audit completed without
17 restriction?

18 A. Again, if you'd tell me the dates of the
19 Order, because I-- going back in that time.

20 Q. You have the Order in front of you.
21 April -- first one is April 15th.

22 A. And when is that in relation to the
23 Stipulation & Agreement?

24 Q. Before.

25 A. Okay. So if it was before the stipulation

1 and I read the Order and I -- the only thing I knew at
2 that time was that we had to get an audit report done by
3 December 31st.

4 Q. This Order -- this one said it had to be
5 done by June 30th.

6 A. So you're talking about the preliminary?

7 Q. Did you read this Order?

8 A. Yes.

9 Q. April 15th?

10 A. I may be getting the Orders confused.
11 Could you refer me to a page?

12 Q. I will. Court's indulgence. I am looking
13 at 90, GMO, but you can read it here. What was it to you,
14 the Staff of the Missouri Public Service Commission shall
15 complete and file construction audits and prudence reviews
16 no later than June 19.

17 A. Again, I knew we had to file reports by
18 that date. I had no thought of whether that was a
19 complete audit or not.

20 Q. Now, you asked about the stipulation.

21 A. Yes.

22 Q. You were sitting in this commission room
23 when the Commission was having a hearing on that
24 stipulation and order, correct?

25 A. Yes, I was.

1 Q. And it was at that time they were also
2 discussing the order to complete the construction audit?

3 A. I remember them discussing the terms of the
4 stipulation.

5 Q. And you don't recall discussion of an
6 extension for the -- for the audit?

7 A. The hearing I remember, I remember was --
8 was Mr. Schallenberg was testifying, and the discussion
9 was about having an audit complete, I think, by
10 December 31st.

11 Q. Right. And is it perhaps your recollection
12 is a little fuzzy now because you were so -- what's the
13 word I'm going to use? I'll let you say the word.

14 A. Aghast.

15 Q. Aghast?

16 A. Yes.

17 Q. And you were aghast sitting back here on
18 June 10th because you said KCP&L is going to violate the
19 stipulation?

20 A. Well, I think I remember saying KCPL is
21 going to violate their obligation to defend the
22 stipulation.

23 Q. So on June 10th, when you're just in it a
24 month, you already think that KCPL is going to violate
25 their obligations?

1 A. I was in the rate case from the beginning.
2 In fact, I was a member of KCPL's past three rate cases,
3 and I sat through all the negotiations of the rate case.
4 I was involved in the discussions. And I knew that that
5 continuation of the audits to the next rate case was an
6 integral part of that stipulation.

7 To me it was very important because at that
8 time I knew I was involved in it. So it had a very
9 important impact on me. So when I heard the Commission
10 discussing about changing that in the middle of the
11 stipulation hearing, I expected KCPL to say, Commission,
12 we have an agreement with the Staff. We're not going to
13 require the audit to be done until the next rate case.
14 They failed to do that, and I was -- I used the word
15 aghast. I was very surprised, very disappointed at that
16 time.

17 Q. I'm going to show you the preliminary
18 report. You're aware of this?

19 A. Yes.

20 Q. Okay. Let's go to No. 6, audit status. As
21 ordered by the Commission, the Staff's current deadline
22 for filing its construction audit and prudence review,
23 December 31st. Do you see that?

24 A. Yes.

25 Q. Now, does this -- in concession to the

1 lateness of the evening, I'll be more leading. In our
2 deposition, you made a big point of saying, that's just
3 the current deadline?

4 A. I don't know if that's what I said, but I
5 did point out that I didn't write this statement, but --
6 so I don't know what was in the mind of, I believe it was
7 Mr. Schallenberg who wrote it. But the words indicate the
8 current deadline, which means that's the current deadline.
9 It can change.

10 Q. In fact, this is what I said. Looked at
11 it. Says current deadline?

12 A. Right.

13 Q. And you told me, it doesn't say final
14 deadline?

15 A. Correct.

16 Q. Do you intend to go back and say I want
17 another deadline until the next ratemaking, I asked you,
18 and you said, I didn't write the statement, but on its
19 face it indicates that this is not the fine deadline.
20 It's the current one. Your words, correct?

21 A. Yes.

22 Q. Now, do you think when the Commission
23 issued its June 10th Order, that it thought it wasn't a
24 final deadline?

25 A. It was the final deadline for the audit

1 that it ordered the Staff to produce. I believe that,
2 yes.

3 Q. You are the person that went -- how many
4 times have you been to Iatan?

5 A. I believe three.

6 Q. And, now, I think Mr. Schallenberg might
7 have been wrong, but I'll ask you. You were out for
8 another meeting when you did the mileage? You just didn't
9 go out for the mileage, did you?

10 A. No. To measure the mileage from the, I
11 think it's parking lot 5 to the location where the Kiewit
12 workers were dropped off, that was very critical in
13 determining what the cost of that -- the increased cost
14 for that project were.

15 Q. Okay.

16 A. One of the purposes for that trip was just
17 to make sure it was the stated distance. I believe it was
18 a mile and a half.

19 Q. So let's go with this. In a prudence
20 review and a construction audit, there was an agreement
21 with the vendor, because they were union folks that were
22 working there, that if the union people had -- all the
23 employees, had to go more than a half a mile, that they
24 would be transported, correct?

25 A. That's part of the national maintenance

1 agreement. That's not part of my agreement between KCPL
2 and Kiewit.

3 Q. Okay. But there's an agreement?

4 A. There's a national maintenance agreement,
5 yes.

6 Q. And KCPL honored that agreement?

7 A. It complied with it, yes.

8 Q. And the agreement would be, if it was more
9 than a half a mile?

10 A. That could be true, yes.

11 Q. Well, if it's critical, you've got to know,
12 right? You said that was critical.

13 A. It is. I just don't remember if it was a
14 half a mile or mile. That fact's not relevant today.

15 Q. It isn't relevant today?

16 A. Not today.

17 Q. So what's relevant is if there is an
18 agreement and there is a cost, why do you believe you need
19 to go out and measure the mileage?

20 A. It's a rational auditing step.

21 Q. That's a rational auditing step?

22 A. Absolutely.

23 Q. It's a rational auditing step when you
24 already have made a risk determination that they may not
25 be telling the truth?

1 A. I didn't make that risk determination.

2 Q. Who did?

3 A. I don't know. I had no reason to doubt
4 that they were telling the truth.

5 Q. You had no reason? You were told by
6 Mr. Giles that it was more than a half mile.

7 A. I don't -- everything the company tells me
8 in a data request I don't accept verbatim. I mean,
9 auditors do check the validity of claims. That's an
10 integral part of the auditing process. I had no reason to
11 doubt that the distance was anything but what KCPL said it
12 was. I don't recall Mr. Giles telling me that distance.
13 But I didn't have the document, the national maintenance
14 agreement. That's what it said.

15 I wanted to -- part of the reason I went
16 out there was to look at all the parking lots to find out
17 how much parking was available, look at the buses, see the
18 status of the buses that KCPL bought so Kiewit could
19 transport or hire a vendor to transport them and see what
20 the distance is. We just took a little tour out there.

21 Q. And you think it's your job as an auditor
22 to also question whether KCPL could have mitigated the
23 cost of those buses?

24 A. Oh, absolutely.

25 Q. And so whether -- you know, why didn't they

1 rent them?

2 A. Well, no. My job as an auditor is to find
3 out what actions KCPL took to mitigate, to lessen the cost
4 of that requirement to have additional parking, also to
5 find out what is the reason why the need for additional
6 parking. Why wasn't it planned? Why wasn't the parking
7 built in? What element caused that? Was that prudent
8 decision on KCPL's part for it to have to incur that
9 \$3 million cost?

10 Q. And, in fact, you asked KCPL, why can't you
11 switch the KCPL parking with the -- with the Kiewit so
12 that you don't have to spend the money?

13 A. No, I never asked them that.

14 Q. You didn't?

15 A. No.

16 Q. Are you sure you didn't?

17 A. Yes.

18 Q. And what about this: What if you disagree
19 with their decision?

20 A. What decision?

21 Q. The decision to buy the bus.

22 A. Well, the decision to buy -- they had to
23 transport the workers.

24 Q. That's not what I'm asking. I'm now
25 saying, you say you have to look at all the reason,

1 whether -- we'll move on. Let's go to Schiff Hardin
2 because that's another decision-making.

3 A. Okay.

4 Q. Your problem with Schiff Hardin is the
5 rates, correct?

6 A. No. My problems with Schiff Hardin are a
7 lot more than rates.

8 Q. What are they?

9 A. Well, you can start by the fact that KCPL
10 redacted Schiff Hardin's budget. We had no idea to tell
11 what the budget for Schiff Hardin was. KCPL redacted
12 every single bit of information on the Schiff Hardin
13 invoices, even work that had nothing to do with attorney
14 work. That was a problem. The fact that KCPL is not
15 complying with several terms of the Schiff Hardin
16 contract, that was an element that bothered me.

17 Q. Let's go with that because the other ones
18 are statements about KCPL and not Schiff Hardin, correct?
19 KCPL redacted, KCPL -- but Schiff Hardin, you're saying
20 the terms of the contract?

21 A. Oh, yes.

22 Q. And the terms of the contract -- you've got
23 the terms?

24 A. Yes.

25 Q. I didn't know you were going to bear gifts

1 today. Do you have the contracts?

2 A. Yes.

3 Q. Now, the term of the contract that the
4 report says is that Schiff -- there are two of them --
5 Schiff Hardin raised its rates and there's nothing
6 memorializing KCPL negotiating those rates.

7 A. Well, I mean, there are a lot more than --
8 there's several. There's more than two.

9 Q. Answer that one. Is that one of the
10 issues?

11 A. Yes. I believe that's on page 3,
12 paragraph G.

13 Q. Of the contract?

14 A. Yes. It says, all fees and costs are
15 subject to annual adjustments, which must be supplied to
16 and approved by KCPL's general counsel at least 30 days
17 prior to the effective date of any such adjustments.

18 When I asked KCPL for any documentation at
19 all from 2005 or '06 through 2009 approving those annual
20 rate increases, they had none.

21 Q. All right. Now, where did it say in that
22 that it had to be in writing?

23 A. Well, when you deal with a contract --

24 Q. I'm not asking you -- I'm asking you a
25 direct question, sir. You read me a statement. I want to

1 know in that statement, where does it say it has to be in
2 writing?

3 A. It doesn't.

4 Q. What's your other problem with Schiff
5 Hardin?

6 A. In paragraph F on page 3, says, in
7 addition, on behalf of the firm -- you know, and I'm just
8 thinking this might be a highly confidential document.

9 Q. What you're reading isn't. I'll stop you.

10 A. Okay. In addition, on behalf of the firm,
11 attorney will as necessary and with prior approval from
12 KCPL's general counsel utilize other resources within the
13 firm and services from third-party consultants to support
14 the above personnel.

15 Q. Okay. They can hire consultants?

16 A. With prior approval from KCPL's general
17 counsel.

18 Q. Right.

19 A. When I asked for information about the
20 hiring of Mr. Jones, KCPL said it was -- it was just an
21 agreement done orally. There's no documents saying it
22 approved it.

23 Q. I'll ask you again, where does it say in
24 that section that the prior approval has to be in writing?

25 A. It doesn't.

1 Q. Now, let's talk about their rates. You
2 spend a lot of ink in this report on rates, and so I'm
3 going to direct your attention to the Laffey Matrix,
4 right?

5 A. Yes.

6 Q. Okay. Now, you got the Laffey Matrix off
7 the Internet, correct?

8 A. The District of Columbia website, I
9 believe.

10 Q. The U.S. Attorney's Office for the District
11 of Columbia Civil Division --

12 A. Yes.

13 Q. -- maintains the Laffey Matrix, and I told
14 you I worked there.

15 A. Uh-huh.

16 Q. So I asked you if you knew that the Laffey
17 Matrix is based on civil rights cases?

18 A. That may be the origin of it, but I know
19 it's used throughout the country as a basis for
20 attorney -- reasonableness of attorney fees. Now, whether
21 it's restricted to those, I don't know that to be true.

22 Q. Well, now we'll go here, the page before.
23 The matrix is intended to be used in cases in which a fee
24 shifting statute permits the prevailing party to recover
25 reasonable attorney fees. See that?

1 A. Uh-huh.

2 Q. I know you're not an attorney, you told me,
3 but you did take this off the website, and do you note
4 that it is intended to be for fee shifting statutes,
5 prevailing party to recover reasonable attorney fees?

6 A. I think, yes, the intention was for that.

7 Q. And do you know if a ratemaking exercise is
8 a fee shifting statute?

9 A. I don't think it is.

10 Q. And do you know that the Laffey Matrix has
11 not been used for complex litigation?

12 A. I don't know that to be true.

13 Q. And do you know whether it's been used in
14 business transactions?

15 A. I don't know that to be true.

16 Q. Let's look at the matrix again. Do you
17 realize that this matrix has one measurement for
18 advancement?

19 A. Yes.

20 Q. And that is what?

21 A. Years of service.

22 Q. I like that. But it's not years of
23 service, it's years after the admission of bar, right?

24 A. Well, assuming that you're an attorney for
25 that period of time, years of service is as an attorney.

1 Q. So if I am an attorney, as I was in 1976,
2 and I have taken the last 30 years to raise my family, I
3 immediately go up to the top rate, correct?

4 A. Were you practicing during those years?

5 Q. It doesn't say that. It says years passed
6 the bar. That's why I asked you.

7 A. I don't -- didn't know the specific
8 qualifications. I assumed that those were for attorneys
9 who have been practicing for that period, and I assume in
10 litigation. If somebody hasn't practiced for that period,
11 they wouldn't meet the qualification of the rate that's in
12 this graph.

13 Q. And you know that I'm from Washington,
14 D.C.?

15 A. Yes, ma'am, I do.

16 Q. And you know just looking at me that I'm
17 over 20 years of service, correct?

18 A. I can't say that for sure.

19 Q. Thank you for being so kind. That was the
20 nicest thing in all the days that we've spent together.
21 But do you seriously think that my rate is that?

22 A. No.

23 Q. And do you think that maybe when anybody
24 hires an attorney, they look for their knowledge, their
25 skills, their experience?

1 A. I would think they would.

2 Q. And do you think that they should be
3 compensated if they have advanced knowledge and particular
4 skills in a particular area?

5 A. I think an attorney should be compensated
6 based on their experience and skill.

7 Q. And how about within skill, it would also
8 be the knowledge that -- the knowledge of the area, right?

9 A. I would say that's reasonable.

10 Q. Expertise is what I was looking for. Now,
11 by the way, the rate increase was a rate increase of
12 12 percent over two years, correct?

13 A. That's for that one individual, I believe.
14 They're 20 percent for the other two categories on this
15 chart.

16 Q. And the other two categories were lower,
17 they weren't the lead partner?

18 A. Well, yeah. The lead partner was only one
19 or two individuals. So subsequently, the other two were
20 more critical.

21 Q. Do you realize that in Washington, D.C.
22 during this time period, that first year associate
23 salaries went from 125 to \$160,000 in an 18-month period?

24 A. I have no knowledge of that.

25 Q. But in your Internet research, you didn't

1 notice that?

2 A. No.

3 Q. Now, the other thing is, and I think I just
4 mentioned this in my question with Mr. Jones -- excuse me,
5 with Mr. Dottheim, this is why Schiff was hired, correct?

6 A. Could you tell me what the source of that
7 is?

8 Q. This is from the -- this is -- this is your
9 document, but it says Schiff's roles and responsibilities
10 under the comprehensive energy.

11 A. I think that's rules and responsibilities.
12 I think it's also in the report, if I can find it, why
13 Mr. Downey -- I believe it's his quote -- said why Schiff
14 was hired. I think -- I think that might be on page 43.

15 Q. All right. Let's go to 43.

16 A. Right.

17 Q. Okay. Mr. Downey says -- and let the
18 record note that I have never worked for Schiff, nor do I
19 ever intend to, so all of this is nothing to do with --
20 but it says, I want them because their industry
21 experience, they are going to provide legal assistance in
22 all disputes. They're going to assist the CE process, and
23 they're going to provide oversight, correct?

24 A. Those are included, yes.

25 Q. Now, it's your testimony and, in fact, it's

1 in your conclusion, that there's a lot of good midwest
2 firms that could have been hired instead of Schiff?

3 A. I don't know if I said good midwest firms.
4 I may have. I know there are midwest firms that provide
5 similar functions.

6 Q. So KCPL should hire a not so good firm so
7 they can save some money for the ratepayers?

8 A. No. What KCPL should do in contracts that
9 are going to exceed probably 20, \$25 million, have some
10 understanding of what the rates the other comparable firms
11 would charge.

12 Q. And you said you were in contract
13 administration?

14 A. Yes.

15 Q. Do you think that rates for something like
16 legal services on a potentially billion dollar project,
17 that the company should not have the right to choose who
18 they want?

19 A. Not at any price, no.

20 Q. And the price isn't reasonable because it
21 doesn't match the Laffey Matrix?

22 A. No. What they should have done is did some
23 kind of request for proposal to get bids, to evaluate the
24 bids. Now, I'm not saying they had to go with the lowest
25 bidder, but they had to go with at least a rate, when

1 you're talking about \$25 million, from a qualified vendor
2 that was reasonable.

3 Q. And we discussed this before. Is there any
4 law, statute, regulation in the state of Missouri that
5 says they have to have competitive bids for legal
6 services?

7 A. It's a company policy that they have to
8 have competitive bids for major contracts. I think
9 it's -- I think it's E100 or A200.

10 Q. Those are procurement contracts.

11 A. This is a contract.

12 Q. Contract is a contract is a contract?

13 A. Well, it's a contract for services. I
14 think that's included in their policy.

15 Q. And because you think -- are saying they
16 violated their policy?

17 A. I'm not saying they violated the policy.
18 I'm -- I don't -- I think they violated their policy, and
19 I can't say that for sure, but I think we've asked for
20 sole source justification letters for hiring Schiff, and I
21 don't believe they've provided them. I think eventually
22 we got them -- forced them into an explanation of why they
23 didn't get bid other than Schiff in a data request. But
24 as far as if they did not produce a sole source
25 justification letter at the time they hired Schiff, yes,

1 that is a violation of their policy.

2 Q. And it's a violation as you read the
3 policy?

4 A. As a clear reading of the policy.

5 Q. As you read the policy?

6 A. Yes.

7 Q. And if you think they violated policy, then
8 you're going to put it in your report?

9 A. Not necessarily.

10 Q. You did some other Internet research,
11 correct? You looked up the tee time for a Schiff Hardin
12 partner --

13 A. Yes.

14 Q. -- correct?

15 And so you went on to a country club
16 website and found that there was a tee time for this
17 partner and for -- was it for the partner and for an
18 officer of KCPL?

19 A. Yes.

20 Q. Okay. And you asked questions because of
21 that?

22 A. Correct.

23 Q. Okay. But you also asked me if it was a
24 coincidence that that country club no longer has tee times
25 on its website, right?

1 A. Right.

2 Q. And you said to me that you weren't
3 saying -- you used this, and I'll get you the statement,
4 an example of how KCPL tries to protect information,
5 correct?

6 A. Not exactly.

7 Q. Didn't you say, and once that something is
8 out in the open, they try to close it down? Do you want
9 me to --

10 A. I don't think I used those words. May I
11 explain?

12 Q. Sure.

13 A. When we started the deposition, one of the
14 first questions you asked me were detailed questions about
15 phone conversations I had with Mr. Schallenberg,
16 Mr. Majors, in preparation for the deposition.

17 Q. Yes.

18 A. So my state of mind at that point would be
19 that you wanted me to give you every information, all the
20 information I could possibly give you. You wanted me to
21 be full and complete.

22 Q. Yes.

23 A. And that's what my goal was. So when you
24 asked me about the information, I gave you that one
25 example, and you said tell me about that example.

1 Q. Right.

2 A. And I gave you -- there were several more I
3 could, but at that time I remembered that the -- what the
4 examples I gave you, and to be full and complete I said,
5 after we provided that information to KCPL, it no longer
6 became available on the Internet.

7 Q. Right.

8 A. And suspicious? Maybe. I'm required to
9 have a suspicious mind or a professional skepticism. Now,
10 I also said I didn't believe there was anything wrong with
11 taking that information off of the website. That was
12 perfectly fine. I may have done it myself. But I was
13 just trying to provide you with all the information I
14 could think of at that time.

15 Q. Did you --

16 A. I also want to add, though, because I knew
17 that it appeared to bother you, so recently I did go back
18 and look it up and it's still out there. So I was wrong
19 that it was taken down.

20 Q. You were wrong?

21 A. Yes.

22 Q. Well, how about this: Were you wrong when
23 you suggested that Mr. Roberts of the Schiff Law Firm had
24 it done because he's a big member?

25 A. I would imagine he would be the only one

1 that could have it done, and like I said, there's nothing
2 wrong with doing that. I would probably do that.

3 Q. Do you know why I asked you those
4 questions?

5 A. No.

6 Q. Because I was trying to figure out how you
7 approached this audit, what state of mind you came into
8 this audit with.

9 A. Okay.

10 Q. And so I asked you why you came to the
11 audit, and we discussed, you volunteered.

12 A. Right. The state of mind of going in to
13 the audit is completely different than following up on an
14 expenditure which is inappropriate on its face, in my
15 opinion, and that -- following up on that requires that I
16 investigate it fully.

17 Q. And was that expenditure charged to
18 Iatan 1?

19 A. I don't know exactly. I know a lot of his
20 expenditures in that time period were allocated 75 percent
21 to Iatan 2 and 25 percent to Iatan 1.

22 Q. So you're doing a construction audit and a
23 prudence review of Iatan 1, and you're spending time
24 tracking down a cost that doesn't go to Iatan 1?

25 A. No. As Mr. Schallenberg said earlier,

1 substantially all of the costs for KCPL were allocated
2 between the two projects. You can't look at one cost for
3 Iatan 2 and one for Iatan 1. They're so commingled that
4 you have to do them together.

5 Q. You did all the meals and expenses,
6 correct?

7 A. Yes.

8 Q. Let's go to -- I'm going to show you 14.
9 I'm actually going to go to -- let's start with 14.

10 A. Page 14?

11 Q. Schedule 14. It's up here. I don't
12 believe -- is the cost of these highly confidential or can
13 I put the whole page in? Let's --

14 A. Just to clarify, these costs are not
15 related to the meals adjustment.

16 Q. I'm asking if all of these costs were for
17 Iatan 1.

18 A. I think this was the list of the
19 inappropriate charges at the end of the report. I believe
20 those are for Iatan 1, yes.

21 Q. Let's go over some of these charges.
22 You've got charges that we can go over here. I'm going to
23 zoom in. This is a meal at the Hereford House, dinner
24 with officer, project manager, consultant at Iatan 2, re
25 Iatan 2.

1 A. Okay.

2 Q. All right. Now, No. 1, it was billed on
3 1/15/07, and it occurred December 18th, '06.

4 A. Okay.

5 Q. Why is it important that you put down
6 billed 1/15/07?

7 A. I think that information is more or less
8 for tracking purposes, that we make sure we don't
9 duplicate entries.

10 Q. Approximately \$50 per person.

11 A. Okay.

12 Q. Public setting for highly confidential
13 matter.

14 A. Okay.

15 Q. Possible alcohol use.

16 A. Okay.

17 Q. Only face sheet receipt, just the blank
18 total number?

19 A. With a number on it.

20 Q. Right, which is what you're going to get
21 with your credit card?

22 A. You also get a detailed list.

23 Q. You get a detailed list every time you give
24 your credit card to a restaurant?

25 A. Yes.

1 Q. Does KCPL policy say that you can accept
2 the face sheet receipt?

3 A. I don't think it's that explicit. Now, I
4 want to clarify. This is not my adjustment here, my
5 entry, but I can speak to it.

6 Q. But you agree with it?

7 A. Yes.

8 Q. You agree with the reasoning?

9 A. Yes.

10 Q. Okay. And you agree that you're looking at
11 a \$141 expense?

12 A. Yes.

13 Q. A \$141 expense, as we went through with
14 Commissioner Clayton, that has to be divided by X,
15 multiplied by Y, turned around three times and taken, you
16 know, split out between Kansas and Missouri, correct?

17 A. No.

18 Q. Isn't that \$141 expense before it is
19 separated for what would go to the Missouri side?

20 A. But I'm not --

21 Q. That disallowance?

22 A. Yes, but I'm not sure that meal listed
23 there, and it could be, but the list -- this is not in any
24 adjustment per se. This list here was not accumulated and
25 put into adjustment. This was just a list to show what

1 the Staff considered to be inappropriate charges.

2 Q. Right. So you did a whole list of
3 inappropriate charges --

4 A. Yes.

5 Q. -- that weren't -- and I'm sorry. By the
6 end of the day this has been pretty marked up. So that is
7 not in any of these charge rates here?

8 A. I can't -- that was a meal that may have
9 been included in the meal adjustment. If it was a local
10 business meal, which it indicates it was, it was probably
11 captured in a number in the meal adjustment, but I would
12 have to refer to the adjustment to verify.

13 Q. Now you've confused me. Is it in your
14 disallowance or is it not?

15 A. It's on a sheet that's not related to my
16 disallowance, but because the word disallowance on meals,
17 it could be in that disallowance.

18 Q. And the purpose of your bringing this up is
19 just to show a pattern and practice of corporate excess?

20 A. I don't know if I'd say corporate excess.
21 I'd say a pattern of practice of a lack of controls on
22 executive expenses that I noted not only in this audit but
23 in KCPL's previous three rate case audits.

24 Q. And you're talking about something that
25 you've looked at in another rate case and you're going to

1 look at in the next rate case?

2 A. Yes. However, these charges won't be in
3 that rate case. They'll be in a work order. They won't
4 be in an expense account.

5 Q. Now, this -- this whole schedule, this is
6 your schedule, correct, inappropriate charges?

7 A. I think I -- I think I had some entries on
8 here, and I believe Mr. Schallenberg had some entries.

9 Q. Let's talk about this. You have a whole
10 list of entries that say that KCPL violated its policy
11 because it paid employees for expenses that were submitted
12 longer than the month after the credit card bill came in?

13 A. No.

14 Q. That's not your --

15 A. No.

16 Q. I'll go to the portion of the -- let me
17 give you the quote. Didn't you list in the report the
18 reason for that schedule was because KCPL failed to follow
19 its policy?

20 A. Well, that's only one potential. Some of
21 these are in accordance with KCPL's policy but we believe
22 were excessive and inappropriate and should not have been
23 charged to the Iatan 1 construction project.

24 Q. And why were they excessive?

25 A. I've seen expenses where over \$100 per

1 person, and I've seen charges for certain individuals that
2 are very high and certain individuals that are very low,
3 and I've seen, for example, one individual at Iatan was a
4 vice president of construction, during the year or so that
5 he was here he incurred very little meals, charged very
6 little expenses to the company. Yet when we have another
7 one, he's got thousands and thousands and thousands of
8 dollars. That's a very curious thing, and a lot of those
9 charges are excessive, in my opinion.

10 Q. In your opinion?

11 A. Absolutely.

12 Q. And so if you think they're excessive,
13 you're going to put them in a disallowance?

14 A. If I think they're excessive, I'm going to
15 make a recommendation to my superiors and explain it, and
16 if they agree, then we make a recommendation to the
17 Commission and say, this is how we feel about it. It's up
18 to the Commission to decide whether they're appropriate or
19 not.

20 Q. Now, which means if you think they're
21 excessive, you're the arbiter of what is excessive or not
22 for the ones that you're doing?

23 A. I make judgments.

24 Q. And you make judgments on what you think is
25 the appropriate amount of a meal or legal fee or an

1 expenditure, correct?

2 A. Based on my analysis, yes.

3 Q. But it's your judgment -- I mean, it's your
4 judgment?

5 A. Enlightened judgment, yes, not an arbitrary
6 judgment.

7 Q. Do you think it's reasonable?

8 A. Do I think my judgment is reasonable?

9 Q. Yes.

10 A. Yes.

11 Q. Do you think your judgment is the judgment
12 of a reasonable man?

13 A. Yes.

14 Q. Okay. We've dealt with this for so many
15 times here, but let's go with it. During the rate case
16 audit this Staff found a \$405 lunch. Why in December
17 after this is -- in a prudence audit, in a construction
18 audit, a prudence review, why are we still talking about a
19 charge in the rate audit?

20 A. First of all, it was not a charge in the
21 rate audit. That charge was made to Iatan 2, which a
22 piece of that cost goes into the common plant, which is
23 assigned to Iatan 1.

24 Q. Right.

25 A. So that's the reason why we pursued it in

1 the construction audit, and when we pursued it, KCPL said,
2 well, this charge, we're not seeking recovery of that
3 charge. Well, we're understanding that's a false
4 statement because they're seeking recovery of that common
5 plant in that rate case.

6 Now, we came to find out subsequently that
7 the individual reimbursed KCPL for that charge, and then
8 that may be the basis of why they said they're not seeking
9 recovery, but KCPL refused to provide that information for
10 us for I think three months, and we had to fight and fight
11 and fight just to get an understanding of what they were
12 doing on that.

13 Q. So you had a three-month fight --

14 A. Right.

15 Q. -- to get receipts for a \$405 lunch,
16 correct?

17 A. Yes.

18 Q. Wait a minute. Which as we say, if you can
19 see this, all right, which 21 percent of the --

20 JUDGE STEARLEY: Excuse me, Ms. Van Gelder.
21 I just want to be sure we don't have a portion of this
22 that's being displayed that should be in-camera.

23 MS. VAN GELDER: What I did, your Honor,
24 was -- may I approach? Other than the lunch, I blocked
25 out any numbers.

1 JUDGE STEARLEY: What about the underlined
2 portion there? I just want to be sure because I believe
3 that is part of it.

4 MS. VAN GELDER. Thank you.

5 BY MS. VAN GELDER:

6 Q. So let's go this way. I think we can do
7 that. So you spent three months to get information for a
8 \$405 lunch, of which 21 percent of the lunch charge is
9 going to be charged to the Iatan project common plant?

10 A. The dollar amount is not important to me.
11 What is important to me is what taking that action -- and
12 it's just not a simple mistake as KCPL characterizes it.
13 For that charge --

14 Q. It's not a simple mistake as KCPL
15 characterized it?

16 A. Correct.

17 Q. So you don't believe their answer?

18 A. They may believe it's a mistake, but here's
19 what has to happen for that mistake to take place: This
20 individual has to incur that meal, that charge, and I
21 don't want to get into the specifics about it, but take
22 that receipt, fill out an expense report, charge that cost
23 to Iatan 2, submit that expense report, get that expense
24 report approved by the CEO of the company and get
25 reimbursed for that expense. That to me is not a

1 definition of a mistake. That's an intentional action.

2 Q. It's a conspiracy.

3 A. It's an intentional action which raises
4 questions in the mind of an auditor, who can't dismiss it
5 as a simple mistake. And what does, because of the
6 individual who took that action, they set the tone at
7 KCPL. It's the tone at the top, and when you have a tone
8 and a breakdown of internal controls, that creates a lot
9 of work on the auditors where it increases the amount of
10 work they have to do to make sure that that lack of
11 internal control is not pervasive throughout the company.
12 So that is why that charge is very important to us.

13 Q. Okay. When we talked, you could not tell
14 me with any certainty that that charge was actually coded
15 and imported by the officer that you're saying made the
16 intentional act to put in a personal expense?

17 A. I know he put it on his expense report, he
18 charged it to Iatan 2, he signed it, he had his CEO sign
19 it and he recovered the fund.

20 Q. And you're saying on expense account he
21 said Iatan 2?

22 A. Yes. I have a copy if you'd like to see
23 it.

24 Q. Yes.

25 A. Here I've highlighted for you.

1 Q. All right.

2 A. And it goes down and it filters in to here,
3 which is 520123, which is the Iatan 2 project.

4 Q. Now, we've got some markings in here, and
5 it was signed, but I asked you before and I'm going to ask
6 you again, how do you know his secretary didn't fill this
7 out?

8 A. She very -- or he may have, but I don't
9 know how she would get the receipts without him giving it
10 to her.

11 Q. Getting a receipt and coding it to the
12 wrong project are two different things, aren't they?

13 A. Well, he signed a document.

14 Q. He did. He did. And yes, you are, you're
15 assuming that he signed a document and he read the
16 document when his secretary gave him that, but you're also
17 assuming that he intentionally tried to game the
18 rate-holders.

19 A. No, I'm not. I don't know if it was a
20 mistake on his part. What I'm saying is there's a
21 breakdown of internal control to let that cost be charged
22 to the company and Missouri ratepayers. Whether he did it
23 a mistake or not, that may be. The lack of internal
24 control or the breakdown of internal control is what is
25 important to me in the scope of this audit.

1 Q. And did you look at the construction
2 procurement contracts?

3 A. Yes, several of them.

4 Q. Do you have a problem with them?

5 A. The construction procurement contracts?

6 Q. Right. Did you look at the contracts that
7 would have bought the materials that went into the
8 upgrade?

9 A. Several of them, but no, I didn't have a
10 problem with them.

11 Q. Okay. And do you know -- do you know how
12 much -- I should do this.

13 MS. VAN GELDER: I think we're going to
14 have to go into in-camera.

15 Judge STEARLEY: In-camera?

16 MS. VAN GELDER: In-camera.

17 (REPORTER'S NOTE: At this point, an
18 in-camera session was held, which is contained in
19 Volume 4, pages 668 through 673 of the transcript.)

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1 BY MS. VAN GELDER:

2 Q. When Mr. Rush had that conversation with
3 you, was he referring to the findings in the audit report?

4 A. I assume he was responding to the findings
5 in both internal audit reports and the Staff's findings in
6 the last three rate cases.

7 Q. But when he said we have problems, which is
8 really a transparent admission of an issue from a company
9 to an auditor, correct?

10 A. Yes.

11 Q. Good thing?

12 A. Yes.

13 Q. But you make it a major problem?

14 A. As I said, repetitive recurring of events
15 where we've notified them before we have major problems
16 and they continue to recur over and over again, that by
17 definition is a major problem.

18 Q. And do you still feel that you are
19 objective in reviewing costs and invoices of KCPL after
20 your time?

21 A. I know I meet the definition of independent
22 in the auditing standards, and I know I am independent in
23 my thought and mind, yes.

24 Q. And you don't think that you have been so
25 frustrated by what you think are the slings and arrows of

1 KCPL's frivolous and, what did you call it, it wasn't
2 histrionic, it was -- how did you describe their
3 arguments?

4 A. If you're talking about the scorched dirt?

5 Q. Yes.

6 A. That was not mine.

7 Q. But you agreed with it?

8 A. I don't know. You didn't ask me if I
9 agreed with it.

10 Q. I did.

11 A. I don't believe you did.

12 Q. Do you think they're scorched dirt?

13 A. I don't know what the reference to that
14 statement was. I know it was in a filing, but I -- I
15 really don't know what it's referring to.

16 Q. Well, do you know what it means?

17 A. Well, it may be referring to KCPL's what I
18 would call tactics now in these last few weeks, and I --
19 to be honest with you, I could not disagree with that
20 characterization.

21 Q. And to be honest, forget about the last few
22 weeks. It's written all over the report that -- it's one
23 of the reasons that you say you can't complete an audit is
24 because of their tactics?

25 A. We completed the audit. I didn't think we

1 said we couldn't complete the audit. We completed the
2 audit. I said their tactics cause problems, cause delays,
3 cause frustration, but we completed the audit by the
4 assigned date by the Commission.

5 Q. And the frustration you had was in part
6 because they asserted attorney/client privilege?

7 A. They asserted many attorney/client
8 privileges, what I consider frivolously. And now we have
9 a new thing they came up accountant/client privilege
10 they're now asserting, and it just --

11 Q. Let's stick with that attorney/client. You
12 think they were frivolous?

13 A. Yes.

14 Q. Did the judge think they were frivolous
15 when he said it was okay?

16 A. I didn't read what the judge ordered, but I
17 know for a fact that in the beginning the Schiff Hardin
18 invoices, which were thick and contained -- each month
19 invoice is around 40 or 50,000. When it started out,
20 everything was redacted. Now it's only a small piece
21 redacted. So to me, that indicates that redaction of all
22 that information was frivolous.

23 Q. As part of your excessive meals, you make
24 the determination that if there is excessive alcohol, the
25 meal should not be allowed?

1 A. If there's excessive alcohol, yes, I would
2 conclude that.

3 Q. Now, there's no policy with KCPL that would
4 say that if they were out with a vendor, that they could
5 buy a bottle of wine or have drinks?

6 A. I agree.

7 Q. But in your mind, that if they're going to
8 be out talking business, they shouldn't be drinking?

9 A. Absolutely. Well, and I want to caveat
10 that. I think to be reasonable, you can go out and have a
11 meal and have maybe a glass of wine or a beer. I mean,
12 that's probably a reasonable charge, especially when
13 you're traveling.

14 Q. All right. And it's your opinion that if
15 you're doing an interview of somebody, and specifically
16 when that individual is going to be Making \$200,000 a
17 year, you suspect that he can buy his own wine?

18 A. I suspect he can. There's absolutely no
19 reason to charge high dollar wine to a construction
20 project. No reason.

21 Q. That's your opinion?

22 A. Absolutely.

23 Q. And if your opinion says there's no reason,
24 then it becomes a disallowance?

25 A. Well, it's not only my opinion. It also --

1 there's a basis for that opinion. First it's an excessive
2 cost. Second, if the employees are conducting business,
3 KCPL has a policy about consuming alcohol during business,
4 and that's not allowed.

5 Q. During business hours. This is a meal.

6 A. It's conducting business, and then you open
7 up the floodgates of potential liability for conducting
8 company business with excessive alcohol, you know,
9 potential accidents. It just opens a whole can of worms.

10 Q. It does, and I'm going to close the can
11 with no further questions.

12 JUDGE STEARLEY: All right. Thank you,
13 Ms. Van Gelder. Questions from the Bench. Commissioner
14 Jarrett.

15 COMMISSIONER JARRETT: I have a couple.

16 QUESTIONS BY COMMISSIONER JARRETT:

17 Q. And I want to go back to the, sort of the
18 very beginning of Ms. Van Gelder's questioning, and she
19 was talking about the stipulation hearing, and I think you
20 indicated you were there --

21 A. Yes, sir.

22 Q. -- present with that. I think I was, too.
23 And when Commissioner, I believe it was Commissioner Davis
24 was questioning Mr. Schallenberg about doing construction
25 audit and prudence review, you said you were aghast at the

1 fact that KCP&L should have jumped up and said, no, we've
2 already agreed, Staff's not going to do an audit. You to
3 remember that --

4 A. Yes, sir.

5 Q. -- exchange?

6 A. Yes, sir.

7 Q. I was at that stip hearing. I don't recall
8 you jumping up and running up here to the table to the
9 attorney and telling them anything. Did you at any point
10 express this big concern to anyone?

11 A. I don't think it would be prudent of me to
12 do so.

13 Q. To tell, say, your boss that you were
14 aghast at what KCPL was doing?

15 A. Aghast may be a poor choice of words.
16 Disappointment is more accurate. KCPL signed that
17 agreement. That agreement states that it had an
18 obligation to defend it. One of the clauses in that
19 stipulation where it agreed that we would continue the
20 audit until the next rate case.

21 And I was misreading what was going on. I
22 thought at that time that the Commission was going to
23 change that date and abrogate the Stipulation & Agreement
24 because it changed a major term of that agreement, and
25 that's what my concern was. I was glad the case was over,

1 we were finishing it, I was excited about maybe having
2 some free time, and all a sudden I had a concern that the
3 stipulation was going to be thrown out, and KCPL was not
4 taking any action. It had an obligation to. It did not
5 take any obligation to defend that stipulation, and I was
6 disappointed at that.

7 Q. Well, I guess what I'm asking is, since you
8 were concerned about this, did you -- did you share this
9 with your boss and say, hey, didn't KCP&L, why didn't they
10 jump up and say this? Are we going to have to do an audit
11 now that we're not supposed to be doing? Did you express
12 that to -- who's your direct supervisor?

13 A. Joan Wandel.

14 Q. Did you express that to Joan?

15 A. No, I did not.

16 Q. And I'm wondering why if you were so
17 concerned about it?

18 A. I think -- I didn't know anybody else who
19 had that concern, and I may have mentioned that concern to
20 a coworker down the line. But the Commission did approve
21 the stipulation, so my concerns alleviated, that it was --
22 it was in effect. I was disappointed that KCPL in my
23 opinion, it's not a Staff opinion, in my opinion it did
24 not stand up for the stipulation.

25 Q. Well, and the reason I ask this, I'm not

1 trying to hide the ball or anything, but, you know, we --
2 Commissioner Davis was questioning Mr. Schallenberg, you
3 know, about doing a construction and prudence audit. We
4 were considering doing that. As a Commission it would
5 have been nice to know from our audit staff that they had
6 some concerns about whether we should be doing that or
7 not. That's my --

8 A. Commissioner, I agree 100 percent. The
9 process we have here at the Commission, though, is that
10 the stipulation hearings are an attorney-based discussion,
11 and unless you're called as a witness and you sit back
12 there, you really don't have an input.

13 Q. I'm not talking about, you know,
14 participating in the hearing, but during a break, tell
15 Mr. Dottheim or whoever the attorney is or tell
16 Mr. Schallenberg who was here or tell Joan, hey, the
17 Commission seems like they're talking about doing an
18 audit, I think it's going to -- might violate the
19 Stipulation & Agreement.

20 A. And Commissioner --

21 Q. Like I said, we were considering doing
22 that, and it would have been nice to know what the audit
23 staff thought.

24 A. And I understand that, and I do appreciate
25 that, and I can tell you I did not tell Ms. Wandel. I do

1 not recall if I mentioned that to anybody else.

2 Q. Okay. Well, I appreciate that. And I just
3 have one more question, and I want to -- well, here's what
4 you said. You said it and I wrote it down immediately as
5 you said it. You said, the audit plan was to find
6 inappropriate charges.

7 A. That's part of it.

8 Q. Okay. That is -- that's part of the audit
9 plan?

10 A. Yes, sir. Just a second and I can refer
11 you to that. Actually, it's part of the audit objective.
12 It's on page 8 of the -- it's the 89 Staff audit report.

13 Q. Okay. Got it.

14 A. I believe it's on -- it's between line 17
15 and 20.

16 Q. I see that. Thank you for referencing that
17 for me.

18 COMMISSIONER JARRETT: I don't have any
19 further questions.

20 THE WITNESS: Thank you, sir.

21 JUDGE STEARLEY: Mr. Hyneman? Mr. Hyneman?

22 THE WITNESS: Yes, sir.

23 QUESTIONS BY JUDGE STEARLEY:

24 Q. Did you see or hear or see any filings from
25 any of the other signatories to the Stipulation &

1 Agreement raising any concerns about there being a
2 violation of the terms of the agreement when the
3 Commission ordered the audits?

4 A. No. At that --

5 Q. That's the end of your answer, yes or no.
6 I'm cutting you off at no.

7 Staff counsel did not raise any concerns,
8 and they were a signatory, that you're aware of, did they?

9 A. No.

10 Q. And you're not an attorney, correct?

11 A. Correct.

12 Q. So while you may think there's been a
13 violation or potential violation of terms, that would be
14 for the attorneys who are experts in the law to determine,
15 would it not?

16 A. May I explain?

17 Q. I'm asking you a yes or no question.

18 A. Yes.

19 Q. All right. Now you may explain.

20 A. I am -- I have an undergraduate degree in
21 accounting. I've taken courses in business law. I have a
22 master's of business administration. I've a CPA. I had
23 to pass a fairly rigorous examination, which included a
24 big section on law. And I've worked with contracts, a lot
25 of contracts, and I understand it. Now, I'm not an

1 attorney and I'm not going to profess to be an expert on
2 it. I do understand the elements of contract law, and one
3 of them especially is consideration and mutuality of
4 obligation. I understand that.

5 And from a layman's review of the
6 Stipulation & Agreement, like I said, it's not a Staff
7 position that I'm claiming, it was my own opinion, that
8 they violated it.

9 Q. I understand, and I appreciate your
10 explanation. You did not approach Staff counsel with your
11 concerns, did you?

12 A. No.

13 JUDGE STEARLEY: Thank you. That's all the
14 questions I have. Recross based on questions from the
15 Bench?

16 (No response.)

17 JUDGE STEARLEY: Mr. Dottheim, any
18 questions for this witness.

19 MR. DOTTHEIM: No questions.

20 JUDGE STEARLEY: Thank you, Mr. Hyneman.
21 You may step down. We appreciate your testimony. I
22 believe we have one scheduled witnesses left.

23 MS. VAN GELDER: We moved the exhibit in
24 already, haven't we, for Mr. Schallenberg?

25 JUDGE STEARLEY: I do not have a record of

1 Exhibit 6 being offered.

2 MS. VAN GELDER: I offer Exhibit 6. That's
3 the audit plans.

4 JUDGE STEARLEY: Just to be sure, let's
5 take up Exhibit 5 as well. I didn't make a mark on that.
6 Any objections to the offering of KCPL GMO's Exhibit
7 Nos. 5 and 6?

8 MR. DOTTHEIM: No.

9 JUDGE STEARLEY: Hearing none, they shall
10 be received and admitted into the record.

11 (STAFF EXHIBIT NOS. 5 AND 6 WERE RECEIVED
12 INTO EVIDENCE.)

13 JUDGE STEARLEY: Mr. Majors, you may come
14 to the stand.

15 (Witness sworn.)

16 JUDGE STEARLEY: Thank you. You may be
17 seated. And you may proceed, Ms. Van Gelder.

18 KEITH MAJORS testified as follows:

19 CROSS-EXAMINATION BY MS. VAN GELDER:

20 Q. Get comfortable. Actually, you don't have
21 to get comfortable. Let's see if we can do this in ten
22 questions. When did you start on the construction audit/
23 prudence review?

24 A. You had asked me that question in the
25 deposition. I did check with the -- I keep a significant

1 portion of the e-mails I receive, and the first e-mails
2 concerning the construction audit were approximately
3 June 11th of 2009. I'm sorry.

4 Q. So almost a month after the April 15th
5 Order?

6 A. About two months. From April --

7 Q. Yes. Thank you.

8 A. -- to June 11th.

9 Q. Thank you. How many times have you gone to
10 the Iatan plant?

11 A. I had mentioned two to three. I can only
12 recall specifically two.

13 Q. How many times did you talk to Dave
14 Elliott?

15 A. Concerning?

16 Q. Construction audit.

17 A. I may have received an e-mail from
18 Mr. Elliott concerning some in-service criteria. Again, I
19 stated that I'm not sure if that was the e-mail forwarded
20 from Mr. Schallenberg or Hyneman or sent directly from
21 me -- or to me from Mr. Elliott.

22 Q. Now, in Staff's -- this is the large
23 exhibit, the discovery -- what number was that? Your big
24 chart that Mr. -- was produced yesterday. Do you recall
25 that there was a document that was produced yesterday that

1 said -- that said, I've been directed to do this?

2 A. Pardon me?

3 Q. Can you see this? Is that from you, I've
4 been instructed?

5 A. That is from me. Was that produced
6 yesterday, I believe?

7 Q. Yes.

8 A. I retrieved this e-mail from that large
9 amount of e-mails that I keep track of on behalf of
10 Mr. Schallenberg. What was -- it does say I have been
11 instructed, if that was the question.

12 Q. And I'm not going to go through all of the
13 e-mails and the document requests, but there's been
14 testimony that there's been about 400 document requests
15 since June. Are you aware of that?

16 A. I am aware. I didn't -- I wasn't here for
17 the entire amount of testimony, but what was the number
18 you said?

19 Q. About 400.

20 A. If that's what you say the testimony was,
21 I'll take that.

22 Q. Thank you. Now, we went over this in the
23 deposition, so I don't want to take all the time today,
24 but I showed you the attachment to KCP&L's pleading which
25 listed document requests. Do you recall us going over

1 that?

2 A. We did.

3 Q. And just to summarize, it was your
4 testimony that most of the document requests that have
5 your name were not authored by you?

6 A. That's correct.

7 Q. And they were authored by either
8 Mr. Hyneman or Mr. Schallenberg?

9 A. That's correct.

10 Q. And you were present in the deposition of
11 Mr. Hyneman where he explained that he didn't want to
12 author the ones anymore, correct?

13 A. He instructed me to submit those data
14 requests. He didn't say anything as to who -- who he
15 wanted to author them.

16 Q. So he instructed you to start submitting
17 them instead of him submitting them?

18 A. Submitting most of them. There were some
19 requests recently that he submitted if I was out of the
20 office or previously engaged.

21 Q. And do you recall him during his, because
22 you were there, during his deposition saying that things
23 were getting a little testy with KCPL, so he thought it
24 would be better if someone else started submitting them?

25 A. I think he said something to that effect.

1 Q. But I asked you during your deposition that
2 in your dealings with KCPL, whether you had any problems
3 with discovery?

4 A. Well, I think during my deposition you
5 asked if I had had any data requests that I authored that
6 were significantly late or incomplete. Is that what
7 you're referring to?

8 Q. Yes. Well, I asked you a number of
9 questions and I was summarizing it. But did you have --
10 I'll tell you exactly what you said. I'm directing you to
11 No. 12. off the top of my head, of any of the requests
12 that I authored, I can't think -- there were -- there
13 may -- there were some that were beyond days, I can tell
14 you that, but I can't think of any unreasonable off the
15 top of my head. Do you recall saying that?

16 A. I do.

17 MS. VAN GELDER: I have no further
18 questions.

19 JUDGE STEARLEY: Questions from the Bench?

20 COMMISSIONER JARRETT: I don't have any
21 questions. Thank you.

22 JUDGE STEARLEY: There won't be any
23 recross. Mr. Dottheim, any questions for this witness?

24 MR. DOTTHEIM: No questions.

25 JUDGE STEARLEY: All right. Mr. Majors,

1 your testimony was quick. You may step down. Thank you
2 very much.

3 THE WITNESS: Thank you.

4 JUDGE STEARLEY: Are the parties wanting to
5 make any closing statements or are they wanting to brief
6 this matter?

7 MR. FISCHER: Judge, I guess I would
8 suggest, given the complexity of some of the issues that
9 have come up, maybe a written brief would be more helpful.

10 JUDGE STEARLEY: I'm thinking the same
11 thing myself, and I'd like to direct our court reporter
12 here that we're going to expedite the transcripts.

13 MR. DOTTHEIM: And I, too, would suggest a
14 brief.

15 JUDGE STEARLEY: I'd like the transcripts
16 to be filed Monday. And then I would also take
17 suggestions on a suggested briefing schedule. I know the
18 new rate case is going to be coming in sometime within the
19 next month or so. At least that's been alluded to in
20 testimony during the hearing. I would imagine the
21 participants are going to want a decision as soon as
22 possible if not prior to that filing. So pull out your
23 calendars, gentlemen and ladies.

24 MR. FISCHER: Judge, I think if it's
25 acceptable to the Bench, we could probably do a

1 simultaneous initial brief on May 18th followed by a reply
2 after the Memorial Day weekend on June 2nd.

3 JUDGE STEARLEY: Okay. So we're going to
4 have transcripts filed Monday, May 3rd, and your first
5 date for preliminary briefs you're saying May 18th?

6 MR. FISCHER: Yes.

7 JUDGE STEARLEY: And then reply briefs
8 June 2nd. Very well. We'll set those dates. Are there
9 any other matters we need to take up at this time?

10 MR. FISCHER: Are there any outstanding
11 KCPL exhibits that have not been offered and accepted?

12 MR. DOTTHEIM: Or Staff?

13 JUDGE STEARLEY: I believe they have all
14 been offered.

15 MR. DOTTHEIM: Was even the, was it Staff
16 Exhibit 1 where there was a question, there was an
17 objection initially from KCPL?

18 JUDGE STEARLEY: Staff Exhibit 1 has come
19 in. I have a note on Staff Exhibit -- I'm sorry. Staff
20 Exhibit 1 did have an objection, but it was admitted over
21 objection.

22 MR. DOTTHEIM: Thank you.

23 JUDGE STEARLEY: I did have a qualification
24 on that, though, as I recall, regarding an inference you
25 were stating which I said you hadn't proved up as of yet,

1 I believe.

2 MR. DOTTHEIM: And I -- I think Mr. Hyneman
3 actually addressed the very subject matter that I was
4 stating that I was testifying on.

5 JUDGE STEARLEY: And you can die that
6 together in your brief.

7 MR. DOTTHEIM: Yes.

8 JUDGE STEARLEY: And I don't believe there
9 were any objections to any of the remaining exhibits. So
10 just for the record, that we're clear, they've all been
11 admitted with only one objection to Staff Exhibit 1, and
12 it was admitted over objection.

13 MR. DOTTHEIM: Thank you.

14 JUDGE STEARLEY: Very well. If there's
15 nothing else for us to take up, the on-the-record
16 proceeding in File No. EO-2010-0259 is hereby adjourned.
17 I wish to thank you-all for participation.

18 WHEREUPON, the on-the-record presentation
19 in this case was concluded.

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified

Shorthand Reporter with the firm of Midwest Litigation
Services, do hereby certify that I was personally present
at the proceedings had in the above-entitled cause at the
time and place set forth in the caption sheet thereof;
that I then and there took down in Stenotype the
proceedings had; and that the foregoing is a full, true
and correct transcript of such Stenotype notes so made at
such time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR