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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

On-The-Record Presentation

April 28, 2010
Jefferson City, Missouri
Volume 1

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,
ROBERT S. KENNEY
COMMISSIONERS.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR, CCR
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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: All right. Good morning.
3 Today is Wednesday, April 28, 2010. The Commission has
4 set this time for an on-the-record proceeding in the
5 matter of a construction audit and prudence review of
6 environmental upgrades to Iatan 1 generating plant and
7 Iatan 1 common plant and the Iatan 2 generating plant,
8 including all additions necessary for these facilities to
9 operate, which is File No. EO-2010-0259.

10 My name is Harold Stearley, and I'll be the
11 Regulatory Law Judge presiding over this proceeding. Our
12 court reporter this morning is Kellene Feddersen.

13 And we will begin by taking entries of
14 appearance from counsel, starting with Kansas City Power &
15 Light Company and KCP&L Greater Missouri Operations.

16 MR. FISCHER: Thank you very much, Judge.
17 On behalf of Kansas City Power & Light Company and KCPL
18 Greater Missouri Operations Company, let the record
19 reflect the appearance of James fischer, Charles Hatfield
20 and Barbara Van Gelder. Our addresses and telephone
21 numbers and other contact information is contained in the
22 written entries of appearance.

23 JUDGE STEARLEY: Thank you, Mr. Fischer.
24 For the Staff of the Missouri Public Service Commission.

25 MR. DOTTHEIM: Steven Dottheim, Post Office

1 Box 360, Jefferson City, Missouri, appearing on behalf of
2 the Staff of the Missouri Public Service Commission.

3 JUDGE STEARLEY: Thank you, Mr. Dottheim.
4 And the Office of the Public Counsel.

5 MR. MILLS: On behalf of the Office of the
6 Public Counsel and the public, my name is Lewis Mills. My
7 address is P.O. Box 2230, Jefferson City, Missouri 65102.

8 JUDGE STEARLEY: Thank you, Mr. Mills. A
9 couple preliminary announcements. As per usual, I ask
10 that you all turn off all cell phone, Blackberries, other
11 electronic devices. They do have a tendency to interfere
12 with our webcasting and recording.

13 Additionally, throughout the proceeding I
14 ask that you all please be sure your microphones are on
15 and that you're speaking into the microphone. Not only
16 assists our listeners on the webcast but improves quality
17 of our recordings as well.

18 And additionally, our IT people have
19 instructed me that when you're all at the podium, please
20 be careful not to step behind your ELMO machine over here
21 and step on any of the cables or we'll be taking an
22 intermission from our proceedings while repairs are made.

23 We did not set out a particular procedure
24 when we set up on-the-record. I know we now have a total
25 of eight witnesses. I'm going to run through the witness

1 list real quickly. For KCP&L and GMO we have Curtis
2 Blanc, Dr. Kris Nielsen, Tim Rush, Chris Giles, Michael
3 Cline. For Staff I have Robert Schallenberg, Charles
4 Hyneman and Keith Majors. Have I got everyone on our
5 witness list?

6 MR. FISCHER: Yes, Judge.

7 JUDGE STEARLEY: The way we're going to
8 proceed is similar to an evidentiary hearing, take opening
9 statements from the parties. KCP&L has requested that we
10 extend the length of this proceeding to present all their
11 witness testimony. So we'll allow them to go first with
12 calling witnesses and then proceed in the usual fashion.

13 Are there any preliminary matters we need
14 to take up before we begin?

15 (No response.)

16 JUDGE STEARLEY: Seeing none, we'll begin
17 with opening statements, starting with KCP&L GMO.

18 MR. FISCHER: Good morning. My name's Jim
19 Fischer, and I'll be representing Kansas City Power &
20 Light Company and KCPL Greater Missouri Operations
21 Company, which I'll probably refer to as GMO throughout
22 the course of this proceeding. Also participating with me
23 as counsel is Chuck Hatfield of the Stinson law firm and
24 Barbara Van Gelder of Morgan Lewis in Washington, D.C. I
25 greatly appreciate the Commission granting our motion to

1 have Ms. Van Gelder participate today.

2 KCP&L and GMO would like to sincerely thank
3 the Commission for convening this hearing to allow the
4 parties to address issues related to the continuing Staff
5 audit of the Iatan 1 air quality control system and the
6 common plant associated with the Iatan 1 plant.

7 We particularly appreciate the opportunity
8 to address Staff's assertions that it has been the
9 company's actions particularly related to discovery and
10 the company's cost tracking procedures that have caused
11 Staff to be unable to comply with the Commission's
12 directive to complete the staff audit by December 31st,
13 2009.

14 The company also has serious concerns
15 regarding allegations that company personnel have violated
16 the company's own code of business -- ethical business
17 conduct. We believe that the evidence will show that
18 these Staff assertions or other excuses for Staff's
19 failure to follow the Commission's directive to complete
20 their Iatan 1 audit by December 31st, 2009, are simply
21 unfounded.

22 In this proceeding, the Staff requested the
23 opportunity to depose the KCPL witnesses. Although
24 Staff -- excuse me. Although Kansas City Power & Light
25 Company has not deposed Staff witnesses in other

1 proceedings, after the Staff made that request, we decided
2 to also conduct depositions of the Staff witnesses to
3 better understand their positions.

4 Based on the evidence adduced at the
5 depositions, the evidence will show that the Staff
6 voluntarily chose to wait to even begin its construction
7 audit of Iatan 1 until the Commission itself ordered that
8 it be done. This occurred on April 15th, 2009, when the
9 Commission directed the Staff should file its construction
10 audit and prudence review on June 19, 2009.

11 Until that Order was issued, Staff had not
12 commenced its construction audit at all, but that's
13 certainly not the impression given by Staff to KCP&L and
14 other parties in these cases, these rate cases.

15 In the direct testimony of Mr. Cary
16 Featherstone filed on February 11, 2009, in KCPL's last
17 rate case, which was ER-2009-0089, Mr. Featherstone, who
18 was one of the two case coordinators, testified that Staff
19 is reviewing the construction costs for plant additions
20 for environmental equipment being installed at the Iatan 1
21 generating facility. He testified that Staff was
22 reviewing the Iatan 1 project as well as the Sibley and
23 Jeffrey Energy Center projects.

24 And he further testified that Staff will
25 not be able to complete and present their results of the

1 construction cost reviews for any of these projects in
2 these rate cases either now or in the true-up. That comes
3 from page 36 of his direct testimony.

4 Often the right hand doesn't know what the
5 left hand is doing, and I'm assuming that Mr. Featherstone
6 believed that Staff was indeed reviewing the construction
7 costs for the plant additions for the environmental
8 equipment being installed at the Iatan 1 generating
9 facility at the time he filed that testimony.

10 However, the evidence produced at the
11 depositions shows that the construction audit and prudence
12 reviews had not even started when the Staff direct
13 testimony was filed on February 11, 2009. Based upon
14 those depositions, we learned for the first time that the
15 Staff chose to wait to begin its construction audit until
16 the Commission itself ordered that it be done. This
17 occurred on April 15, as I mentioned, when the Commission
18 directed the Staff should file its construction audit and
19 prudence review on June 19, 2009.

20 Until that Order was issued, Staff had not
21 commenced this construction audit at all, but that's not
22 certainly the impression that KCPL had of where the
23 process stood. And based on your -- upon my review of
24 your Orders, I suspect the Commissioners may not have --
25 or may have had a different impression of the process as

1 well.

2 Prior to the depositions in this case, the
3 companies were baffled by the fact that this Staff audit
4 seemed to be taking longer to complete than it did to
5 build the Iatan 1 air quality system itself, but now, now
6 we understand that Staff did not commence its prudence
7 review and construction audit until the Commission
8 directed it to do so.

9 As you may recall from my opening
10 statements in the last Kansas City Power & Light rate
11 case, the utility operations staff has been actively
12 engaged at Iatan for years and has requested all change
13 orders and supporting documentation for changes at Iatan
14 over \$50,000. They've been reviewing all the Iatan status
15 reports and contractor meeting minutes. They reviewed
16 site photographs, the Alstom contract, the Alstom
17 settlement agreement and various other contracts as well
18 as all Iatan 1 contracts.

19 There was a 21-page schedule attached to
20 the rebuttal testimony of Mr. Brent Davis, which is the
21 company witness in the last Kansas City Power & Light rate
22 case, that listed the massive number of documents provided
23 to Staff in this process.

24 KCPL also provided the Staff and other
25 signatory parties to the regulatory plan Stipulation &

1 Agreement with KCPL's strategic infrastructure status
2 reports every three months. These quarterly status
3 reports included extensive discussion of costs, schedules
4 and any issue that was materially impacting the success of
5 that project.

6 The KCPL quarterly status reports were
7 followed up with in-person meetings with Staff and other
8 signatory parties in which the key construction,
9 regulatory and legal personnel made lengthy presentations
10 and answered questions related to all major events that
11 affected the Iatan 1 project. Each of those meetings
12 typically lasted from ten o'clock in the morning 'til mid
13 afternoon. Sometimes we didn't take lunch breaks.

14 Now, this effort by Kansas City Power &
15 Light to keep the Staff and the signatory parties to the
16 regulatory plan stipulation informed about the progress of
17 these comprehensive energy plan projects have been
18 unprecedented in scope. From KCPL's perspective, the
19 primary reason for the quarterly meetings was to
20 facilitate the prudence audit and the regulatory process.

21 Frankly, in light of these onsite reviews,
22 the informal document production requests, the hundreds of
23 data requests and the numerous meetings with Staff and
24 other parties and the Staff's testimony in the last rate
25 cases, the company's had the impression that Staff had

1 been conducting a prudence and construction audit of
2 Iatan 1 for an extended period of time.

3 During the depositions, however, it became
4 quite apparent that the prudence and construction audit
5 for Iatan 1, as Mr. Schallenberg explained it, did not
6 commence until after the Commission issued its April 15
7 Order directing Staff to file its prudence audit report by
8 June 19th.

9 According to the testimony in the Staff
10 depositions, Mr. Schallenberg initially began the
11 construction audit by himself. He was later assisted by
12 Mr. Hyneman and Mr. Majors, and these Staff members are
13 the only persons that are working on this construction
14 audit since April 15th. There are no engineers or persons
15 with construction management experience involved in the
16 Staff's prudence review and construction audit.

17 According to Mr. Schallenberg's deposition,
18 there was no one on Staff that expressed an interest in
19 getting involved in a prudence audit, and he made the
20 decision that trying to force or coerce someone to work on
21 something that he wasn't really committed to doing would
22 be counterproductive at this stage. That's a quote from
23 page 21 of the deposition.

24 He also did not believe that the use of an
25 outside consultant would be efficient. As a result, he

1 personally took on the task, with the assistance of
2 Mr. Hyneman and Mr. Majors.

3 It's also apparent from the evidence
4 provided in the depositions that there has been little
5 coordination of efforts between the Utility Services
6 Division, which includes Mr. Schallenberg, Hyneman and
7 Majors, with the efforts of the Utility Operations
8 Division, which includes the PSC Staff engineers like
9 Mr. Dave Elliott, Mr. Shawn Lange, Mr. Leon Bender and
10 Ms. Lena Mantle.

11 In fact, there's only been a handful of
12 conversations about the engineering group's activities at
13 Iatan. Mr. Schallenberg testified that he obtained a
14 banker's box full of documents from Mr. Dave Elliott, but
15 otherwise there have been little conversation with the
16 engineers or the assistance of the Utility Operations
17 Division.

18 Based on the evidence provided in the
19 depositions, it appears that the Staff's engineering
20 efforts were intended to be limited to a review of whether
21 the Iatan 1 plant met the in service criteria, which of
22 course it did more than a year ago.

23 The Commission should not allow Staff to
24 deflect the conversation away from its own failures to
25 finish the construction audits by December 31st by

1 asserting that it's the company's discovery practices and
2 its cost control system that prevented Staff from
3 completing the construction audit and prudence review by
4 December 31st.

5 In reality, it appears that the Staff did
6 not complete its prudence review and construction audit by
7 December 31st because it didn't even start the process
8 until the Commission issued its Order that it do so on
9 April 19th.

10 The Staff has also raised at the 11th hour
11 some rather novel but erroneous theories, legal theories
12 that I think you'll probably hear about today. As I
13 understand the Staff's position from the depositions,
14 Staff is asserting that the companies have reneged on the
15 settlements of the last KCPL and GMO rate cases by asking
16 for a clarification of the status of the Staff's Iatan 1
17 prudence review in this proceeding.

18 According to Staff, as I understand it,
19 KCPL is violating the stipulation by asking for a
20 clarification of the status of the Staff's construction
21 audit and by asking that the Commission rule that the
22 prudence disallowances contained in the December 31st
23 report are the prudence issues that may be raised by Staff
24 in the upcoming rate cases related to Iatan 1 and the
25 common plant.

1 Even more surprising from our perspective
2 is the Staff's legal theory that you, the Commissioners,
3 have voided the Stipulations & Agreements in the last KCPL
4 and GMO rate cases when you issued your June 10th Order
5 directing Staff to complete its prudence and construction
6 audit of Iatan 1 and the common plant needed to operate
7 Iatan 1 by December 31st, 2009. You may hear Staff
8 counsel refer to this as the unintended consequences of
9 your June 10th Order.

10 Staff has never filed these legal theories
11 in any of its pleadings in this case, and perhaps I
12 misunderstand their positions. According to the Staff's
13 position as I understand it, when the Commissioners
14 directed the Staff to complete their prudence audit of
15 Iatan 1, the Commissioners avoided the settlements in the
16 last KCPL and GMO rate cases since the Stipulations &
17 Agreements stated that, and I'll quote the section,
18 non-signatory parties may continue their construction
19 audits of Iatan 1 and Iatan 2 prior to KCPL filing its
20 Iatan 1 rate case. That comes out of the KCPL stip at
21 page 4.

22 If that's the Staff position, then the
23 companies must respectfully disagree with Staff's novel
24 theory on that point. The Commission clearly has the
25 authority to direct its own staff to complete its prudence

1 audit sooner than the parties had suggested in the
2 Stipulation & Agreement. The Stipulation & Agreement by
3 its very terms state that it's not a contract with the
4 Commission and the Commissioners are not bound by it.

5 All powers of the Staff come directly from
6 those delegated from this Commission. If the Commission
7 requests that the construction audit be completed by
8 December 31st of 2009, it's unclear to me how Staff has
9 been delegated any powers independent from the Commission
10 to continue its audit in a manner inconsistent with the
11 Commission's directives.

12 From the company's perspective, the purpose
13 of this hearing today is to demonstrate that KCPL's
14 actions were not the reason that the Staff has failed to
15 comply with the Commission's directive to complete its
16 prudence audit by December 31st, 2010 (sic). Staff's new
17 legal theories about the Commissioners voiding the
18 settlements shouldn't be a distraction from the reasons
19 we're here today.

20 Now, the companies were informed in the
21 deposition that the Staff's construction audit reports
22 filed on December 31st, 2009, are viewed by the Staff as
23 basically a special project done to satisfy the
24 Commissioners, and it's not the prudence and construction
25 audit that will be filed in the company's next rate case

1 by the Staff.

2 In fact, Mr. Schallenberg testified in the
3 depositions that there was much more efficient ways to
4 have addressed that need of the Commission than to have
5 ordered the Staff to file its audit report. That's
6 quoting from the transcript at 2 -- page 204. Excuse me.

7 Now, the Staff's own preliminary report
8 filed on June 19 clearly acknowledges that the Staff at
9 that time understood that they had a December 31, 2009,
10 deadline for completing this construction audit and
11 prudence review of the environmental upgrades at Iatan 1,
12 including common plant.

13 If I can make my technology work, I'd like
14 to show you that preliminary report, that language. On
15 page 14 of the preliminary report, the Staff clearly
16 stated, as ordered by the Commission, the Staff's current
17 deadline for filing its construction audit and prudence
18 review of the environmental upgrades at Iatan 1, including
19 related Iatan 1 and Iatan 2 common plant, is December 31,
20 2009. On that same page they go on to say, the Staff has
21 adjusted its audit/review scope to meet that deadline.

22 In the surrebuttal testimony of
23 Mr. Schallenberg in the KCPL rate case, he attached a
24 one-page Coordination Procedure for Construction Audits
25 that explained the Staff procedure to have both the

1 operations and the services division involved in
2 construction audits. And Judge, I'd like to request the
3 Commission to take administrative notice of this document,
4 which was Schedule 2 to the surrebuttal testimony of
5 Robert E. Schallenberg which was Staff Exhibit 27 in Case
6 No. ER-2009-0089, and I have copies if that would be
7 helpful.

8 JUDGE STEARLEY: That would be helpful,
9 Mr. Fischer. And the Commission will take administrative
10 notice.

11 MR. FISCHER: During the depositions, we
12 found out that this Coordination Procedure of Construction
13 Audits has been suspended by the Staff at the time
14 Mr. Schallenberg filed his surrebuttal testimony, although
15 he was not apparently aware of that suspension at the time
16 he introduced the document.

17 In addition, he'd circulated a draft audit
18 plan among his colleagues for doing construction audits at
19 several plants, including the Iatan 1 plant, but none of
20 those plans were ever finalized. This draft document did
21 not contain specific steps for completing the audit,
22 schedules of events or listing of the personnel that would
23 be needed to complete those plants.

24 Now, based on the evidence included in the
25 depositions, Mr. Schallenberg, Mr. Hyneman and Mr. Majors

1 are the only Staff members working on the Iatan 1 prudence
2 audit today, without the participation of the other
3 sections or divisions of the Commission Staff.

4 As the company's expert Dr. Kris Nielsen
5 will tell you, the Staff's current approach to the Iatan 1
6 prudence and construction audit does not comply with the
7 auditing standards of the industry outlined in the
8 governmental auditing standards known as the Yellow Book
9 for Governmental Auditing.

10 The Staff's audit appears to be more akin
11 to a financial audit that is heavily dependent upon the
12 intensive review of invoices rather than a review of the
13 prudence of the decision-making process of the
14 construction project. I think if you ask the Staff
15 witnesses, they'll also suggest that this intensive
16 invoice review process results directly from their
17 interpretation of your Order.

18 A prudence review is a category of a
19 performance audit within which the auditor or the reviewer
20 is objectively examining the decision-making process and
21 the decisions that are being made to execute the project,
22 if those processes are prudent and the decisions are
23 prudent. A prudence review is conducted to determine
24 whether or not the decision made or the actions taken by
25 management during the execution of the project were

1 independent assessment of and reasonable assurance about
2 whether an entity's reported financial condition results
3 and the use of resources are presented fairly and in
4 accordance with recognized criteria.

5 Staff's audit appears to be more of a
6 financial audit than a prudence audit review. Staff
7 appears to have a theory that there's always another
8 expenditure at a power plant that will need to be reviewed
9 or audited over its life. Therefore, it's not possible,
10 according to this view of the auditing process, to ever
11 truly complete an audit of the construction of a power
12 plant.

13 The companies clearly disagree with this
14 analysis and approach. As I'm going to explain in a
15 minute, this never-ending audit scenario has not been the
16 typical experience with other prudence audits of power
17 plant construction projects here in Missouri, and it's
18 certainly not consistent with the Commission's clear order
19 to the Staff to complete its prudence audit by
20 December 31st, 2009.

21 Now, to understand how we've come to this
22 hearing, I think we probably need to briefly mention the
23 events from the last rate case that led up to the hearing.
24 Particularly, Commissioner Kenney, you weren't here, and
25 I'd like to just go over for a minute some of the history.

1 I apologize if it gets a little bit long, but I'd like to
2 discuss that just a minute.

3 The last KCPL and GMO rate cases were
4 largely driven by the huge investments at Iatan 1 and the
5 urgent need to have those investments reflected in
6 permanent rates. Given the turmoil that was being
7 experienced in the financial markets at that time, the
8 severe recession affecting the United States economy
9 generally, the companies' reliance on the anticipated cash
10 flows from the rate relief of those rate cases and the
11 need to raise capital in financial markets to complete
12 Iatan 2, it was critically important to Kansas City
13 Power & Light and GMO that they be permitted to include
14 their prudent investments in Iatan 1 in their permanent
15 rates.

16 Now, as the Commission will recall,
17 however, the Staff and certain intervenors did not propose
18 to reflect the full investment of Iatan 1 in permanent
19 rates even though they did not include any specific
20 allegations of imprudence or inefficiency in their
21 testimony. Instead, the Staff proposed to put the rates
22 into effect on an interim subject to refund basis because
23 they had not completed the audit of the Iatan 1 and the
24 common plant, and they stated in their testimony, as I've
25 already mentioned, that they did not intend to do so

1 before the case concluded.

2 The Commission had previously ruled in the
3 Callaway and the Wolf Creek rate decisions in the mid '80s
4 that there's a presumption of prudence related to public
5 utility expenditures, and the Missouri courts have agreed.
6 In particular, the presumption of prudence and the
7 prudence standard was addressed in State ex rel Associated
8 Natural Gas vs. the Public Service Commission, 954 SW 2d
9 520.

10 The Commission and the court decisions have
11 held that when other parties raise a serious doubt as to
12 the prudence of those expenditures, then the public
13 utility has the obligation to come forward to rebut those
14 allegations to meet its burden of proof.

15 Now, in the next KCPL and GMO rate cases,
16 or in those last ones that I -- the 0089 case and the 90
17 case, none of the parties raised any serious doubt about
18 the prudence of these expenditures. However, the Staff
19 was unwilling or perhaps unable to provide the results of
20 its prudence audit of Iatan 1 in the context of that case.

21 Instead, the Staff wanted to defer trying
22 any prudence issues to some future rate proceeding. We
23 certainly understand why now. Because the Staff had not
24 even started the prudence audit of the Iatan 1 project at
25 that point in time.

1 In virtually every other major electric
2 rate case in which a public utility in Missouri has
3 requested that a new electric plant be included in rate
4 base, the Commission Staff has conducted a prudence and
5 construction audit and made their recommendations
6 regarding the appropriate level of investment that should
7 be included in permanent rates within the context of that
8 rate case.

9 For example, in the rate cases involving
10 the Callaway, Wolf Creek and Grand Gulf nuclear power
11 plants, the Staff conducted their prudence audits and made
12 their recommendations to the Commission within the context
13 of the rate cases for which the plant was included in
14 rates.

15 And then more recently in rate cases
16 involving AmerenUE's Peno Creek plant, Empire's rate cases
17 involving the State Line combined cycle plant and the
18 Asbury plant, and Aquila's rate case involving the South
19 Harper plant, the Commission Staff conducted its
20 investigation and made its recommendations to the
21 Commission in the context of those rate cases. And in
22 those cases the Commission made determinations of prudence
23 and determined the appropriate amount of investment that
24 should be included in rates within the context of those
25 rate cases.

1 During the course of the last KCPL and GMO
2 rate cases, the Commission held two motion hearings on
3 April 6th regarding the procedural schedule modifications
4 for the true-up proceedings in both those KCPL and GMO
5 rate cases. At the hearings, the issue concerning the
6 Staff's ability to complete its construction and prudence
7 audits of Iatan 1, Sibley and Jeffrey was again raised.

8 Staff counsel when asked how long it would
9 take to complete an audit and prudence review in the KCPL
10 procedural hearing initially stated that he didn't have an
11 answer to that question, but he would -- but it would take
12 more than one or two or three months to complete.

13 Later in the day at a companion hearing in
14 the GMO case, a different Staff lawyer announced that the
15 Staff auditors had informed him that it would take in the
16 neighborhood of six months to perform a prudence review of
17 the Iatan 1 improvements. You can find that at page 20 of
18 the transcripts of ER-2009-0090 on April 6th.

19 We have now passed the one year anniversary
20 of that statement by Staff, and Staff now appears to be
21 saying in its pleadings in this case that it's going to
22 take many more months before it could complete its
23 prudence audit of Iatan 1, notwithstanding the clear
24 directive from this Commission that I'll discuss in a
25 moment.

1 Judge, I'd also like for you to take
2 administrative notice of the April 15 Orders in Case No.
3 ER-2009-0089 and 0090. I've got copies of those decisions
4 or those Orders if that would be helpful as well.

5 JUDGE STEARLEY: That would be helpful, and
6 the Commission will take administrative notice of those
7 Orders.

8 MR. FISCHER: As I mentioned, following
9 these procedural hearings, the Commission issued separate
10 Orders in the KCPL and the GMO cases on April 15th, 2009,
11 and these orders were entitled Order Regarding
12 Construction and Prudence Audits of the Environmental
13 Upgrades at Iatan 1, Jeffrey Energy Center and Sibley
14 Generating Facility.

15 In the KCPL Order, the Commission stated,
16 and I've got it on the board there, Staff indicates that
17 it does not plan to conduct a construction audit or
18 prudence review until sometime next year in the context of
19 a future rate case. However, the Commission does not have
20 the option to delay evaluating a relevant issue or factor
21 in a case setting rates. Consequently, the Commission
22 shall direct its Staff, based on the information that
23 Staff has received from KCPL to date, to complete a
24 construction audit and prudence review of the
25 environmental upgrades of Iatan 1.

1 The construction audit and prudence review
2 shall include all additions necessary for these facilities
3 to operate. Staff shall identify and explain with
4 particularity any disallowances of expenses that it
5 believes are justified. You'll find that on pages 5 and 6
6 of the KCPL Order.

7 Now, if you go to the ordered section,
8 you'll find that the Commission ordered that the Staff of
9 the Missouri Public Service Commission shall complete and
10 file the construction audit and prudence review of the
11 environmental upgrades at Iatan 1, including all additions
12 necessary for those facilities to operate, no later than
13 June 19, 2009. This is the Order I was talking about
14 earlier that caused the Staff now to commence an audit.

15 Let's see. The second paragraph of the
16 ordered section states, the Staff of the Missouri Public
17 Service Commission is directed to provide a specific
18 rationale for each and every disallowance recommended in
19 the construction audits and the prudence reviews.

20 The parties eventually reached a settlement
21 of the KCPL and the GMO rate cases on April 24th and
22 May 22nd respectively, and of course that was before the
23 June 19 deadline that the Commission established for the
24 Staff to file their construction audits and prudence
25 review of Iatan 1.

1 Judge, I also at this time would ask you to
2 take administrative notice of the Nonunanimous
3 Stipulations & Agreements that were filed on April 24th
4 and May 22nd, 2009, in the 89 case and the 90 case.

5 JUDGE STEARLEY: The Commission will take
6 administrative notice of those Orders.

7 MR. FISCHER: I have copies of the
8 stipulations without attachments if that would be helpful.
9 They are a little bit voluminous.

10 JUDGE STEARLEY: If you have them, that
11 will be fine, Mr. Fischer. And the Commission takes
12 notice of its Orders approving those stipulations.

13 MR. FISCHER: You took administrative
14 notice of that?

15 JUDGE STEARLEY: Yes.

16 MR. FISCHER: Thank you. Now, as a part of
17 the Stipulation & Agreements in those cases, the parties
18 agreed, and I put it on the board, that no signatory party
19 to this 2009 stipulation, and this is coming from the KCPL
20 stipulation, shall argue that anyone is prohibited from
21 arguing or presenting evidence in the next KCPL general
22 rate case challenging the prudence of any Iatan 1
23 construction costs or that KCPL should have had this unit
24 operating at full generating -- generation capacity sooner
25 than the actual date that Iatan 1 was found to be

1 operational and used for service.

2 It goes on. Provided, however, that any
3 proposed disallowance of rate base for imprudence under
4 this paragraph shall be limited to a maximum of Missouri
5 jurisdictional rate base no greater than \$30 million
6 inclusive of Iatan common costs. If you go to the GMO
7 stipulation, there's a similar paragraph, but it has a \$15
8 million limitation for the GMO case.

9 There's also in the stipulation a statement
10 that says, the non-utility signatories may continue their
11 construction audits of Iatan 1 and Iatan 2 prior to KCPL
12 filing its Iatan 2 rate case.

13 Now, on June 8th, 2009, the Commission held
14 an on-the-record proceeding to consider the Nonunanimous
15 Stipulations & Agreements that were filed in these cases,
16 and during that on-the-record proceeding, Mr. Schallenberg
17 was asked by Commissioner Davis the following questions
18 regarding the prudence audits of Iatan 1, Sibley and
19 Jeffrey.

20 So, would you have an objection if the
21 Commission ordered you to produce these audits by, say,
22 December 31st, 2009, as opposed what was said the time for
23 Staff to file its direct testimony in the next round of
24 rate cases?

25 Mr. Schallenberg replied, obviously I won't

1 object. It does change the priority of how the work is
2 done, but if that's the Commission's desire, those audits
3 will be moved up to make sure they meet that date, and the
4 other audits will be adjusted accordingly. That's found
5 at transcript page 180.

6 Now, at the time of this on-the-record
7 proceeding, Mr. Schallenberg clearly was indicating to
8 Commissioner Davis that staff had no objection to filing
9 its completed Iatan 1 prudence review and construction
10 audit by December 31st, 2009. The Commission issued
11 Orders Approving Nonunanimous Stipulations & Agreements in
12 that case, which the Judge has already taken notice of,
13 and that was done on June the 10th, 2009.

14 Commissioners, I want to make it very clear
15 that the companies are not suggesting that Staff or any
16 other party should be prohibited from arguing or
17 presenting evidence in the next KCPL and GMO rate cases
18 challenging the prudence of Iatan costs at all. However,
19 the companies are requesting that the Commission provide
20 certainty about the status of the Staff's Iatan 1 prudence
21 audit in this proceeding. Is it concluded as required by
22 the Commission's Order of April 15, or is it continuing
23 without an end in sight, the never-ending audit scenario
24 that seems to be alluded to by Staff?

25 The companies are not requesting that the

1 Commission make any substantive determinations about
2 prudence at this time. We believe, however, the
3 Commission should find that the December 31st, 2009,
4 construction audit concludes Staff's prudence review of
5 Iatan 1 at least for expenditures through the end of 2009.

6 In both the KCPL and the GMO stipulations,
7 there was an out clause which gave the Staff and other
8 parties the opportunity to argue for higher disallowances
9 than the 30 million for KCPL and the 15 million for GMO
10 under certain circumstances. I'd like to talk about those
11 circumstances.

12 These out clauses included circumstances
13 such as, should the Commission find that KCPL failed to
14 provide material and relevant information which was in
15 KCPL's control, custody and possession -- or possession,
16 or which should have been available to KCPL through
17 reasonable investigation, or should the Commission find
18 that KCPL misrepresented facts relevant to charges to the
19 Iatan 1 and the Iatan common costs, or KCPL engaged in the
20 obstruction of lawful discovery.

21 Now, under those circumstances, this out
22 clause would allow the parties then -- basically says the
23 parties were not bound to propose a disallowance to KCPL's
24 Missouri jurisdictional rate base no greater than
25 30 million. There's a similar provision in the GMO

1 stipulation that relates to 15 million. We call that the
2 15 and \$30 million cap.

3 Now, in response to the allegations leveled
4 by Staff related to the discovery issues in this case, the
5 companies request a finding by the Commission that the
6 companies have not obstructed Staff's prudence review of
7 the Iatan 1 project by abusing the discovery process. We
8 believe we've been diligent in providing responses to
9 massive amounts of discovery in this case. And Mr. Tim
10 Rush will be here later today to testify about the details
11 of that process.

12 Very few discovery disputes have been
13 brought to the Regulatory Law Judge or the Commissioners.
14 And for the most part, when they were, the Commission has
15 ruled in favor of the companies. Therefore, we don't
16 understand the basis of the Staff's argument that the
17 companies have been abusing the discovery process.

18 What is clear from the Staff pleadings,
19 particularly paragraph 15 of the Staff's Motion to Open a
20 Construction Audit, which was filed on March 12, 2009,
21 what is clear is the Staff intends to continue the audit
22 of the Iatan 1 and common plant needed to operate Iatan 1,
23 and it does not intend to complete the prudence and audit
24 for some unspecified period of time that may extend beyond
25 the company's next rate cases.

1 As I mentioned earlier, this is
2 inconsistent with the Staff's own preliminary report where
3 they indicated that they had adjusted the audit scope to
4 meet the December 31, 2009, deadline.

5 Well, back to my review of the events that
6 led to this hearing. Following the approval of the
7 settlement of the KCPL and GMO rate cases, the companies
8 and the Staff filed a joint motion of Staff, KCPL and GMO
9 to extend the filing date of Staff's construction audit
10 and prudence review reports and the filing date of
11 responses or rebuttal testimony to Staff's construction
12 audit and prudence review reports to KCPL and GMO's next
13 general rate cases.

14 I'm always amazed at what we put in the
15 title of these pleadings, but that's what we filed. In
16 this joint motion, Staff and the companies jointly
17 requested that the Commission extend the filing dates of
18 the Staff's construction audit and prudence review reports
19 for KCPL and GMO respecting the environmental upgrades at
20 Iatan 1, the Jeffrey Unit 1 and 3 and the Sibley unit from
21 June 19th, which had been originally ordered, 2009, to the
22 filing of the Staff's direct testimony in the next general
23 rate cases for KCPL and GMO.

24 Judge, I'd like to have the June 10th Order
25 taken administrative notice of as well in those cases.

1 JUDGE STEARLEY: Very well. The Commission
2 will take administrative notice of the June 10th, 2009,
3 Orders.

4 MR. FISCHER: Now, as I mentioned, we'd
5 asked for -- that the extension of the deadline be
6 granted, but the Commission considered our request and the
7 Commission simply said no, it did not grant the request.

8 Instead, in its June 10th Order, the
9 Commission clearly and unequivocally stated, the Staff of
10 the Missouri Public Service Commission shall complete and
11 file its construction audit and prudence review of the
12 environmental upgrades at Iatan 1, including all additions
13 necessary for these facilities to operate, no later than
14 December 31, 2009.

15 The Commission explained its Order as
16 follows: In light of the parties' settlement, the
17 Commission finds it reasonable to extend the deadline for
18 Staff to complete the construction audit and prudence
19 review. However, the Commission recognizes that Staff,
20 having operated under a deadline of June 19, should be
21 able to file at least a preliminary report of its audit no
22 later than the original deadline.

23 The Commission further does not wish to
24 delay completion of the audits by the end -- or beyond the
25 end of this calendar year. By setting a final deadline of

1 December 31, 2009, the Commission will have more time to
2 adequately review Staff's audits, and the parties will
3 have sufficient time to resolve any discovery disputes and
4 file position statements with regard to the Staff reports.

5 In the ordered section of that June 10th
6 Order, the Commission specifically stated as follows: The
7 Staff of the Missouri Public Service Commission shall
8 complete and file the construction audit and prudence
9 review of the environmental upgrades at Iatan 1, including
10 all additions necessary for these facilities to operate,
11 no later than December 31, 2009. And that's my
12 understanding, but that's what you ordered. No later than
13 December 31, 2009, the Staff shall complete and file the
14 construction audit and prudence review for Iatan 1.

15 The next ordered section stated, the Staff
16 of the Missouri Public Service Commission is directed to
17 provide a specific rationale for each and every
18 disallowance recommended in the construction audits and
19 prudence reviews. You can find that on page 2.

20 Now, from KCPL's and GMO's perspective,
21 that Order is about as clear as it gets. The Staff was
22 required by the Order of the Commissioners to complete and
23 file the construction audit and prudence reviews of the
24 environmental upgrade at Iatan 1 no later than
25 December 31, 2009.

1 show that the companies have already provided Staff with
2 access to all relevant personnel and information necessary
3 to reach conclusions about the prudence at Iatan and the
4 common plant necessary to operate Iatan.

5 We believe the evidence will also show that
6 the Staff's recent audit activities have largely focused
7 on expense reports of officers of the companies and the
8 mileage charges for employees working at the Iatan
9 construction project.

10 In fact, of the most recent 400 data
11 requests issued by Staff in the construction audit, more
12 than 100 or about 25 percent have dealt with expense
13 reports of KCPL employees. More than 50 data requests
14 dealt pertained to how KCPL employees are reimbursed for
15 mileage at the construction site. Only about a dozen or
16 so of those 400, about 3 percent, pertain to expenditures
17 of Alstom, Kiewit or Burns & McDonnell, the principal
18 vendors that are operating out of Iatan 1, Iatan 2 and the
19 common plant. Those are the big guys out there.

20 If you want to look at the DRs that I'm
21 talking about, they're attached to the company's
22 March 22nd response as Attachment 22. You can read all
23 400 if you want.

24 We believe the evidence is going to show
25 that the Staff now is conducting a financial audit of the

1 companies rather than a prudence review of the
2 construction decisions made related to the Iatan 1 and
3 common plant.

4 The companies are going to present five
5 witnesses in this proceeding who will address the issues
6 related to the Iatan construction project, the discovery
7 process, and the level of cooperation of KCPL and GMO to
8 facilitate the Staff audit. We're going to present these
9 witnesses to talk about the extensive cost controls and
10 management processes that have been in place to control
11 construction costs, the typical scope of a prudence audit
12 of a power plant construction project, and the potential
13 financial damage that could occur as a result of the
14 uncertainty surrounding the incompleteness of these audits,
15 and the damage that could be occurring to KCPL's business
16 reputation based upon some of these unfounded assertions.

17 More specifically, the companies will
18 sponsor the following witnesses to talk about these
19 Iatan 1 issues: Mr. Curtis Blanc, KCPL Senior Director of
20 Regulation, will address the Staff's serious allegations
21 against the company as to why the construction audit and
22 prudence review of Iatan 1 has not been completed as
23 ordered by the Commission.

24 In particular, he will address the Staff's
25 claims particularly in its March 9th reply that the

1 companies have violated their own Code of Ethical Conduct
2 by not cooperating in the Staff's audits. He will explain
3 that the companies take this allegation very seriously,
4 and the bottom line is, this allegation is simply not
5 true.

6 Mr. Kris -- Dr. Kris Nielsen of the Pegasus
7 Global Management Consulting Firm performed an independent
8 and objective evaluation of the effectiveness of decisions
9 made by the Iatan project leadership team. He will
10 explain how the company's cost control system is not only
11 adequate, but is typical of a project of this type.

12 He will also testify that Staff received
13 all the information necessary to conduct a prudence review
14 at the Iatan 1 site. He's familiar with the fact that the
15 Kansas staff and its outside consultants were able to
16 complete a prudence audit of the Iatan 1 project last year
17 using essentially the same data that's been available to
18 the Missouri Staff with no significant discovery disputes.

19 He will also explain the differences
20 between a prudence audit of a power plant and a financial
21 audit which the Staff appears to be conducting. In
22 particular, he will address the governmental auditing
23 standards or what they call the Yellow Book published by
24 the GAO which prescribes the appropriate standards for
25 such audits.

1 Chris Giles, the former Vice President for
2 Regulatory Affairs, will explain the company's cost
3 control system and demonstrate how costs can be tracked
4 through that system.

5 Mr. Rush, KCPL's Director of Regulatory
6 Affairs, will address the Staff's allegations regarding
7 discovery issues. Mr. Rush will explain the discovery
8 process in general and the massive amount of information
9 that has been requested of the companies and provided to
10 the Staff, both the Services Division and the Operations
11 Division, most often to separately accommodate their
12 particular work practices.

13 And then finally, Michael Cline, KCPL's
14 Vice President and Treasurer, will address the financial
15 implications that may result from Staff's failure to
16 complete its audit of the Iatan 1 and common plant. He
17 will testify that the uncertainty around the status of the
18 Iatan 1 prudence review puts downward pressure on the
19 company's credit rating and stock price to the detriment
20 of the company and ultimately to its customers.

21 We should also clearly indicate what the
22 companies are seeking at the end of the hearing and what
23 we're not seeking. At the conclusion of the hearing, the
24 companies request that the Commission issued an Order
25 clarifying the status of the Staff's Iatan 1 prudence

1 audit. We believe that the Staff should be precluded from
2 proposing additional prudence adjustments/disallowances in
3 the next rate cases in addition to those 18 that have
4 already been proposed for KCPL and the 12 for GMO that are
5 already contained in the Staff reports that were filed on
6 December 31st.

7 The Commission has already directed the
8 Staff to complete their prudence review and construction
9 audits as of December 31st, 2009, and the Staff's
10 preliminary report indicated they were going to comply
11 with the Commission's Order. Indeed, the Staff did file
12 its December 31st report that addressed their findings.
13 The Staff has not sought an extension of the deadline for
14 completing its prudence and construction review or filed a
15 request to now expand its recommendations.

16 Contrary to what I expect Staff may argue
17 in this case, the companies are not reneging on any
18 agreements made with Staff or any other party to the rate
19 case settlements. The companies are not seeking any
20 prohibition on Staff from arguing or presenting evidence
21 based on their prudence reviews in the next general rate
22 cases challenging the prudence of costs at Iatan. But
23 they should be limited to what their reports stated as of
24 December 31st. That's -- that's where the disallowances
25 have been identified.

1 The Commission -- the companies are not
2 seeking a wholesale end to the Staff's review of
3 expenditures related to Iatan 1 and the common plant
4 necessary to operate it. The companies are instead simply
5 looking for confirmation that the prudence disallowances
6 from Staff related to KCPL's decisions related to the
7 Iatan 1 AQCS and the common plant ended with the
8 December 31, 2009, reports, as was directed by the
9 Commission in its June 10th Order in both the 89 case and
10 the 90 case.

11 Staff's inquiries into rate base issues --
12 or rate case issues such as AFUDC calculations and
13 allocation issues between Iatan 1 and Iatan 2 would not be
14 affected by the company's request. These are rate case
15 issues and not prudence issues. Nor would the Staff's
16 review of invoices related to Iatan 1 and common plant
17 that were not available at the end of the year be
18 affected. Those issues can be addressed in the companies'
19 next rate cases.

20 Now, obviously this Commission continues to
21 have jurisdiction over the companies' rates, including the
22 level of Iatan 1 costs reflected in those rates. And the
23 company -- the companies recognize that independent
24 prudence audits by their very nature are intrusive and
25 they're expensive, requiring a considerable amount of

1 investment by the companies, their staff time, their
2 materials and outside consultant costs.

3 However, the companies believe that these
4 efforts should be focused on prudent audit issues related
5 to the companies' decision-making process at the
6 construction project and not an auditing of every invoice
7 related to the project.

8 The companies believe that the evidence
9 will show in this hearing that the Staff is largely
10 focusing now on minutia related to mileage charges and
11 receipts for officer expense accounts rather than prudence
12 issues related to decision-making out at the construction
13 site.

14 Unlike the KCC staff consultant which
15 completed his prudence review of Iatan 1 in the context of
16 KCPL's last Kansas rate case and dealt with the prudence
17 of the company's major decisions related to Iatan 1, the
18 Missouri auditors are now spending their time on things
19 like requesting the home addresses and business addresses
20 of every Burns & McDonnell employee at Iatan apparently so
21 they can independently check their monthly mileage
22 charges. This is DR No. 782. Apparently Staff believes
23 that it needs to know this information on a monthly basis
24 so that if these employees change their home address
25 during the project, they can check the accuracy of those

1 mileage charges.

2 The Staff has been spending their time
3 since the April 15 Order checking the entrance logs of the
4 power plant to verify whether the president of the
5 company, Mr. Downey, and other company personnel actually
6 traveled to the Iatan site on specific days, including the
7 day of the crane accident, so they can cross check that
8 information with their expense accounts.

9 Mr. Hyneman and Mr. Majors even made a
10 special trip, one of only two trips that Mr. Majors made,
11 to the Iatan site so they could measure the distance
12 between a remote parking lot used by union employees to
13 the entrance of the site. Apparently this exercise was
14 designed to verify whether there was a real need for the
15 company to have a bus to transport these union workers a
16 mile and a half to the entrance to their site.

17 They've been requesting that the company
18 provide the specific business purposes for Mr. Downey's
19 visits out to the site, and they've been requesting copies
20 of expense reports for Mr. Downey and other officers with
21 receipts for each and every account reimbursement charged
22 to Iatan during the last four years. In one request the
23 Staff even questioned whether the trip of Mr. Churchman,
24 the company's vice president of construction, to the
25 funeral of the gentleman that died in the crane accident

1 should be considered as a personal or a business-related
2 expense.

3 These are just a few examples, your Honor,
4 of the types of issues that have been causing the company
5 personnel to spend a great deal of time accumulating
6 information and other minutia in direct response to the
7 Staff inquiries and often on an expedited basis.

8 Initially when the companies requested that
9 Staff relieve it of the ten-day turnaround on the DRs that
10 occurred before the rate cases ended, when we asked that
11 they go back to 20 days to give us the opportunity to get
12 some of this information, Staff initially objected. We
13 eventually worked it out. But that's what they were
14 asking for at that time, and they wanted it in ten days.

15 Such examples cause my clients to question
16 the big -- the big picture focus of the current auditing
17 staff and whether they understand the purpose of a
18 prudence audit at all.

19 The companies do not seek to limit the
20 Commission's jurisdictional authority or statutory
21 responsibility in any way. The companies' request is
22 specifically limited to our request that the status of the
23 Staff's audit be clarified, and that the Staff be
24 precluded from adding additional prudence adjustments that
25 are not already contained in their audit reports.

1 The companies are seeking an understanding
2 from this Commission regarding whether the Commission's
3 Order directing the Staff to complete its audit by
4 December 31st, 2009, really truly applies to Staff at all.

5 In conclusion, and I'm sorry it's taken me
6 so long, the companies have a very significant concern
7 that history may repeat itself with the upcoming 2 Iatan
8 rate case. It's not clear from the evidence that the
9 Staff will complete its prudence review and construction
10 audit of Iatan 1 in the context of the companies' next
11 rate cases.

12 We're very concerned that we may see a
13 repeat of the problems that occurred in the last rate
14 cases when Staff failed to complete its prudence review
15 and construction audits in the Iatan 1 rate case. With
16 the amount of money that's involved with the construction
17 of Iatan 2, a repeat performance by Staff could jeopardize
18 recovery of the huge investment of Iatan 2, and we
19 respectfully request that the Staff's intentions with
20 regard to the prudence audit of Iatan 2 be determined and
21 explored by the Commission today.

22 I thank you very much. I thank you for
23 your patience for this unusually long opening statement,
24 but I appreciate you being here today. Thank you very
25 much.

1 JUDGE STEARLEY: Any questions for
2 Mr. Fischer?

3 COMMISSIONER JARRETT: Yes. Mr. Fischer,
4 thank you for your opening statement. I'll ask this
5 question, and I won't put you on the spot. If you don't
6 feel like answering it, I won't make you answer it. But
7 do you believe that the evidence will show that our Staff
8 has acted in bad faith throughout this entire audit
9 process?

10 MR. FISCHER: Judge, on behalf of the
11 companies, I don't want to go that far. I don't want to
12 cast aspersions on the Staff. I think the evidence is
13 going to show that they didn't get started until
14 April 15th on their audit, that they -- that
15 Mr. Schallenberg started by himself, and he later got
16 Mr. Hyneman to volunteer, then they may have gotten
17 Mr. Majors, but that didn't occur until April 15th.

18 We thought this audit had been going on for
19 a long, long time before that. And we would have thought,
20 based on other prudence audits, you'd have engineers,
21 you'd have construction management folks that had the
22 expertise to question and to come to conclusions about the
23 prudence of decision-making at that site.

24 Now, the Staff has a lot going on. They
25 have other construction audits and everything else. They

1 have rate cases all over. I don't want to say that
2 anyone's acted in bad faith, but you can -- that's a
3 motive thing. Therefore, I can't answer that. You can
4 ask that of Staff.

5 But that's our frustration. That's the
6 reason we're here today. I mean, and we asked for more
7 than just three hours to discuss it.

8 COMMISSIONER JARRETT: Well, the evidence
9 will speak for itself, and I appreciate your answer, and I
10 look forward to looking at the evidence. Thank you.

11 JUDGE STEARLEY: Any other questions for
12 Mr. Fischer?

13 (No response.)

14 JUDGE STEARLEY: Thank you very much,
15 Mr. Fischer. Opening statement from Staff.

16 MR. DOTTHEIM: May it please the
17 Commission?

18 Immediately there are a couple of
19 overriding problems with Mr. Fischer's presentation and
20 what he's indicated are KCPL's requests from the
21 Commission. One, they're not accurate; and two, in
22 particular regarding the requests, I think the only
23 parties here are the company, the Staff and the Office of
24 Public Counsel, and there are more signatories to the two
25 Stipulations & Agreements that have been referred to,

1 which are the Stipulation & Agreement in the Kansas City
2 Power & Light case, ER-2009-0089, the Stipulation &
3 Agreement in ER-2009-0090, and very possibly the
4 Stipulation & Agreement involving the KCPL regulatory
5 plan, which is still in effect and relates to a fourth
6 rate case, the rate case where KCPL seeks to place in
7 service the Iatan 2 generating unit.

8 The relief that KCPL is requesting relates
9 directly to the Stipulations & Agreements that this
10 Commission approved in two cases last year, and there are
11 other parties to that Stipulation & Agreement that relied
12 on those terms in entering in to that -- those two
13 Stipulations & Agreements, and this is an investigatory
14 docket. This is not a contested case. You are going to
15 possibly make rulings which will affect the rights of the
16 signatories to those Stipulations & Agreements.

17 And since we're talking about those or I'm
18 talking about those Stipulations & Agreements, I too would
19 like to distribute copies of them and the Commission's
20 Orders.

21 Also, too, I think I'd like to note, and if
22 Mr. Fischer or if any of the attorneys for Kansas City
23 Power & Light disagree with me, the Staff members who were
24 deposed on Friday and Monday of this week, we made
25 ourselves available for as long as Kansas City Power &

1 Light wanted to depose us. We didn't place any time
2 limits. I think maybe I objected to one or two questions
3 as far as form, and that was the sum total. I think they
4 told us throughout that process that we were open, and I
5 do believe we were.

6 MR. FISCHER: Judge, I'd certainly
7 stipulate to that, and would express my thanks to the
8 Staff for staying late and coming to Kansas City on a
9 Friday and working late on Monday. We all tried to get
10 this done before we got to this hearing, and I appreciate
11 very much Mr. Dottheim, Mr. Schallenberg, Hyneman and
12 Majors for being available to do that. Thank you very
13 much.

14 JUDGE STEARLEY: Thank you, Mr. Fischer.
15 Please proceed, Mr. Dottheim.

16 MR. DOTTHEIM: Okay. And I'd like to
17 distribute -- it's the same packet of documents -- well,
18 it's the Stipulation & Agreements in the two cases, but I
19 think it's a -- it's a more complete packet. I think it
20 really contains just one additional relevant document.
21 But if you'll pardon me for a moment.

22 JUDGE STEARLEY: That's fine, Mr. Dottheim.
23 If the Commission needs to take notice of that additional
24 document, point it out to me, which one it is.

25 MR. DOTTHEIM: It is -- they aren't stapled

1 together. There's a binder clip. They are printed front
2 and back. They are the Stipulations & Agreements, the
3 Commission's Orders approving the Stipulations &
4 Agreements, concurring opinion of Commissioners and a
5 Notice of Correction in Case Nos. ER-2009-0089 and
6 ER-2009-0090. And it also contains a term sheet in Case
7 No. ER-2009-0089. And I have various pages flagged and
8 various sentences or parts of sentences highlighted which
9 I would like to go over after I distribute copies.

10 JUDGE STEARLEY: The Commission will take
11 notice of the Notice of Correction from June 11th, the
12 concurring opinions that were filed, and your Schedule of
13 Terms and Conditions. I believe we have already taken
14 notice of the other documents.

15 MR. DOTTHEIM: Mr. Fischer did refer to,
16 earlier this morning, to some arguments on matters that
17 the Staff will raise. In fact, the Staff made -- made
18 note of them a couple of weeks ago during an on-the-record
19 presentation in the AmerenUE rate case. It was on
20 April 12. It involved in particular a low income
21 Stipulation & Agreement.

22 Commissioner Gunn and Commissioner Kenney
23 were in the hearing room, and Commissioner Gunn raised a
24 question regarding a part of the Stipulation & Agreement
25 regarding that no other program, low income program could

1 be proposed in the year 2010, and I think he posed the
2 question if the Commission suggested a program or a
3 variation, might the company or some other party suggest
4 that the Stipulation & Agreement was void.

5 And I said I -- I referred the Commissioner
6 to a section of the Stipulation & Agreement and noted that
7 I did believe that that -- that nature of an issue was
8 going to be before the Commission in a few weeks, the end
9 of this month, and I do believe that issue is before the
10 Commission.

11 And I'd first like to refer the
12 Commissioners to the -- to the first half, and I would say
13 that I don't believe at the moment that the two
14 Stipulations & Agreements at the moment are void. I
15 believe there may be a question about that depending upon
16 the action that the Commissioners might take, which I
17 don't believe they've taken yet. But Kansas City Power &
18 Light does believe that the Commission has taken that
19 action.

20 And the first -- the first tab and the
21 highlighting is -- and I know with all these documents
22 it's difficult to tell, but the first tab and
23 highlightings at page 3 of the Nonunanimous Stipulation &
24 Agreement in the KCPL rate case, the 0089 case. It's
25 section 5 with the heading prudence and in service timing

1 of Iatan 1. It's a part of a sentence, no signatory party
2 to this 2009 stipulation shall argue that anyone is
3 prohibited from arguing or presenting evidence in the next
4 KCP&L general rate case challenging the prudence of any
5 Iatan 1 construction costs. There is no date in that
6 portion of the sentence or there's no December 31 date.
7 There's no June 19 date.

8 I'd like next refer the Commissioners to
9 the next page, which is the next tab. There's a complete
10 sentence that's highlighted, and that sentence is, the
11 non-utility signatories may continue their construction
12 audits of Iatan 1 and Iatan 2 prior to KCP&L filing its
13 Iatan 2 rate case. And the Staff negotiated that sentence
14 and intended that sentence to mean that it could continue
15 its Iatan 1 audit up to and through the Iatan 2 rate case.

16 COMMISSIONER JARRETT: Judge, may I
17 inquire?

18 JUDGE STEARLEY: Certainly, Commissioner.

19 COMMISSIONER JARRETT: Mr. Dottheim, is
20 your argument then that the Staff can just ignore our
21 order saying that Staff shall file that by December 31st,
22 2009?

23 MR. DOTTHEIM: No, Commissioner. We did
24 file an audit. It's not the audit -- in fact, what we
25 filed was broader than what we thought you ordered. You

1 ordered in particular an invoice audit. We went beyond
2 that, and we filed more akin of an audit that we would
3 have filed. At the same time we believe that we were
4 continuing under certain circumstances, which I will
5 address, to continue under those certain circumstances,
6 which in part I've addressed in responses I've made to the
7 Commission on behalf of Staff on March 9 and on March 29.

8 So we don't believe that we ignored or that
9 we -- or that we violated Commission Orders. We believe
10 we are in compliance with the Commission's April 15th
11 Order. We believe we are in compliance with the
12 Commission's June 10 Order. In fact, there are two
13 June 10 Orders. There is the Commission's June 10 Order
14 denying the joint motion of Staff and KCPL requesting that
15 the June 19 filing of the Staff in essence be postponed or
16 continued to the Iatan 2 rate case. Also, it requested
17 that KCPL's obligation to respond to that filing be
18 lifted.

19 To Staff, the joint motion of May 28 was
20 before the Commission ever came up with a December 31st
21 date. The June 10 Order, one of the June 10 Orders said,
22 no, we're not going to let -- we're not going to lift the
23 June 19th date. You still have to file on the June 19th,
24 but it's a preliminary report. You are also going to have
25 to file on December 31. And we met both dates.

1 But what we're doing we think is consistent
2 with both of the Commission's June 10 Orders. The
3 Commission's second June 10 Order is in this packet.
4 In fact, it's the second page, and that Order is Order
5 Approving Nonunanimous Stipulations & Agreements and
6 Authorizing Tariff Filing. Your Order approving the
7 Stipulation & Agreement doesn't vary any of the terms in
8 the Stipulation & Agreement.

9 We believe we are in compliance with both
10 of your Orders. We believe you have not yet voided this,
11 the April 24th Stipulation & Agreement.

12 JUDGE STEARLEY: Commissioner Gunn has some
13 questions.

14 COMMISSIONER GUNN: Let me read from the
15 Order specifically. The Staff of the Missouri Public
16 Service Commission shall complete and file the
17 construction audit and prudence review of the
18 environmental upgrades at Iatan 1, including all necessary
19 additions necessary for these facilities to operate, no
20 later than December 31st, 2009.

21 And what you're saying here is that that
22 sentence says file the completed the construction audit,
23 but don't really file a completed construction audit
24 because we can continue up until the they file the first
25 rate case. I'm not talk about stipulation. I'm talking

1 about the Order.

2 What your contention is, is that that Order
3 allows for more construction audit under -- for exactly
4 the same terms that we're talking about past the December
5 31st, 2009 date? That sentence is open-ended when taken
6 in context of the Stipulation & Agreement?

7 MR. DOTTHEIM: We would never do an invoice
8 audit. That's not the audit -- if I may, Commissioner,
9 Mr. Fischer read from the transcript of --

10 Commissioner GUNN: Mr. Dottheim, I'd like
11 you to answer my question. Because we ordered you to
12 complete the construction audit on Iatan 1 by
13 December 31st, and now you're telling me that that -- that
14 was almost a year ago.

15 MR. DOTTHEIM: Yes.

16 COMMISSIONER GUNN: And what you're now
17 saying for the first time as far as I can tell, that
18 there's somehow would violate -- that that Order would
19 violate a Stipulation & Agreement that we approved about a
20 year ago if the plain reading of this sentence is how I
21 read it, because what I read on this -- and you may have a
22 point, but I think it is -- I think -- I don't know how a
23 sentence could be any clearer than to say -- this didn't
24 say a construction audit. It didn't say a preliminary
25 one. It didn't say a partial one. It said the

1 construction and prudence audit, not allowing for anything
2 else.

3 MR. DOTTHEIM: And also, Commissioner,
4 pardon me for digressing, if you get from the company the
5 slides that it put up on the screen, one of the slides did
6 not say the. One of the slides said its.

7 COMMISSIONER GUNN: Well, I'm --

8 MR. DOTTHEIM: I know. I know.

9 COMMISSIONER GUNN: I'm reading from this.
10 So let's put aside what the company asked, okay, because
11 this is the question that I fundamentally want to get
12 answered. It's the question that I asked on April 15th,
13 and to find out that the audit wasn't even started, I
14 don't recall that being clear in the April 15th hearing
15 that we had, that the audit hadn't even been started. I
16 understood that it hadn't been completed and there was no
17 intent to complete. But let's get beyond that for a
18 second.

19 MR. DOTTHEIM: Can I address that?

20 COMMISSIONER GUNN: Well, I would like to
21 address my first point, which hasn't been addressed yet.

22 MR. DOTTHEIM: Yes.

23 COMMISSIONER GUNN: So this Order you are
24 saying does not mean what it said? There are evidently
25 this -- the construction audit and prudence review is

1 something completely separate than what's commonplace.

2 MR. DOTTHEIM: That may be what you say it
3 says, I guess is what I'm saying, Commissioner.

4 COMMISSIONER GUNN: Well, that's funny
5 because it's a Commission Order, right, that I concurred
6 in, correct? So my intent on what it said is pretty
7 important here. Would you agree with that?

8 MR. DOTTHEIM: Well --

9 COMMISSIONER GUNN: If what I say violates
10 the Stipulation & Agreement, that's a different issue.

11 MR. DOTTHEIM: Well, I'm reading it in
12 context with your other Order on June 10th.

13 COMMISSIONER GUNN: So they conflict?

14 MR. DOTTHEIM: Not the way --

15 COMMISSIONER GUNN: Not the way you read
16 it?

17 MR. DOTTHEIM: Not the way I read it. I
18 tried to read them so they wouldn't conflict.

19 COMMISSIONER GUNN: But now, that brings me
20 to my second point. Why is this the first time we're
21 hearing that when we've gone through this and they're
22 asking -- and we're asking for this audit to be complete,
23 that all of a sudden you're saying, well, it's going to
24 void out a Stipulation & Agreement. That's the reason why
25 we're not doing it and we're continuing on.

1 We haven't heard that for a year. For a
2 year we haven't heard that. Can you shed some light on
3 that?

4 MR. DOTTHEIM: Well, that's not something
5 lightly that the Staff would raise, for other parties to
6 raise.

7 COMMISSIONER GUNN: Nobody raised it, until
8 we decided --

9 MR. DOTTHEIM: And then --

10 COMMISSIONER GUNN: -- until the Commission
11 decided that this thing was going way too slow and we
12 wanted to get it. All of this has been on our motion, on
13 us trying to move forward on this, and it's one excuse
14 after another about why this audit has not been completed.

15 Now, if you want to say that all the
16 parties agreed that we didn't have to do it and that the
17 Commission's order of this doesn't supersede the agreement
18 that everybody comes to, and that now you have some sort
19 of right to throw out the entire stipulation of the Kansas
20 City Power & Light Stipulation & Agreement, that's a
21 different argument, but it's new. It's new. Because I
22 think the Commission contemplated that you would have an
23 audit completed, a construction and prudence audit
24 completed by December 31st.

25 COMMISSIONER JARRETT: We were told by

1 Staff that they would have it completed. Mr. Schallenberg
2 didn't object.

3 MR. DOTTHEIM: May I read --

4 COMMISSIONER JARRETT: Said they could do
5 it in six months.

6 COMMISSIONER GUNN. Absolutely. If that
7 was taken out of context, you can absolutely read it.

8 MR. DOTTHEIM: I will go to the transcript
9 of June 8 that was read. And I go to page -- I go to
10 page 180, and Commissioner Davis says, okay, so would you
11 have any objection if the Commission ordered you to
12 produce these audits by, say, December 31st, 2009, as
13 opposed to what was said the time for Staff to file its
14 direct testimony in the next round of rate cases?

15 Obviously I won't object. It does change
16 the priority of how the work is done, but if that's the
17 Commission's desire, those audits will be moved up to make
18 sure they meet the date, and the audit -- other audits
19 will be adjusted accordingly.

20 Now, continuing in the transcript,
21 Commissioner Davis says, I don't want to disrupt MGE's
22 rate case or Empire's gas case or anything else.

23 Mr. Schallenberg says, there are no reasons
24 that are being -- excuse me. There are no resources that
25 are being dedicated to the construction audits that are

1 competing with Empire's rate case or with MGE's rate case.
2 The thing is, is it's not likely that between now and the
3 end of the year nothing else will come up. In Iatan 1's
4 case, Iatan 1 is interrelated with Iatan 2, and as we
5 finish -- or as we finish Iatan 1, there's going to be an
6 overlap between that and Iatan 2. There's going to be
7 costs that should be in one or the other, and then we
8 still have that common plant deal. And when you're saying
9 Iatan 1, Iatan 1 will still have some overhang until
10 Iatan 2 is finished, and Iatan 1 -- excuse me, and I --
11 we're still talking to the company. We get those updates
12 as to when Iatan 2 will be finished because that dictates
13 when the next rate case will take place.

14 And I would also point out is, there is
15 still the -- when you're doing a construction audit,
16 you're actually doing it on the dollars. You're doing it
17 on the dollars spent, and the dollars spent are not
18 necessarily -- well, in fact, almost -- it's probably
19 universal, they're never complete, completely known at the
20 time a plant goes into operation. And I think we're
21 looking at some schedules that go through the rest of this
22 year of payments that are projected to be made that
23 haven't been made. So that is an issue as to what the
24 construction audit at December 31st would address because
25 it can only address what has actually been paid because

1 audits are done on what's paid, not what was projected.

2 So Mr. Schallenberg was trying to indicate
3 that you can pick a date like December 31st, and even
4 though that plant went into service on April 19th, that
5 doesn't mean the audit of Iatan 1 is over. And we have
6 subsequently learned that there is additional construction
7 and --

8 COMMISSIONER JARRETT: And when did Staff
9 file a motion to extend before December 31st saying, you
10 know, all the costs haven't come in, we can't complete
11 this by December 31st, so can we have an extension? Why
12 didn't Staff do that?

13 And I also might add, Mr. Williams is in
14 the back of the room. He's the one that said this in
15 Volume 10 of the transcript in the rate case: I've been
16 informed that it would take in the neighborhood of six
17 months to perform a prudence review of the Iatan 1
18 improvements. I'd like to ask Mr. Williams to come
19 forward and tell me who told him that.

20 MR. WILLIAMS: My recollection is that it
21 was related to me by Cary Featherstone, who is not a
22 participant in these audits.

23 COMMISSIONER JARRETT: But someone from
24 Staff told you it would take six months and you relayed
25 that to the Commission?

1 MR. WILLIAMS: That was --

2 COMMISSIONER JARRETT: We issued an Order
3 saying December 31st, which was issued in, I believe,
4 April or June.

5 JUDGE STEARLEY: That's correct, April was
6 the first Order.

7 COMMISSIONER JARRETT: Giving them more
8 than six months to complete it.

9 JUDGE STEARLEY: The first one set a
10 deadline of June 19th, and then that was extended. So
11 really first Order was issued in April.

12 MR. WILLIAMS: There was an April 15th
13 Order that gave the June 19th date.

14 COMMISSIONER JARRETT: Commissioner Gunn, I
15 apologize for jumping over you.

16 COMMISSIONER GUNN: No.

17 COMMISSIONER JARRETT: And let me step this
18 back here, because I want to apologize for getting
19 frustrated on this stuff, and I don't mean to be heated
20 about it, but you can understand that this Commission --
21 well, I as a member of this Commission am extremely
22 frustrated at this whole process, and this -- what I
23 thought we had resolved after a hearing in April, and then
24 after an Order that issued about December 31st, we are
25 now, you know, almost in May. So now we're almost --

1 we're a month away from or six weeks away from the year
2 anniversary in which we granted the extension to
3 December 31st, and there was -- as far as I can tell,
4 there's no qualification in this Staff report about what
5 you're talking about. There's no -- there's been no
6 mention of the Stipulation & Agreement issue up until
7 today.

8 And we have ruled on discovery requests, I
9 think quickly. The delay hasn't come from us. And
10 Mr. Fischer's right, we've ruled for the company nine
11 times out of ten. And the discovery disputes appear to
12 have been amicably, to everyone's credit, resolved.

13 So I'm frustrated by the process, and I
14 don't mean to -- I don't mean to let that get the better
15 of me in these proceedings, which it does occasionally,
16 and for that I apologize. And from this point I'm going
17 to step back and let you finish your opening statement to
18 address these and then we'll address the specific
19 witnesses if we have anything else. I want to -- I'll
20 dial it back and I -- and again, I apologize for getting
21 frustrated with the process.

22 COMMISSIONER JARRETT: I'll dial back, too.
23 I'm frustrated as well, Commissioner Gunn. I join you in
24 that.

25 I would like a question for Mr. Dottheim on

1 my -- in answer to my question about why when we were
2 approaching the December 31st date we didn't get, you
3 know, a motion saying we need more time because all the
4 invoices, all the paid invoices haven't come in yet, so,
5 therefore, we need until, say, January 31st to complete
6 the audit?

7 MR. DOTTHEIM: Commissioner, we didn't do
8 it in a motion. We thought we indicated very clearly. I
9 mean, we didn't put in the December 31 report that --
10 well, we didn't have anything from the -- from the company
11 because -- regarding a cutoff that they would be
12 requesting.

13 We indicated in the report that we weren't
14 done, and that prompted them to file on February 16th
15 their first response. And I don't believe they asked for
16 time to address this matter until they saw the
17 Commissioners' agenda session where the Commissioners
18 reacted to KCPL GMO's February 16th filing raising the
19 matter that the Staff had put in its December 31 report
20 that the Staff did not consider the December 31 report to
21 be definitively closed.

22 And there was an agenda session where the
23 Commissioners reacted to that February 16th filing of
24 KCPL, and the Commissioners, I believe, indicated that
25 they wanted scheduled a hearing and it would be scheduled

1 for part of a day, and KCPL made a subsequent filing
2 requesting two days.

3 But you're right, I mean, from the
4 perspective of Staff didn't file a pleading. We put in
5 the report, we thought it would be appropriate to give an
6 indication in the report as opposed to -- as opposed to
7 not say anything and then just file something in the
8 Iatan 2 rate case that indicated we had continued forward
9 on Iatan 1 and had not cut off if the company hadn't
10 noticed that by the data requests or the questions we were
11 asking in meetings or anything of that nature.

12 We wanted to try to be as clear in our
13 report, and evidently we were. Also, too, we had hoped to
14 be far along enough in the report that we would provide
15 KCPL a copy of the report so they could review it,
16 comment. We could review their comments and either accept
17 or not accept their comments and then file it. The timing
18 did not permit that.

19 We contacted KCPL and asked them if they
20 would be interested in, I think, because I wasn't involved
21 in the contact, but I believe we contacted KCPL in
22 November, inquired if they would be interested in joining
23 with us in requesting from the Commission additional time
24 beyond December 31 for the filing of the report so that we
25 could first give them a draft of the report, they could

1 comment on the report, and then we could read their
2 comments and react to their comments, akin to what has
3 more been done by the Management Services Division.

4 KCPL told us that they were not so
5 interested. So we went ahead and we filed a report on
6 December 31.

7 COMMISSIONER JARRETT: Thank you. And
8 just -- I'm sorry to interrupt. I don't have any more
9 questions. But, Judge, can you issue an order directing
10 Mr. Featherstone to be available for questioning since
11 Mr. Williams had said he's the one that said it would take
12 six months?

13 JUDGE STEARLEY: I'll issue that order
14 right now from the bench. Mr. Dottheim, you'll make
15 Mr. Featherstone available before the conclusion of this
16 hearing.

17 MR. DOTTHEIM: I think Mr. Williams is --

18 JUDGE STEARLEY: And, Mr. Dottheim, I
19 really don't cherish the idea of continually interrupting
20 your opening statement. Since you're at this one sentence
21 in the stipulation, it's probably appropriate for me to
22 ask this one question about that.

23 Since that statement says, may continue the
24 construction audits prior to the filing of the Iatan 2
25 case, setting a December 31st, 2009 date is, in fact,

1 prior to the filing of the Iatan 2 case. So I don't see
2 where those Orders are in contradiction with one another.
3 Do you have a different position on that?

4 MR. DOTTHEIM: Our view when we negotiated
5 that, that that was intended to go to and into the Iatan 2
6 case.

7 JUDGE STEARLEY: But the sentence does not
8 say that. The sentence says, continue the audit prior to
9 the filing, and there's no deadline or date set. It just
10 has to be prior to the filing.

11 MR. DOTTHEIM: And the date for the filing
12 of the Iatan 2 case has continually changed.

13 JUDGE STEARLEY: It has. But
14 December 31st, 2009 was definitively prior to the filing
15 of the Iatan 2 rate case. And with that, please continue,
16 and we'll try not to interrupt your opening statements as
17 much.

18 MR. DOTTHEIM: The next tab is on page 11
19 of the KCPL Stipulation & Agreement, and it's paragraph
20 25. In the event that the Commission does not approve and
21 adopt the terms of the 2009 stipulation in total, it shall
22 be void and none of the signatory parties shall be bound,
23 prejudiced or in any way affected by any of the agreements
24 or provisions hereof unless otherwise agreed to by the
25 signatory parties.

1 And so at least the Staff viewed that the
2 Commission had adopted in entirety the Stipulation &
3 Agreement as the Staff understood the Stipulation &
4 Agreement when the Commission issued its Order adopting
5 it.

6 The next paragraph, the highlighted
7 sentence, the signatory parties shall cooperate in
8 defending the validity and enforceability of this 2009
9 stipulation and the operation of this 2009 stipulation
10 according to its terms. And this is the paragraph where
11 the Staff believes that Kansas City Power & Light has not
12 upheld, has not acted consistently with the terms of the
13 Stipulation & Agreement.

14 The next tab is on -- or I should say tabs
15 are on the second page of the document that really should
16 go to the first page of that, of that document, which is
17 marked KCPL Exhibit No. 58, Case No. ER-2009-008, and the
18 last number is really not legible. It's 9, and the date
19 is 4/21 zero, and that appears to be a 9, and the
20 reporter's initials are KF.

21 This document is the term sheet, which when
22 agreement was reached in principle, the parties went on
23 the record and had this marked as an exhibit and went on
24 the record on April 21, and addressed this document.

25 If you would turn to the page where --

1 which is the next page, where the two tabs are,
2 paragraph 6, the heading Prudency and In Service Timing of
3 Iatan 1, the highlighting on the first part of the
4 sentence, no party to this agreement shall argue that
5 anyone is prohibited from arguing or presenting evidence
6 in the next KCP&L general rate case challenging the
7 prudence of any Iatan 1 construction cost.

8 And then the sentence later in that
9 paragraph, the parties may continue their construction
10 audits of Iatan 1 and Iatan 2 prior to KCP&L filing its
11 Iatan 2 rate case, which is not literally the same as in
12 the Stipulation & Agreement. I think the term
13 signatories, non-utility signatories instead of parties is
14 used.

15 The next set of tabs are for the Kansas
16 City Power & Light Greater Missouri Operations Company
17 case, which I think people have generally referred to as
18 GMO or GMO, and it's really comparable sentences, sections
19 to the KCPL Stipulation & Agreement. I don't know that I
20 really need to take the Commission's time going through
21 the document.

22 Before I really address -- maybe I don't
23 know with what relevance the Commission might find this,
24 but for something of a historical perspective, during the
25 Callaway and the Wolf Creek cases, construction audits

1 were attempted. Construction audit filings were attempted
2 while those projects were occurring. Two dockets,
3 actually three dockets, a docket even for Callaway 2 until
4 it was canceled were created.

5 And I've had various of the Commission
6 Orders and pleadings copied because they're not in the
7 Commission's bound volumes, but if the Commission wants a
8 historical perspective, an effort that was made by the
9 Staff on an ongoing basis to file on a semiannual basis
10 construction audit reports, and the documents were to be
11 called -- well, the entire process was called a
12 construction audit or construction audits, not prudence
13 reviews.

14 But my recollection, and I don't believe
15 I've seen in the documents I've flipped through that any
16 of -- that any reports were ever produced. In fact,
17 Kansas City Power & Light actually filed a motion asking
18 that the Commission order the Staff to file a construction
19 audit report prior to the Wolf Creek rate case. The Staff
20 opposed that motion. The Commission did not order the
21 Staff to file a construction audit report. The
22 construction audit report, so to speak, was filed
23 ultimately in the rate case itself.

24 And as for any allusion this morning to
25 that rate case, the -- the construction audit issues being

1 handled in the context of one 11-month ratemaking cycle
2 didn't happen. It actually arguably was three cycles.
3 KCPL withdrew the first rate case that had been filed
4 because they -- they were going to miss the in-service
5 date, and then they filed a second rate case, and since
6 the Commission wasn't going to be able to issue a Report
7 and Order within the 11-month period, the 11-month period
8 was extended, as I think I recall, by another set of
9 tariffs being filed.

10 But I have a packet of materials that I'd
11 like to distribute if there might be an interest in that
12 from a historical perspective.

13 JUDGE STEARLEY: You may proceed,
14 Mr. Dottheim.

15 MR. DOTTHEIM: I've been trying to keep the
16 KCPL supplied with materials. I was only able to access
17 this on Monday and yesterday, so I wasn't able to get KCPL
18 copies prior to just handing them copies.

19 As far as the Staff not having started its
20 construction audit prior to April of last year, KCPL
21 argued in its testimony filed in its rate case last year,
22 the 0089 case, it is my recollection it argued in the
23 Great Plains Energy, Inc. acquisition of Aquila that the
24 Staff was engaged in a construction audit investigation
25 when the Staff in the GPE acquisition of Aquila. When the

1 procedural schedule was suspended in December, I think it
2 was 2007, in 2008 the Staff subpoenaed 11 KCPL
3 individuals, including a number of individuals at the
4 Iatan plant site. And KCPL asserted that the depositions
5 that the Staff had served and the activities of the Staff
6 were -- were inappropriate in that case, that it was -- it
7 was Iatan related and not related to the GPE acquisition
8 of Aquila.

9 I would also note, I mentioned that about
10 the Wolf Creek case. The Hawthorn 5 rebuild after it was
11 destroyed by a catastrophic explosion, the Staff's audit
12 of the Hawthorn 5 rebuild occurred in the case subsequent
13 to when the plant became fully operational and used for
14 service. It wasn't, as I understand it, in the first case
15 after the plant went fully operational and used for
16 service.

17 As far as the nature of the Staff's
18 continuing audit of Iatan 1, in the Staff's pleading that
19 it filed on March 29th, the Staff attempted in part to
20 address that in paragraph 3 on page 3, which if you'll
21 pardon me I'll -- I'll read. The Staff is not presently
22 engaged in a construction audit and prudence review of the
23 timeframe already addressed by the period covered in the
24 Staff report filed on December 31, 2009, and it was not
25 the Staff's intent to return to that time period to

1 conduct further or new investigation and propose new,
2 different or increased adjustments barring the
3 developments listed in the Staff's March 9, 2010 reply
4 which the Staff repeats as follows:

5 A, matters that a party other than the
6 Staff may raise before this Commission;

7 B, matters that the public service
8 commission staff in an adjoining state might raise in a
9 contemporaneous proceeding in that adjoining state to a
10 Missouri Commission proceeding or in a subsequent
11 proceeding to a Missouri Commission proceeding involving
12 the same construction project;

13 C, matters that an informant may bring to
14 the attention of the Staff of which the Staff was not
15 previously aware;

16 D, matters that may be raised by the media
17 of which the Staff was not previously aware;

18 E, information not timely disclosed by KCPL
19 or information disclosed by KCPL that is later found to be
20 fraudulent, inaccurate, misleading or incomplete;

21 F, matters that may originate as an inquiry
22 by a member of the Legislature of which the Staff was not
23 previously aware;

24 G, matters that the Staff may become aware
25 of on its own but too late in an audit to be entirely

1 developed by a deadline in a particular case;

2 And H, matters that become an issue only
3 after the completed construction project operates for a
4 period of time, such as a unit not meeting design
5 specifications, having high maintenance costs,
6 experiencing low availability, et cetera.

7 May I have a moment, please?

8 JUDGE STEARLEY: Certainly.

9 MR. DOTTHEIM: When I read through that
10 list, there is a source of concern that the Staff believes
11 that the Commission really needs to consider if the
12 Commission is considering a cutoff date as far as leaving
13 a period of time costs that would be unaudited.

14 Also, too, there are situations such as, as
15 I understand it -- and Mr. Schallenberg is, of course,
16 here and he's, I would suggest, the principal individual
17 that the Commissioners might address their questions to as
18 far as your view of the audit. I believe there are
19 matters such as contract settlements, what have you, that
20 impact or relate to Iatan 1.

21 So there are still items open. The work
22 orders, all work orders to Iatan 1 have not closed.
23 There's an auxiliary boiler that is being constructed
24 that's being charged to Iatan 1. It is just not a simple
25 situation where you can take a meat cleaver and cut off

1 looking at costs because the plant, that is the Iatan 1
2 AQCS is now in service or has been in service since
3 April 19, 2009.

4 As far as data requests are concerned,
5 there are always disputes. KCPL has taken the approach
6 that because data is recognized or matters are recognized
7 as being privileged by attorney/client or attorney work
8 product immunity, that the Staff necessarily shouldn't be
9 asking questions in those areas at all.

10 That's not the staff's perspective. The
11 Staff requests privilege logs. A number of the discovery
12 issues that have gone to the RLJ have been of that -- of
13 that nature. It is somewhat deceptive when there are not
14 necessarily a large number of discovery disputes that
15 reach the Commission.

16 There are any number of discovery disputes
17 that are ultimately resolved after an extended effort, an
18 extended period of time literally before, right before
19 they go to the RLJ. And the Staff always tries to be
20 cognizant of the Commission seeming to indicate to the
21 Staff that at times maybe the Staff is not reasonable, so
22 the Staff may try to be more reasonable, and then when the
23 Staff is more reasonable and gets itself in a situation
24 that it doesn't go to the Commission or when it finally
25 does go to the Commission, it's a small number of cases

1 that finally after, again, extended period of time, others
2 have settled out, the Commission has the impression that
3 there may not have been a lot of disputes because not many
4 have gotten to the Commission. It's almost a damned if
5 you do, damned if you don't.

6 The Staff really doesn't have a formal
7 presentation to make. The Staff had -- again, given the
8 limitations with which the Staff used the proceedings with
9 other parties not being present and it's not a contested
10 case, and from agenda sessions where it appeared that the
11 Commission wanted to ask the Staff questions, the three
12 Staff members who were principally are -- who are the
13 three Staff members who produced the June 19 and the
14 December 31 report are here to respond to questions from
15 the Commissioners.

16 Thank you.

17 JUDGE STEARLEY: Any other questions for
18 Mr. Dottheim?

19 (No response.)

20 JUDE STEARLEY: All right. Thank you,
21 Mr. Dottheim.

22 Mr. Mills, are you going to have an opening
23 statement?

24 MR. MILLS: I do not. Thank you, your
25 Honor.

1 JUDGE STEARLEY: We're going to take about
2 a ten-minute break, let my court reporter rest her hands
3 here. We'll pick up about 11:25, and I want to go over
4 some issues with the orders of the witnesses and the fact
5 that we will need to be breaking for agenda session today.

6 MR. FISCHER: Judge, let me make a comment.
7 We are here to accommodate the Commission. We have
8 witnesses that would like to make points. However, if the
9 Commission would like to ask questions of either the
10 company or Staff witnesses before we get to our formal
11 presentations, we're happy to do whatever the judges --
12 whatever the Commission would like to do.

13 JUDGE STEARLEY: All right. Thank you,
14 Mr. Fischer.

15 (A BREAK WAS TAKEN.)

16 JUDGE STEARLEY: All right. We are back on
17 the record. Commissioner Jarrett had asked to inquire of
18 Mr. Featherstone. I understand he is present, and is he
19 here in the hearing room now. Mr. Featherstone, if you'd
20 please come forward. Please raise your right hand.

21 (Witness sworn.)

22 JUDGE STEARLEY: Thank you. You may be
23 seated. Commissioner Jarrett, you may inquire.

24 CARY FEATHERSTONE testified as follows:

25 QUESTIONS BY COMMISSIONER JARRETT:

1 Q. Good morning, Mr. Featherstone.

2 A. Good morning.

3 Q. How are you?

4 A. Very good.

5 Q. Glad you could come up here on short
6 notice. I appreciate it.

7 A. I apologize for my dress as well.

8 Q. No. You're fine. I wanted to ask you
9 about a conversation you had with Nathan Williams. Back
10 in the ER-2009-0089 case, back on April 6th of 2009 we had
11 some, I believe, oral argument on that day, and we were
12 talking about a construction and prudence audit of
13 Iatan 1, and Mr. Williams indicated, said the following:
14 This is on page 39 of transcript 10 -- of Volume 10 of the
15 transcript, lines 15 through 18. I've been informed that
16 it would take in the neighborhood of six months to perform
17 a prudence review of the Iatan 1 improvements.

18 And when I asked Mr. Williams this morning,
19 he indicated that you were the source of that information.
20 Do you recall that conversation with Mr. Williams?

21 A. Yes. Understanding it was over a year ago,
22 but yes.

23 Q. All right. Can you recall what the basis
24 of your answer that it would take in the neighborhood of
25 six months is or was?

1 A. Well, at the time, you said it was
2 April 6th, it was early -- early part of April, as I
3 recall, the -- while our engineering staff had not
4 declared the unit in service from their criteria that they
5 used, the plant from my perspective was, at least the
6 information that I had received through the audit, was
7 substantially done and was really just awaiting the
8 testing and the criteria to be met.

9 So when -- during the course of the oral
10 argument, my thinking was that we were going to have --
11 and if we had to put a time frame to it, that we would
12 have a dedicated staff that would be fairly substantial, I
13 was thinking about maybe in terms of what we did for Wolf
14 Creek. It certainly wouldn't be that involved because
15 it's a different -- it was a different additions as
16 opposed to Wolf Creek being a generating plant that was
17 \$3 billion.

18 So I knew that we would have differences,
19 but that we would have a dedicated staff that would be a
20 pretty substantial staff, a lot of man hours that would be
21 devoted, and that would be in the context of actually
22 doing the audit.

23 My view was, is that the cost of the plant
24 would be completed for the most part. There might be some
25 minor outstanding construction that would still go on,

1 maybe fencing, paving roads and things like that, but the
2 plant itself was done.

3 I certainly didn't contemplate that they
4 would still be a year later still be spending pretty
5 significant sums of money, which is my understanding they
6 still are. And it didn't contemplate also the continued
7 moving of funds between Iatan 1 and 2, the common cost
8 issue. I think that's an important point to remember.

9 The six-month time frame would be in my
10 mind, and of course keep in mind it was -- we need a time
11 frame and, off the top of your head, what would it be?
12 With a dedicated staff, it would be in the context of
13 doing an audit. That wouldn't be a completion. It
14 wouldn't be a report. It wouldn't be the company having
15 an opportunity to respond. It wouldn't be a follow-up
16 response.

17 In other words, you would have the audit
18 done, and then subsequent to that, then you would put
19 together your preparation. The company would certainly be
20 given a right to do discovery of that presentation, and
21 then follow-up response. All of that was not contemplated
22 within that six-month period, if I can describe it that
23 way.

24 Q. Let me back up just a second. What's your
25 job title?

1 A. I'm a regulatory auditor with the Utility
2 Services Division.

3 Q. And how long have you been a regulatory
4 auditor?

5 A. March of 1979 I started with the Commission
6 in transportation, and then I transferred, I think in
7 November, to the Utility Division. We had different
8 titles then, but essentially doing the same work, rate
9 case work, audit work.

10 Q. How many audits would you say you've done
11 in your career?

12 A. And I would -- I would -- I would contrast
13 rate audits from construction audits.

14 Q. Okay. About how many construction audits?

15 A. Construction audits? In terms of the scope
16 and size of power plants, I would say one, Wolf Creek.
17 I've done some combustion turbines and a combined cycle
18 unit, and those were done in the context of rate cases,
19 although a lot of the work, there was still a lot of site
20 visits before the rate case was started. Some of those
21 didn't -- weren't completed. There was a cutoff, and so
22 there was a follow-up in, say, a follow-up rate case.

23 There was probably, if I can think for a
24 moment, just off the top of my head, I think maybe four,
25 five possibly of construction audit type style audits.

1 Rate cases, if I have to put a number to it, maybe 50.

2 Q. All right. Now, you had indicated that
3 there were -- you had said the six months, but then you
4 had lots of qualifications that you hadn't considered when
5 you gave that number; is that right?

6 A. I was thinking in terms of -- and again, if
7 you forgive me, it's in the context of an oral argument,
8 the Commission wanting an answer, a timeframe to do the
9 audit. I'm thinking of the actual audit itself, six
10 months.

11 Q. And one of the factors you mentioned here
12 just a few minutes ago was your understanding, and I'm
13 paraphrasing, but correct me if I'm wrong, your
14 understanding that there continued to be expenses and that
15 there continued to be money shifting between Iatan 1 and
16 Iatan 2. Is that basically what you said?

17 A. Yes.

18 Q. Now, have you been involved in the
19 construction audit of Iatan 1 at all?

20 A. No, I have not.

21 Q. What is the basis of your understanding
22 that there's still money flowing back and forth if you're
23 not involved in the audit?

24 A. I attend -- well, two members, one of which
25 reports to me, work in the Kansas City offices where I'm

1 domiciled, and so just on a day-to-day basis we talk among
2 ourselves.

3 Q. What's his name?

4 A. Keith Majors is my direct report.

5 Q. And he's working on the Iatan 1 audit?

6 A. He is.

7 Q. Construction audit?

8 A. He's dedicated to that. He's assigned to
9 that project. And also Mr. Hyneman, who we are -- we're
10 the Regulatory Auditor 5s. Both of us are in the office,
11 and so we talk frequently about the case.

12 We've had also comprehensive energy plan
13 meetings, which are quarterly meetings to discuss
14 primarily now Iatan 2, but Iatan 1 issues do come up. The
15 most recent one that I attended was, I believe it was
16 April 15th, I think, fairly recently.

17 Q. And who usually attends those meetings?

18 A. The meetings are open to the parties of the
19 regulatory plan, which was the 2005-0329 case. Certainly
20 Public Counsel I believe are in attendance. At various
21 times the Department of Natural Resource I think has shown
22 up. Always the company. There's a whole group. There's
23 the construction side of the company that attends, and
24 then there's generally the rate case folks, the regulatory
25 people that I deal with on a frequent basis, they're

1 always in attendance. Various Staff members, the Staff
2 Counsel's Office is represented. Certainly people from
3 operations and services. There's a mix of engineers and
4 auditors, and sometimes the financial analysis people, the
5 management services people attend from a Staff
6 perspective. It's a fair number of very broad
7 disciplines.

8 Q. You say that those meetings happen, what
9 did you say, quarterly?

10 A. They were identified in the regulatory plan
11 as a quarterly meeting. Without getting too much into the
12 details of the meeting, I'm not sure, because it deals
13 with the upcoming rate case, but I believe the April 15th
14 meeting, I'm not sure if that was the quarterly meeting or
15 not. We met, I think, in February. I think we've got
16 another one coming up in May.

17 But I -- that meeting dealt with, I think,
18 some special circumstances dealing with, and I won't get
19 into details, but I believe forecasting matters and
20 scheduling matters as it relates to the in-service date
21 of -- projected in-service date of Iatan 2 and how it
22 would interface with the rate case filing.

23 Q. And what was the date of that meeting
24 again?

25 A. I think it was April 15th.

1 Q. Was there anything discussed about the
2 Iatan 1 prudence audit at that meeting?

3 A. No. No. I -- the meetings generally, they
4 will have an agenda and a presentation, usually handouts
5 made by Kansas City Power & Light personnel and some of
6 their consultants. Then the meetings sort of -- there's a
7 break. They leave, and there's follow-up discussions
8 with, as I said, the regulatory folks.

9 And there might have been some discussions
10 that dealt with some discovery, maybe some data request
11 issues after the meeting, and I think that -- and I may be
12 confusing the February meeting with the April meeting, but
13 I know there was some audit related discussions that
14 occurred that I did not attend.

15 Q. Right. Well, you know, you had answered
16 when I asked the question about how did you know about
17 certain details of the audit if you weren't involved in
18 it, and you said there were two ways: 1, you talked to
19 your employees that were working on it; and then No. 2,
20 through these regular meetings that you have?

21 A. Right.

22 Q. And so I'll just maybe ask a more
23 open-ended question. Can you give me all the examples
24 that you can remember where at this meeting issues
25 regarding the Iatan 1 prudence audit occurred within the

1 last year?

2 A. Well, certainly, and they're not identified
3 as the -- they're not on the agenda that says, okay, let's
4 talk about the Iatan prudence audit. It's events that
5 transpired.

6 Q. Right. Sure.

7 A. And so it will be the -- you know, one of
8 the big things is the common costs that affect Iatan 1.
9 There's a lot of construction still going on obviously,
10 and you can debate whether it's still in the construction
11 face, the startup phase, and I won't get in to all that.
12 But there's still a lot of work that's being done on
13 Iatan 2, a lot of money still being incurred. There's
14 still a work force out there, and there's still a lot of
15 dollars to be expended. The plant isn't finished and
16 won't be for a period of time.

17 Q. Now, that's Iatan 2, right?

18 A. Iatan 2. How Iatan 2 relates to Iatan 1 is
19 there's a common cost issue, and it's substantial. It's
20 not an insignificant amount of money. In fact, there was
21 as exhibit that we, if I can refer to it as Staff
22 Exhibit 2, that we filed during the oral argument. I
23 think you said it was April the 6th. And March 26th the
24 Iatan 1 common share was \$462 million. So we're talking
25 about a lot of money.

1 That had shifted significantly from just a
2 short period of time several weeks prior to that March
3 26th date. That continues to be an issue, and that will
4 be addressed ultimately in the next rate case. That
5 affects Iatan 1 substantially.

6 There's still construction -- I'm using the
7 term construction. There's still a buildout from Iatan 1,
8 I understand. In fact, I think the last meeting they
9 mentioned something about an auxiliary boiler that wasn't
10 contemplated that they're now planning on doing.

11 Those kind of things come up. Schedule
12 obviously affects. Any time you move the plant from an
13 in-service date, I think it was June 1 at one point, then
14 became July the 28th. That affects costs substantially.

15 So while there wasn't anything in our
16 meetings that said let's talk about prudence now, all of
17 those affect the costs of the plant, which then gets you
18 into the audit.

19 Q. Right. But now --

20 A. The evaluation of the cost of the plant.

21 Q. Right. Now, our audit was to do a
22 construction audit -- or our order was to do a
23 construction audit and prudence review of the
24 environmental upgrades to Iatan 1?

25 A. Right.

1 Q. Other than what you've mentioned, any other
2 discussions about the environmental upgrades that were
3 part of the prudence audit?

4 A. Well --

5 Q. I assume -- I assume the boiler you just
6 mentioned is not part of that. That's not -- is that an
7 environmental upgrade?

8 A. I don't know. I don't know what it's for.
9 And I would caveat that I haven't been directly involved
10 in the audit literally for a year. I've been doing other
11 things. And so my -- you know, my knowledge and my
12 detailed knowledge is very, very limited as to these
13 projects. That's just what I remember from the meeting.

14 Q. All right.

15 A. I haven't thought about whether it was
16 environmental or non-environmental, and I certainly
17 haven't thought about the common cost issue in terms of is
18 that environmental or not environmental.

19 Q. All right. Now, this morning when
20 Mr. Williams identified you as the source of the six
21 months information, when did you find out that you were
22 going to be summoned here to testify?

23 A. I was upstairs in another Staff member's
24 office, and I received a phone call that said that I
25 needed to come down and that the Commission --

1 Q. Who was that phone call from?

2 A. Mr. Majors.

3 Q. Okay. And between that time and the time
4 you took the stand, did you have any conversations with
5 anyone about --

6 A. Well --

7 Q. -- Iatan 1?

8 A. Mr. Majors identified for me that the
9 Commission had some questions, may have some questions for
10 me, he didn't know for sure at the time, and sort of kind
11 of briefly was describing what the nature of the inquiry.
12 And then shortly after, in fact while he was discussing
13 the matter with me, Mr. Williams, Nathan Williams, the
14 attorney that was, I guess, in question, came up with the
15 answer that you were asking or someone asked in the oral
16 argument, he then came and had a discussion with me and
17 said this is what the Commission is interested in.

18 Q. All right. Talk to anybody else about it?

19 A. Briefly Mr. Schallenberg. During the break
20 we were down in the second floor is where I --

21 Q. And what did Mr. Schallenberg and you
22 discuss?

23 A. I think more than anything he was just
24 describing that the Commission has some questions for me
25 with respect to the six-month, the audit, and just what --

1 how it came up in the context of today.

2 Q. All right. Anything else?

3 A. That's pretty well it, I think.

4 Q. All right. Well, Mr. Featherstone, I
5 apologize again for --

6 A. Well, that's all right.

7 Q. -- bringing you out on short notice. I
8 don't have any further questions. I don't know if any of
9 the other Commissioners or parties have any.

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

12 CHAIRMAN CLAYTON: I have no questions,
13 Judge.

14 QUESTIONS BY COMMISSIONER GUNN:

15 Q. I apologize if this was asked. When you
16 conveyed this six month, you acknowledged -- I wasn't in,
17 I apologize, on the very beginning. You had a question
18 from Mr. Williams which talked about the six-month
19 timeframe. Was it an offhanded comment or was it based --
20 was it based on the specifics of this case or was it -- or
21 was it a generalized idea about what a construction
22 prudence audit may take?

23 A. While I came in kind of somewhat prepared
24 in the oral argument that we -- that we might be called as
25 a witness, when it's an oral argument, I pretty well leave

1 it to it's the attorney's problem, and that if I can
2 assist them, can assist Mr. Dottheim in some fashion, I'll
3 do that, but I wasn't really on. I wasn't performing that
4 day. And so I was here as a -- as a participant but sort
5 of in the gallery, and the Commission had the question,
6 posed the question. They wanted more of a definitive
7 answer.

8 And Mr. Williams came back. I think he was
9 sitting where Mr. Schallenberg is now. He came back and
10 said, if you had to do -- if you had to come up with a
11 timeframe, what would it be? And sort of off the top of
12 my head I would say that it would be -- would it be six
13 months? And I said six months. Maybe I came up with six
14 months, and, you know, my thinking was that we would have
15 a significantly -- it would be a significant dedicated
16 staff to work on Iatan 1, and that the costs would be
17 substantially -- the construction and the costs would be
18 substantially done, completed, and we would have the
19 information.

20 Q. So suffice to say it was kind of a
21 back-of-the-envelope, back-of-the-napkin kind of
22 calculation with certain assumptions that this would be
23 run in a certain way?

24 A. You're being kind on what that would be. I
25 wouldn't -- I don't think that it was even considered a

1 back of the envelope.

2 Q. I want to move on. I appreciate that. I
3 don't want to -- I know that's what was said, but I want
4 to make sure that we put that in the correct context.

5 So when we talk about hypothetically, and
6 obviously I don't want to get into any -- when we talk
7 about this potential boiler, if we talk about a potential
8 modification to what was done in Iatan 1, and I understand
9 the kind of desire and the need not to get completely
10 locked in to a position because, as Mr. Dottheim rightly
11 said, when you meat cleaver this off, there may be things
12 that get lost in that -- in that interim period.

13 So typically what -- if there is a date
14 where an audit was done or considered closed and you have
15 other modifications, let's assume that it's been -- that
16 you have part of a plant that's in service, audit was
17 completed, and then a modification was done to that.

18 How would that typically be dealt with in
19 terms of -- in terms of a construction and prudence audit?
20 Would it be segmented out, and then how would you again
21 recover those or get those costs recovered?

22 A. Typically if the plant is being brought in
23 line or online in the context of a rate case, you're going
24 to have cutoff just by virtue of the rate case has to end
25 at a finite period of time.

1 Q. Right.

2 A. And so those costs that can be identified
3 and reviewed within the context of that timeframe are
4 included in the rate case or excluded by making an
5 adjustment. And then in future rate cases, then you would
6 look at additional -- any additional costs that went
7 beyond that cutoff.

8 Q. So substantively, even though there was
9 that ongoing review of what was happening would be dealt
10 with in a subsequent rate case?

11 A. Yes.

12 Q. One way or the other?

13 A. Yes.

14 COMMISSIONER GUNN: Thanks. I don't have
15 anything further. I appreciate it.

16 COMMISSIONER JARRETT: I do have one more
17 question.

18 COMMISSIONER KENNEY: I don't have any
19 questions. Go ahead.

20 FURTHER QUESTIONS BY COMMISSIONER JARRETT:

21 Q. You are at least a little familiar with
22 this audit, that it began last April and is still ongoing?

23 A. Well, in April we were in the context of
24 the rate case, the 89 rate case, excuse me, the 2009-0089
25 rate case, along with the 0090, which was the GMO rate

1 case.

2 Q. Right.

3 A. And in the context of the oral argument,
4 and my testimony addresses this in the last rate case, is
5 that we had not completed the audit, the review. The
6 costs were still coming in. They were still sort of a
7 moving target. So in April of last year we in no way were
8 anywhere near finished with that review of those costs.

9 Q. Okay. Now, you said you had two folks that
10 report to you or that you know that are working on this?

11 A. Well, one individual -- not to get into
12 detail, but one individual reports to me and then one is a
13 peer.

14 Q. Okay. So when did they start working on
15 this audit?

16 A. Sort of keeping the timeframe of -- just
17 looking at it from April forward, our work at that time --
18 in fact, when we were doing the oral argument, we were in
19 what I call a production of surrebuttal. We were getting
20 ready to go to trial on the rate cases, unrelated to
21 Iatan 1, just rate case work. And all of that, all the
22 month of April and May we were still working on the rate
23 case.

24 We were -- at the time of the oral
25 argument, we were actually in negotiations, and I'm not --

1 I can't get into the details of the negotiations, but we
2 were actually negotiating the settlement which ultimately
3 was presented to the Commission and approved. Much of
4 those discussions, without getting into the discussions,
5 had to deal with the -- the context of the -- of the
6 Stipulation & Agreement speaks for itself, and a good part
7 of the stipulation is devoted to Iatan 1 and 2, the
8 timing, the cap associated with the prudence review.

9 Those were all key elements of -- from the
10 Staff's point of view. I'm only talking about from Staff
11 now. I don't know the other parties, what they were
12 thinking. But from Staff's point of view, those were key
13 elements of those negotiations, and it was part and parcel
14 those negotiations was to allow the construction audits
15 would continue, not only Iatan 1, but also Iatan 2 through
16 the next rate case.

17 Q. All right. I don't know if I got the
18 answer to my question, so I'll ask it again. When did --
19 when did the person that reported to you start doing
20 prudence audit work on Iatan 1?

21 A. After the rate cases concluded -- and I
22 apologize for not answering more directly. When the rate
23 cases concluded timeframe, I think was in June, they were
24 still working on the rate case. When we had -- I think
25 on-the-record presentation was the first week in June. We

1 still had tidy-up work. They did not really start in
2 earnest probably middle of the summer, maybe July, and
3 that's just off the top of my head.

4 Q. Okay. And they had done no work before
5 April, do you remember?

6 A. Certainly Mr. Majors did no work on the
7 construction, what I would call the construction audit
8 phase before that timeframe, and I -- I doubt that Mr. --
9 and he's here. They can speak for themselves when they
10 think they started. But I don't think Mr. Hyneman started
11 any earlier than July either.

12 COMMISSIONER JARRETT: Okay. I don't have
13 any further questions. Thank you.

14 JUDGE STEARLEY: I have a couple questions
15 for Mr. Featherstone. There may be some
16 cross-examination, but we need to break for agenda at this
17 point. So I'm going to instruct everyone to be back here,
18 we'll pick up at approximately 1:30. If agenda were to
19 run late, we might go a little longer, but we're going to
20 shoot for 1:30. Mr. Featherstone, if you'd please return
21 at that time.

22 THE WITNESS: Yes, sir.

23 JUDGE STEARLEY: You may step down at this
24 time, but you'll remain under oath when you come back.

25 THE WITNESS: Okay.

1 (A BREAK WAS TAKEN.)

2 JUDGE STEARLEY: All right. We are back on
3 the record. We had left off with Mr. Featherstone on the
4 stand. Mr. Featherstone, I remind you that you're still
5 under oath.

6 THE WITNESS: Yes, sir.

7 JUDGE STEARLEY: I have just a couple quick
8 questions, and then we'll open things up for
9 cross-examination from the parties.

10 QUESTIONS BY JUDGE STEARLEY:

11 Q. And my question is a real quick and easy
12 yes or no question. All I need to hear is a yes or no.
13 In the KCPL rate cases that were filed last year, you did
14 file direct testimony in those cases, correct?

15 A. Yes.

16 Q. Okay. And in that testimony, you did spend
17 no time addressing the construction audit issue, correct?

18 A. Yes.

19 JUDGE STEARLEY: That's all the questions
20 that I have for you. Commissioner Gunn, did you have any
21 other questions?

22 COMMISSIONER GUNN: I don't have anything
23 additional.

24 JUDGE STEARLEY: All right.

25 Cross-examination would begin with Public Counsel, but I

1 see Mr. Mills is gone. I do want to advise the parties,
2 while I don't necessarily mind if someone is not present
3 as we proceed because maybe not every single issue is
4 important to that counsel or party, I do want to advise
5 you that if you're not present when a witness is being
6 examined, such as Mr. Mills in this instance, I will
7 consider that you have waived your opportunity for
8 cross-examining the witness.

9 And now that takes cross to KCPL GMO.

10 MR. FISCHER: Ms. Van Gelder will handle
11 cross on this issue.

12 MS. VAN GELDER: Your Honor, may I give a
13 copy of the Order to Mr. Featherstone?

14 JUDGE STEARLEY: Certainly.

15 MS. VAN GELDER: And I'm giving just for
16 ease the 90 Order.

17 JUDGE STEARLEY: Okay. Which date is this
18 order?

19 MS. VAN GELDER: April 15th, I believe.

20 JUDGE STEARLEY: You may proceed.

21 CROSS-EXAMINATION BY MS. VAN GELDER:

22 Q. Good afternoon, Mr. Featherstone.

23 A. Good afternoon.

24 Q. We haven't had the opportunity to meet. I
25 represent KCPL in this matter. I just have very few

1 questions for you.

2 A. Okay.

3 Q. First question is what I understand your
4 earlier statement that when you gave the estimate of about
5 six months, you were anticipating there would be a
6 dedicated staff that was assigned on to this prudence
7 audit?

8 A. Well, keep in mind, in the context of the
9 oral argument, the question came from the Bench and then
10 my attorney came to me, and so it was a very quick answer.

11 Q. Right.

12 A. But yes, a dedicated staff.

13 Q. How big is a dedicated staff, sir?

14 A. Well, I think it could vary. If -- if --
15 depending on the nature, the scope of the work, work like
16 on Iatan 1 versus an Iatan 2 versus a Wolf Creek, you're
17 going to have different levels of staff and different
18 types of staff.

19 Q. Now, when you were asked the question, even
20 though it was on the fly, you knew it was about Iatan 1,
21 correct?

22 A. Yes, ma'am.

23 Q. And you told us a few minutes ago that it
24 was a dedicated staff. My question is, when you were
25 thinking about Iatan 1 and you were thinking that it was a

1 dedicated staff, how big were you thinking when you said
2 it was a -- you need a dedicated staff?

3 A. I'm not sure that I thought in terms of
4 exact numbers, but in say approximation, maybe a range
5 of -- of course, not knowing all the projects, I'm putting
6 a lot of caveats here.

7 Q. I'm just asking you what you were thinking.

8 A. I thought maybe in terms of four to five,
9 six people. Again, not having full knowledge of what kind
10 of projects that we were going to be working on and faced
11 with in terms of our time commitments, that would have
12 been I think an ideal staffing.

13 Q. And in response to one of the
14 Commissioners' questions this morning, you referred to
15 Wolf Creek, correct?

16 A. Yes, ma'am.

17 Q. Okay. And Wolf Creek had an outside
18 consultant also, correct?

19 A. Yes, it did.

20 Q. At the time of the October -- excuse me,
21 April 15th Order, this -- you were assuming it would take
22 six months with, what did you say, four or five people,
23 and that's to do an audit of Iatan 1, Jeffrey and Sibley,
24 correct?

25 A. Well, no. I think the question that I

1 recall that was posed, and because it was an oral
2 argument, it was posed to our Staff counsel, it wasn't
3 posed to me as a witness, so I wasn't on the stand. I was
4 sitting in the gallery. So I was in an observation mode.
5 I think the question, as I recall it, was specifically
6 Iatan 1.

7 Q. Well, you did --

8 A. I did not get into Jeffrey and any of the
9 other power plants, Sibley.

10 Q. You did read the Order when it came out,
11 though?

12 A. The one you just handed me?

13 Q. Yes.

14 A. At the time, sure.

15 Q. And did you note that your estimation was
16 incorporated in the Order?

17 A. I didn't -- I didn't when I read the Order
18 put two and two together that they were looking at -- from
19 my -- to use your term, off the cuff or off the fly six-
20 month time frame. I didn't draw the parallel between the
21 Order and that discussion with the Commission.

22 Q. And when you read the Order, you noted that
23 it did cover Iatan, Jeffrey and Sibley?

24 A. Yes.

25 Q. And you -- did you also note that the Order

1 incorporates an earlier testimony that you filed? Look on
2 page 2.

3 A. Yes.

4 Q. Now, that was testimony that you filed
5 which says that the Staff is currently looking at the
6 construction costs for the major plant additions for KCPL,
7 correct? First question, page 2.

8 A. Yes.

9 Q. Did you write that question?

10 A. Can I take a -- I haven't seen this for a
11 long time, so can I take a few moments?

12 Q. Please.

13 A. Okay.

14 Q. Who was reviewing the construction costs
15 when you wrote this in February of 2009?

16 A. There was no one on the rate case team, if
17 I can use that expression, that was looking at the
18 construction costs, common plant costs for either Iatan 1
19 or 2. We believe that the -- our operations group was
20 visiting the plant site and examining the documentation
21 and costs associated with both projects --

22 Q. And is that Mr. --

23 A. -- at the time.

24 Q. Is that Mr. Elliott, Mr. Lange?

25 A. It would be certainly those two and others.

1 Q. Did you speak with them before you wrote
2 this?

3 A. I didn't speak with them directly in the
4 sense that I approached them and said, can we sit down and
5 talk? We had a series of internal meetings and
6 discussions that I know that at various times members of
7 the operations group would have been in attendance.

8 Q. Was it your intent when you wrote this and
9 filed it with the Commission, that the Commission would
10 think that the Staff was conducting a prudence audit and a
11 construction audit of these three facilities?

12 A. My -- my intent when I wrote it to get to
13 the heart of the question was that we had not concluded
14 the construction audit, the prudency review audit, and
15 that my intent was to really give a status report. I was
16 a coordinator of the rate case project, and my intent was
17 to basically inform the Commission that while we were not
18 done, we had every intentions of continuing the audit and
19 that it would be tied to the next rate case.

20 Q. And my question to you is, your intent was
21 to say you hadn't completed it. Did you start it?

22 A. In my mind, the -- at the time when I wrote
23 this, I had assumed that members, Staff members had been
24 working, had been going out to the plant site, had been in
25 communication with plant personnel as well as Kansas City

1 Power & Light personnel, and had received a fair amount of
2 data, to my understanding. And so my intent was and my
3 assumption was that at that time they had been working on
4 the project.

5 Q. Did anybody in the operations section
6 review this testimony before you filed it?

7 A. Well, our process, probably similar to a
8 lot of places, we send out our testimony to a lot of
9 different people, certainly my direct superiors, our Staff
10 Counsel at the time, called the General Counsel's Office.
11 I had a co-coordinator with -- that was assigned to this
12 project along with myself. I was the coordinator for
13 services. He was the coordinator for operations. There
14 would have been exchange at that point.

15 How many people reviewed it once that
16 transfer was made and who specifically reviewed it, I
17 don't remember or don't know.

18 Q. And can you say actually with certainty
19 today that you did give it to the coordinator of
20 operations? You said you would have, that would be custom
21 and habit. I'm asking if you have a recollection of
22 actually giving it to the coordinator in operations?

23 A. Of course we do things with e-mails now,
24 and I'm sure that I would have.

25 Q. Can you please go to page 6, Footnote 13,

1 and I'll read the footnote for the record. The Commission
2 notes that 222 days, 7 months, 10 days have passed between
3 the date GMO filed its case and the date of this Order, a
4 time period in which the Commission has confirmed that
5 Staff has been reviewing information it needs to complete
6 the audit. Do you see that footnote?

7 A. Well, you used the word reviewing and it
8 was receiving.

9 Q. Thank you. So you make a difference
10 between reviewing and receiving?

11 A. I'm not making a distinction. I'm just, if
12 I may, no disrespect, correcting. You were reading it and
13 you -- you cited reviewing.

14 Q. I did?

15 A. I'm not making a distinction for myself.
16 I'm just addressing that -- your read of the quote.

17 Q. Well, let's go with that for a second. Do
18 you think if the Staff is told -- Staff tells the
19 Commission that it's receiving information, implicit with
20 that is that it would be reviewing the information it was
21 getting?

22 A. No.

23 Q. Now, the footnote says Footnote 4, so go
24 back to Footnote 4, which is page 3.

25 A. Yes, ma'am.

1 Q. And what does Footnote 4 say?

2 A. Direct testimony of Cary G. Featherstone,
3 pages 31 through 33.

4 Q. So were you the -- the basis for the
5 information that was in Commission Footnote 13?

6 A. I don't know.

7 Q. And very briefly, I believe you said that
8 you were involved in the settlement and stipulation?

9 A. Yes.

10 Q. And that stipulation -- and I don't want to
11 know anything about settlement discussions, I just want to
12 know about the stipulation facts. Not talking about
13 whether it's null and void. Are you with me?

14 A. (Witness nodded.)

15 Q. That stipulation says that the
16 disallowances for Iatan 1 will be capped at \$30 million,
17 correct?

18 A. It has been a long time since I've seen the
19 stipulation, probably since June of last year. That is my
20 recollection with that caveat.

21 Q. And I believe with GMO it was 15?

22 A. I have even less recollection of that
23 number, but I would accept that. I think the stipulation
24 will say what it says.

25 Q. Well, my question to you really is part of

1 the process, which is if you -- you're a good auditor,
2 correct? Like to think so.

3 A. I'd like -- I would like to think so.
4 There's probably others who have other views.

5 Q. And we hope that today's testimony won't
6 change that, sir. But you are an Auditor 5 supervisor?

7 A. Yes.

8 Q. Now, when you were negotiating a
9 settlement, you have to have a basis for a settlement
10 number, correct?

11 A. No.

12 Q. You don't?

13 A. No.

14 Q. So you can settle a case and not determine
15 whether or not that basis for settlement is not reasonable
16 or prudent?

17 A. I don't know how companies -- I've not
18 worked on that side of it. They may have a number in mind
19 that they have to get to. From Staff's perspective, most
20 settlements do not have numbers and frameworks in line.
21 They are looking at other things. Certainly the number is
22 important, but we weren't trying to achieve a certain
23 number. We walked away from this settlement discussion,
24 this is the number that we have to have.

25 Q. But certainly in your job in protecting the

1 ratepayers of the state of Missouri, you want to know that
2 the number that you're settling is a number that is in
3 their best interests, correct?

4 A. Yes. And not only in the interest of the
5 company but also the -- or the customers, but also the
6 company as well.

7 Q. So \$30 million is what you agreed to would
8 be the cap for -- actually, 45 if you take GMO, for a
9 \$700 million project, correct?

10 A. Well, again, I'm going to rely on what the
11 documents say, and that's what the agreement was, that
12 there was going to be a cap for -- of -- for the two
13 companies.

14 Q. So if the Commission Staff can determine
15 the cap, then shouldn't it be able to determine that
16 there's enough information to audit?

17 A. I'm sure you've been involved in
18 negotiations and settlements. That number was arrived at
19 through discussions with the parties and with the company,
20 and, you know, the number could have just as easily been
21 something else. That was part of the negotiations, and it
22 was not the only feature of the negotiations. It was a
23 package of items that related to both cases. It ranged
24 from the rate case revenue requirement amount. It ranged
25 from tax issues, pension issues, as well as a whole merit

1 of other issues that the documents will identify.

2 Q. So it's your testimony that in a
3 settlement, when a settlement number is reached it
4 incorporates a whole host of issues that are very
5 difficult later to unpars?

6 A. It is a package deal, and we thought that
7 we bargained for in good faith and received a
8 consideration for our agreement to end the case in the way
9 that -- in the manner that -- in which it was dealt with.

10 Q. Two last questions. At the time you were
11 involved in that and you came to that number, you thought
12 that number was reasonable?

13 A. In consideration of everything else, yes.

14 Q. So it was a prudent decision to settle?

15 A. I think that it speaks for itself that we
16 signed the agreement, our attorneys signed the agreement.
17 We considered an agreement a contract with the parties and
18 we were satisfied.

19 MS. VAN GELDER: I have no further
20 questions. Thank you.

21 JUDGE STEARLEY: Thank you. Commissioners,
22 any further questions for this witness?

23 COMMISSIONER JARRETT: I don't have any.

24 COMMISSIONER GUNN: I just have one.

25 FURTHER QUESTIONS BY COMMISSIONER GUNN:

1 Q. I want to clarify what you said. So you're
2 saying that if the -- if the Staff says that they are
3 receiving information, that doesn't mean that they are
4 also reviewing information, that that would have to be
5 explicitly said in order for anybody to assume that?

6 A. No. I maybe can answer it this way if I
7 may. I get a lot of data that, having every intention to
8 review on a timely basis, you put it aside and when you
9 need to get to it and you need to deal with it. Sometimes
10 you will do a quick review. But just by virtue of you
11 sending me like say a data request response, I may not
12 immediately look at it. I may look at it weeks later or
13 when I need to look at it. So I am making that
14 distinction between receiving and reviewing.

15 Q. But in the purposes of the document that
16 we're talking about, the document which says the Staff is
17 receiving information, that the intent is that it will
18 eventually be reviewed?

19 A. Absolutely.

20 Q. All right. So one can assume that if the
21 Staff is receiving it, that they will eventually review
22 it?

23 A. Sure.

24 Q. But it would be wrong to assume they would
25 immediately review it?

1 A. Depending on the nature of the material.

2 Q. And that's the distinction -- that's the
3 distinction that you're making?

4 A. Yes.

5 COMMISSIONER GUNN: Okay. Thank you. I
6 don't think I have anything else.

7 JUDGE STEARLEY: Any recross based on
8 questions from the Bench? Hearing none, would you like to
9 do some redirect?

10 MR. DOTTHEIM: Yes.

11 REDIRECT EXAMINATION BY MR. DOTTHEIM:

12 Q. Mr. Featherstone, I don't believe you were
13 in the hearing room this morning when I think Mr. Fischer
14 made the statement that -- I think he was referring to the
15 State Line combined cycle unit. The Staff finished an
16 audit of that unit at the time it became fully operational
17 and used for service. Do you have any knowledge of the
18 State Line combined cycle generating unit?

19 A. I-- I coordinated the rate case that
20 included the State Line combined cycle in rate base, and
21 specifically was -- myself and another accountant was the
22 principal witnesses addressing a prudency review of the
23 State Line combined cycle unit.

24 Q. Did all of the costs of the State Line
25 combined cycle unit go into rate base in the case in which

1 the State Line combined cycle unit became fully
2 operational and used for service?

3 A. No.

4 MR. FISCHER: I think I'm going to enter an
5 objection. Typically questions are related to questions
6 from the Bench, which I think they all have. This appears
7 to be related to questioning whether counsel made a
8 mistake or something in the opening statement.

9 JUDGE STEARLEY: I'm going to allow Staff a
10 little latitude. The Commissioners called this witness,
11 and they didn't have an opportunity to do direct
12 originally. Depending on what Mr. Dottheim fleshes out
13 here, I will ask the Commissioners if they want to ask
14 additional questions as well, in which case I can open it
15 up for another round of recross.

16 You may proceed, Mr. Dottheim.

17 BY MR. DOTTHEIM:

18 Q. Mr. Featherstone, did you answer the
19 question?

20 A. I said no.

21 Q. Mr. Featherstone, do you have any knowledge
22 of the Hawthorn 5 rebuild after Hawthorn 5 was destroyed
23 because of a catastrophic explosion?

24 A. Yes. I was the coordinator, one of the
25 coordinators of looking at not only Hawthorn 5 but several

1 construction projects in the -- in the KCPL 2006 rate
2 case.

3 Q. Did Staff perform its audit of the
4 Hawthorn 5 rebuild in the case in which the Hawthorn 5
5 generating unit was placed in rate base as fully
6 operational and used for service?

7 A. In the context of the 2006 case, we
8 examined several projects, and Hawthorn 5 was -- was
9 inclusive of that. We didn't complete the review of those
10 costs, and, in fact, I addressed that in my direct
11 testimony in that case. I notified the company that we
12 were not going to finish Hawthorn 5, the construction
13 review. We were going to write a report or, in essence,
14 indicate to the Commission that we had completed the
15 construction audits on the combustion turbines but that we
16 were carrying over the Hawthorn 5 review until the next
17 rate case, the 2007 case.

18 Q. I believe Ms. Van Gelder asked you some
19 questions regarding your testimony about the dedicated
20 Staff for a construction audit relating to Iatan 1. Could
21 you indicate whether you're referring to a dedicated Staff
22 for Iatan 1 or Iatan 1 and Iatan 1 common plant, or could
23 you just be more specific as to what that comment, what
24 that dedicated Staff is that you were referring to, the
25 size and the -- and the project involved?

1 A. As I indicated earlier, I'm not sure that
2 when the question was posed to me by Staff counsel, how
3 long it would take, that I -- that I really had numbers in
4 mind, the kind of Staff, the types of individuals' levels
5 of experience and so on and so forth.

6 This was sort of impromptu response, but,
7 you know, I certainly would have -- the question as it was
8 posed to me as I heard it from the Commission back in
9 April of '09 was it was specifically referring to Iatan 1,
10 and certainly if you included all of the other units, if
11 you included Iatan 2, if you included certainly the common
12 costs, those were all -- that scope of those kinds of
13 audits would increase in terms of the numbers of people
14 and the duration.

15 Q. Ms. Van Gelder asked you a question about
16 Wolf Creek, and I think she asked you whether Wolf Creek
17 had an outside consultant? Did Wolf Creek have -- well,
18 if you might explain what you meant, whether it -- it --
19 regarding whether Wolf Creek had an outside consultant?

20 A. The Staff was doing both Callaway and Wolf
21 Creek at -- at -- at various times simultaneously, and so
22 we had many outside consultants. We had actually received
23 special funding to -- we had a special budget to do
24 several consultants as well as a multitude of dedicated
25 Staff. I think almost the entire auditing department,

1 and, in fact, we've had special funding to hire additional
2 auditors and all but maybe one or two of the audit Staff
3 was assigned to both those projects at various times.
4 They as I recall, just hadn't thought about it for 25
5 years, it was kind of a nightmare, but I think we really
6 were working on the project from like in earnest from like
7 maybe the fourth quarter of '83 to all of, I think we
8 filed our reply brief December 31, 1985. So much of the
9 Commission was consumed, the Staff was consumed with those
10 projects.

11 Q. Do you have memories of a construction
12 trailer?

13 A. I have vivid memories of a construction
14 trailer in Burlington, Kansas at the site.

15 Q. And how many auditors were in that
16 construction trailer?

17 A. At various times, we probably had as few as
18 six or seven, maybe as many, with our outside consultant,
19 well, with dedicated staff, in-house staff, maybe as many
20 as 12, 13, and then we had other people that would come in
21 outside of the audit staff. We would have engineers that
22 would -- that would come to the site, and we had then also
23 the consultants that had site presence as well.

24 Q. Consultants to the Staff for the
25 Commission?

1 A. Yes.

2 MR. DOTTHEIM: Thank you, Mr. Featherstone.

3 JUDGE STEARLEY: Any additional questions
4 from the Bench? No more recross? Okay. Mr. Dottheim
5 asked a few questions that hadn't been covered before, so
6 I was going to give you an opportunity for another round
7 of recross. Mr. Featherstone, it looks like your
8 examination is through. You may be excused.

9 THE WITNESS: Thank you.

10 JUDGE STEARLEY: At this point we had
11 planned on picking up with the original schedule of
12 witnesses being offered by KCP&L, and Mr. Fischer, I don't
13 know timing-wise if any of your witnesses have a schedule
14 we need to accommodate.

15 MR. FISCHER: We are here for whatever time
16 it takes, I think the next two days.

17 JUDGE STEARLEY: You may call them in in
18 the order in which you desire.

19 MR. FISCHER: I think the first witness
20 would be Mr. Curtis Blanc.

21 JUDGE STEARLEY: I do want to take a moment
22 to remind -- I think most of the witnesses are in this
23 room. When the Commissioners direct questions or the
24 parties are directing questions that are yes or no
25 questions, the Commission would expect to hear a yes or a

1 no or an I don't know. They would also expect to hear
2 answers to the questions being naturally asked. And if
3 the parties object for parties being nonresponsive or on
4 my own consideration, I may strike witness testimony
5 that's nonresponsive to the questions. If the witnesses
6 will please pay attention and focus their answers, the
7 Commission will greatly appreciate it.

8 With that, Mr. Blanc.

9 (Witness sworn.)

10 MR. HATFIELD: Thank you, Judge. And for
11 members of the Commission, I do have some questions for
12 Mr. Blanc that I think are going to cover many of the
13 issues that have been raised. I know that the
14 Commission's not used to live direct. So let me just
15 suggest, if at any point you wish to interrupt to ask the
16 witness questions, he would welcome that. I would welcome
17 that. Please don't feel like you need to wait until we're
18 finished with the entire direct or even with the section
19 if you have questions you want to jump in on.

20 COMMISSIONER JARRETT: Should I allow you
21 to finish your question first before I --

22 MR. HATFIELD: You're the Commissioner.

23 CURTIS BLANC testified as follows:

24 DIRECT EXAMINATION BY MR. HATFIELD:

25 Q. Mr. Blanc, maybe we can just dive right in

1 and have you describe for the Commission a little bit your
2 responsibilities at Kansas City Power & Light.

3 A. Sure. I'm Senior Director of Regulatory
4 Affairs. I oversee the regulatory affairs department and
5 basically manage our activities with the regulators, both
6 before the Missouri Public Service Commission, the Kansas
7 Corporation Commission and the Federal Energy Regulatory
8 Commission.

9 Q. And are you familiar with a generating
10 facility known as Iatan 1?

11 A. I am.

12 Q. And just one thing I want to be clear for
13 the Commission. Iatan 1, that facility was actually
14 built -- do you know?

15 A. I think it went into service roughly
16 1978ish.

17 Q. And then what we've been talking about so
18 far today -- you've been here for the opening --

19 A. Yes.

20 Q. -- right?

21 -- has to do with environmental upgrades;
22 is that your understanding?

23 A. That's correct.

24 Q. And when did those begin?

25 A. Those began in approximately 2006.

1 Q. And can you just describe for the
2 Commission what it is that goes into the environmental
3 upgrades at Iatan 1?

4 A. Sure. As Mr. Hatfield asked, Iatan 1 is an
5 existing unit. This project was environmental retrofit.
6 We added an SCR to reduce nitrous oxide emissions. We
7 added a scrubber to reduce sulfur dioxide emissions. We
8 added a baghouse to reduce particulate emissions. I
9 believe the project also included low NOX burners, which
10 would also reduce nitrous oxide emissions, as well as a
11 new digital control system.

12 Q. And there's been a reference to, I believe,
13 maybe in opening or Mr. Featherstone's testimony actually
14 to a boiler. Did you understand what Mr. Featherstone was
15 referring to there?

16 A. If I understood him correctly, it's
17 something called an auxiliary boiler, and the engineers
18 will probably snicker at me for not understanding or
19 remembering all the details, but basically for the Iatan
20 site, for starting the generation units, if you don't have
21 steam in the unit, you haven't started it yet, you have to
22 have some ability to produce steam elsewhere. That's an
23 auxiliary boiler.

24 The site currently has two boilers. I
25 don't recall -- or two auxiliary boilers I should say. I

1 don't recall what horsepower they are. But the auxiliary
2 boiler he's referring to is adding a third boiler to go
3 from two boilers for the site to three boilers to the site
4 to start up both units.

5 Again, I'm not an engineer, but my
6 understanding was there was a concern that if it was
7 wintertime, both units were down, you wouldn't be able to
8 start both units with the two auxiliary boilers. You
9 would need three.

10 Q. And does that third auxiliary boiler have
11 anything to do with the environmental upgrades at Iatan 1?

12 A. No.

13 Q. What is the status of the environmental
14 upgrades at Iatan 1?

15 A. Construction was completed in February of
16 2009, and they were deemed to be in service a year ago in
17 April of 2009.

18 Q. And what do you mean when you say
19 construction was completed? Can you just elaborate a
20 little bit on what's finished?

21 A. Sure. Maybe the distinction would be the
22 -- I mentioned the actual facilities, the scrubber, the
23 SCR, the baghouse. Those have to be built, but then
24 that's not in service. You have to demonstrate that
25 they're working, that they're doing what they're supposed

1 to do. And so there's generally some time between
2 finishing building the equipment and being able to
3 demonstrate that it's doing what it's supposed to do.

4 Q. Now, you've already been through openings,
5 but can you briefly in your position in charge of
6 regulations describe why you believe we're here today?

7 A. Sure. I think there are essentially two
8 primary points. I think Mr. Fischer's opening described
9 it very well, but to put it in my own terms, the first
10 would be to respond to the allegation Staff levied in its
11 pleadings, basically suggesting that we had abused
12 discovery to the point of violating our Code of Ethical
13 Business Conduct. We take that very seriously, and we're
14 glad to get a chance to respond to that.

15 And the other allegation is that the cost
16 control system for Iatan 1 was somehow inadequate. We
17 believe that not to be true as well, and likewise
18 appreciate the opportunity to explain that.

19 The second point is basically clarity. We
20 understood the Commission to have ordered the Staff to
21 complete its construction audit and prudence review by
22 December 31, 2009. When that report came out, we became
23 concerned I think for the first time that that wasn't the
24 case, that there was -- Staff viewed there being more work
25 to be done.

1 And that wasn't our understanding, and so
2 we really wanted to have these hearings to get certainty
3 as to if it's done, if it's not done, when will it be
4 done.

5 Q. Now, since you saw that December 31 report,
6 have you received information that gave you an additional
7 understanding about whether the audit is complete?

8 A. Sure. I think reading the report, it
9 wasn't clear. It seemed to indicate at times it was, at
10 other times in the report that it wasn't. But in Staff's
11 subsequent pleadings and then as part of the depositions,
12 it became very clear that Staff was treating the audit
13 that resulted in the December 31st report as a side
14 project with limited scope, and that the real Iatan 1
15 audit was something different in that it was ongoing and
16 far from complete.

17 Q. Now, this morning Mr. Dottheim read from, I
18 believe it was Staff's reply brief, and he read a section
19 that said that Staff did not intend to return to the
20 period of time covered by the audit. Now, did that
21 resolve the matter from your perspective?

22 A. It would have -- that statement by itself
23 is helpful because that would imply the construction
24 audit/prudence review is over. But as I said, other
25 caveats, there's \$60 million they identify they want to

1 continue to review, and -- and then in the subsequent
2 pleadings it indicates that there really isn't an end.

3 But if you took that statement on its face,
4 it would start to sound like the December 31st audit was
5 the audit and it's done.

6 Q. And then I want to talk briefly about
7 the -- the December 31 cutoff date. Mr. Dottheim in
8 opening said that the Staff had talked to Kansas City
9 Power & Light about possibly extending the December 31
10 date, and do you know to whom he discussed -- or whom he
11 discussed that with?

12 A. I believe it was a communication between
13 Nathan Williams and myself, if I recall that correctly.

14 Q. And would you tell the Commission about
15 that discussion where Staff asked if you would extend the
16 December 31 date?

17 A. Sure. I guess just two points of clarity.
18 One would be, it was never presented to us that Staff
19 wasn't going to have time, didn't have the information it
20 needed to conduct its audit. The issue, as Mr. Dottheim
21 correctly suggested, is that they would like to have -- or
22 would have liked to have inserted a mechanism where we
23 could review the report, have 45 days I think it was to
24 comment on it and provide it back. And that would have
25 been nice. We would have enjoyed reviewing the report. I

1 think that would have been helpful. But in our opinion it
2 wasn't worth holding up the completion of the audit for us
3 to get a chance to comment on it ahead of time.

4 My second point would be, part of that
5 arrangement, that request for extension was there was a
6 provision in that agreement that basically said that the
7 companies would agree that discovery or lack of
8 cooperation in discovery matters was why the extension was
9 needed, and we weren't going to concede that because we
10 didn't think it was true.

11 Q. All right. Let's talk about discovery for
12 just a minute, and you referred to -- you referred to an
13 allegation earlier about the Ethical Code of Conduct.

14 MR. HATFIELD: And Judge, I'm going to show
15 some sections of Staff's reply to KCPL's and GMO's
16 February 16th, 2010 initial response. As I understand it,
17 that pleading has been rolled in to this 259 docket.

18 JUDGE STEARLEY: Yes, that's correct.

19 MR. HATFIELD: I was going to say, to the
20 extent it hasn't, I'd like you to take notice if --

21 JUDGE STEARLEY: I'd be happy to take
22 notice of it, but it is in this file.

23 MR. HATFIELD: Fair enough.

24 BY MR. HATFIELD:

25 Q. And I'm realizing now that all of my work

1 to make sure I could see this and the Commission could see
2 it, I didn't think about being able to have Mr. Blanc see
3 it. So I apologize if he's going to have to turn his back
4 very briefly maybe to read this.

5 We're starting -- Staff believes that KCP&L
6 GMO has acted contrary to page 9 of the October 30, 2007
7 GPE Code of Ethical Business Conduct. Now, is that the
8 allegation you referred to earlier in your testimony?

9 A. Yes, it is.

10 Q. And that -- that Code of Conduct is set out
11 for us there by Staff in the block. Consistent with
12 applicable law, we're required to cooperate fully,
13 promptly and truthfully in any internal or external
14 investigation, including responding to requests for
15 information relating to the subject matter of the
16 investigation. We will not destroy or alter any company
17 record with the intent to obstruct any pending or
18 threatened investigation.

19 Does that correctly set out GPE's Code of
20 Conduct?

21 A. Yes, it does.

22 Q. And are you aware as -- in your position,
23 are you aware of anyone at Kansas City Power & Light who
24 has violated that Code of Conduct?

25 A. No, I am not.

1 Q. Have you ever directed anyone to violate
2 that Code of Conduct?

3 A. No, I have not.

4 Q. Now, as regard -- by the way, had you ever
5 heard that allegation before you saw it in Staff's reply?

6 A. No. I was aware of, as I mentioned before,
7 that they thought our lack of cooperation was delaying
8 their audit, and we had had some discovery disputes that
9 had gone to the Judge, but I was not aware prior to
10 reading that that they thought we were violating our Code
11 of Ethical Business Conduct.

12 Q. Regardless of the pleadings and all that, I
13 mean, had anybody ever mentioned to you that in
14 conversations, in meetings, that the Staff believed you
15 might be violating the Code of Ethical Conduct?

16 A. Not that I recall.

17 Q. And so let me just ask you, regardless of
18 the Code of Conduct, have the companies, to your
19 knowledge, used the discovery process to delay the
20 construction and prudence audit of Iatan 1 environmental
21 upgrades?

22 A. Absolutely not. Tim Rush is here and will
23 testify in greater detail about the numbers of data
24 requests we've received and the process that goes in to
25 making sure they're answered accurately and timely, and I

1 know we've devoted a lot of resources to doing just that.

2 I think one of the complications is what
3 seems to be a very simple question often isn't.
4 Particularly with respect to the Iatan construction
5 project, we may get what would appear to be a simple data
6 request, but it would have to go to the construction team.
7 It would have to go oftentimes to property accounting
8 group, the accounting group, tax group. I mean,
9 oftentimes our DRs require the input of dozens of people,
10 and that's necessary to ensure they're accurate, and that
11 takes time.

12 Q. Now, in your responsibility, have you
13 interacted with any other state service commissions that
14 are reviewing the Iatan 1 environmental upgrades?

15 A. Sure. The Kansas Corporation Commission
16 reviewed the Iatan 1 environmental retrofits we've been
17 talking about as part of last year's case in Kansas.

18 Q. And in that case, did the Kansas staff
19 complete a prudence audit?

20 A. Yes, they did.

21 Q. And did they have access to the same data
22 to which the Missouri Staff has had access?

23 A. Yes, they did. Not only did they largely
24 ask for the same type of information, but the Missouri
25 Staff literally had access to our responses to the Kansas

1 staff's data requests.

2 Q. And I think Mr. Rush is going to discuss
3 that in a little more detail; is that right?

4 A. Yes, he is.

5 Q. Let me show you, this is from the Staff's
6 audit, the 12/31 audit report, and it's voluminous, so I
7 did not make extra copies, but I believe it's also a part
8 of this docket.

9 JUDGE STEARLEY: It is.

10 BY MR. HATFIELD:

11 Q. This is from page 3, Mr. Blanc, and I've
12 drawn a little arrow here just to help us out. Says,
13 Staff has experienced significant discovery issues in this
14 audit. These issues are highlighted by the absence of any
15 of these issues when KCPL provides information to the
16 Staff of the Kansas Corporations Commission.

17 So let me just ask you, because Staff's
18 talking there about Kansas, have you treated the Kansas
19 staff more favorably than you've treated the Missouri
20 Staff when it comes to discovery?

21 A. No. And actually, the process is
22 identical. The same group reviews the DRs when they came
23 in. The same group of people draft them as they pertain
24 to Iatan 1 as I talked about the various groups, but it's
25 the same people responding to both states, and we make no

1 differentiation between DRs depending on what state
2 they're coming from.

3 Q. And putting aside the formal discovery
4 process for a minute, let's tell the Commission how long
5 the company has been providing information to the Missouri
6 Staff concerning the Iatan 1 environmental upgrades.

7 A. Sure. I believe it was Mr. Featherstone
8 touched upon this, but part of the regulatory plan was the
9 idea that we would be sharing information kind of in real
10 time as we went along as these projects were constructed.
11 Now, we started providing quarterly reports as required
12 under the regulatory plan back in 2006, and we provided
13 the most recent one for the fourth quarter of 2009, and I
14 believe that was our 16th quarterly report.

15 Q. Let me show you --

16 MR. HATFIELD: And, Judge, this has not
17 been filed, and I don't know how we're doing exhibits.

18 JUDGE STEARLEY: If you'd like to mark an
19 exhibit and offer it, we can certainly do that.

20 MR. HATFIELD: I'd love to. What number or
21 other designation shall I place upon it?

22 JUDGE STEARLEY: We'll give it KCPL GMO
23 Exhibit 1.

24 MR. HATFIELD: Judge, I am now going to
25 read from the substance of this exhibit. I would just

1 note for the record that it is marked highly confidential.

2 JUDGE STEARLEY: Very well.

3 (KCPL GMO EXHIBIT NO. 1 WAS MARKED FOR
4 IDENTIFICATION BY THE REPORTER.)

5 BY MR. HATFIELD:

6 Q. Tell us what Exhibit 1 is.

7 A. This is the report I just referenced. It's
8 the one most recently provided, and it's the CEP quarterly
9 report for the fourth quarter of 2009 dated February 12th,
10 2010.

11 Q. And without getting into the substance of
12 it, what -- what general areas do these reports cover?

13 A. Sure. These reports as they were designed
14 to be basically provide a status update of the projects at
15 that time, what kind of costs we've incurred, how much has
16 been built, any pending issues, risks we're facing.

17 I mean, you can flip through the report.
18 It's comprehensive. I think this one is roughly -- yeah,
19 it's more than 90 pages, and basically just goes to what's
20 going on with construction, what our costs have been, and
21 what kind of risks the projects are facing.

22 Q. And do you know how many of these quarterly
23 reports have been provided concerning Iatan 1?

24 A. Says at the beginning, I believe this one
25 indicates that it was the 16th report. Like I said, they

1 were quarterly and I believe we began in 2006.

2 Q. And can you just -- I think we've got it,
3 but explain to the Commission how Exhibit 1 relates to the
4 quarterly meetings Mr. Featherstone was discussing, which
5 happens first and --

6 A. Sure. We would have a quarterly report and
7 then we would follow that up. We would come down here
8 and, as Mr. Featherstone accurately put it, we would have
9 people from the regulatory group, we would have people
10 from the project team. If there were other issues at the
11 moment, representatives from those groups would come down.
12 We would meet with the staff and the other parties to the
13 regulatory plan. We would go through the report, answer
14 questions about the report and then updates.

15 Usually just scheduling-wise there could be
16 a month between when the report came out and when we could
17 get our meeting scheduled, and if anything had transpired
18 in that month that was relevant, we would go over that as
19 well.

20 And also as Mr. Featherstone touched upon,
21 outside of the quarterly meetings, or I guess I should say
22 in addition to, sometimes we would have special meetings.
23 Like, for example, he mentioned a recent forecast meeting
24 that wasn't one of our regularly scheduled meetings, but
25 it was a significant issue having to do with the CEP

1 projects. We convened an additional meeting.

2 Q. Now, in addition to these quarterly, these
3 16 different quarterly reports and these meetings that
4 happened to explain the process, have there been other
5 meetings maybe in Kansas City with Staff of the Missouri
6 Public Service Commission?

7 A. Yes. Starting I believe it was for Iatan 1
8 in 2007, engineers from the Commission's operations
9 division began making site visits to the plant. I believe
10 those visits were about monthly and have continued through
11 now.

12 Q. And did you gain an understanding or did
13 you have an understanding at the time of why the engineers
14 were visiting the plant?

15 A. Sure. Our impression was that that was
16 Staff's construction audit, that that was beginning the
17 type of information they were reviewing. They would come
18 onsite and they would review vendor contracts, purchase
19 orders, change orders, lots of questions about costs, and
20 we assumed that was Staff's prudence audit.

21 Q. And let's just make it clear. I think
22 these Commissioners probably understand, but to make the
23 record clear, when you refer to the engineers who were
24 attending, distinguish that from the three gentlemen who I
25 think we've heard were on the audit, Mr. Schallenberg,

1 Mr. Hyneman, Mr. Majors.

2 A. Sure. I guess I'm referring to members of
3 the Commission's Operations Division. Specifically
4 Mr. Elliott came almost every time if not every time, and
5 then Shawn Lange would sometimes be with him and Mike
6 Taylor would sometimes be with him.

7 Q. Now, did you also provide information to
8 the Services Division, Mr. Schallenberg's group?

9 A. Yes. There was, I think it's been alluded
10 to already, as part of last year's rate case, there was a
11 lot of information provided about the Iatan 1 project to
12 the Services Division. And then predating that, as part
13 of the acquisition case when GPE acquired Aquilla, I
14 believe it was Mr. Dottheim referenced the depositions and
15 the subpoenas for documents that were related specifically
16 to Iatan 1 that we provided as part of that process, and
17 that was a couple years ago.

18 Q. Now, since the company started providing
19 the quarterly reports in 2006, do you know how many times
20 members of the Services Division have visited the Iatan
21 site?

22 A. I am aware of only two or three.

23 Q. Thank you. Now, we talked about all this
24 information provision. Has there ever been a time that
25 Kansas City Power & Light has declined to provide

1 information?

2 A. The only examples I can think of, and there
3 are two, and one's generic and one's specific. Starting
4 with the generic one, we've attempted to protect the
5 attorney/client communication privilege and the attorney
6 work product privilege. We have declined to provide that
7 information. Those disputes have gone to the RLJ and I
8 believe in the form of a motion to compel to the
9 Commission.

10 The other example I can think of early in
11 the Iatan 1 audit, they requested information specific to
12 Iatan 2, and we initially objected, saying we understood
13 you were doing your Iatan 1 audit. We don't understand
14 how the Iatan 2 information is relevant. And they
15 explained that they would need the information to make
16 sure that costs were allocated correctly between the two
17 and that -- and to calculate the additional amortizations
18 mechanism that was part of our last rate case. We agreed
19 and provided the information.

20 Q. All right. And in addition to information,
21 have you ever denied access to any Kansas City Power &
22 Light employees who the Staff desired to talk to?

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

24 Q. In your position, have you ever heard from
25 anyone on the Staff that these discovery disputes were

1 impeding their ability to complete an audit?

2 A. Other than in the reports themselves. The
3 reports themselves indicate that it's a reason Staff
4 hasn't been able to conduct its audit. And then as I
5 mentioned before, in that request to extend the deadline,
6 that was one of the terms of that agreement -- or I
7 believe it was in -- I say agreement, but it was a draft
8 motion, a joint motion for the Commission.

9 Q. And then lastly on discovery, on the things
10 that you declined to provide and the reasons you
11 described, did you take a different position with Kansas
12 on those requests?

13 A. No. We've drawn exactly the same lines,
14 especially in terms of protecting attorney/client
15 communications and attorney work product.

16 Q. All right. I want to -- I want to leave
17 discovery for a minute and talk a little bit about cost
18 control, which we haven't -- we didn't really discuss as
19 much in opening, but one of the issues that Staff raises
20 in its audit reports is whether Kansas City Power & Light
21 has an adequate cost control system. Are you familiar
22 with that?

23 A. I am.

24 Q. And can you just briefly describe for the
25 Commission whether that cost control system is adequate?

1 A. I believe it is. I'm not the expert. We
2 have Dr. Kris Nielsen here who is a prudence project
3 expert of this type, and he will testify that the cost
4 control system we have is not only adequate but typical
5 for a project like this, and Chris Giles will be able to
6 answer questions about how it works.

7 Q. Now, the cost control system you have in
8 place, was Kansas looking at a different cost control
9 system when it created -- I'm sorry, completed it prudence
10 audit?

11 A. No. There's only one cost control system.

12 Q. The Staff also in its audit says, and this
13 has been discussed today, that you can't complete the
14 audit because there are still costs being incurred related
15 to Iatan 1. So let's start with that. Are there still
16 some costs being incurred related to the Iatan 1
17 environmental project?

18 A. There are. There are what I would describe
19 relatively minor costs that continue to be incurred, and
20 certainly none that would go to prudence, a prudence
21 audit.

22 Q. All right. Let me show you, this is --
23 this is a chart that appears several places. One place is
24 in Exhibit 1. Another place is in a Staff reply. But let
25 me just show you this chart. I'm going to get really

1 fancy. Look at that.

2 A. This is also on page 41 of Exhibit 1 if
3 that's helpful for ease of reading.

4 Q. Curtis, is this HC? I thought we talked
5 about this.

6 A. No. I -- I think out of prudence we should
7 treat it as highly confidential. The page is designated
8 as such, and I'm pausing because the information is
9 historical but there's also some projected. So I think we
10 should treat it as highly confidential.

11 JUDGE STEARLEY: If the questioning is
12 regarding this, do you want to go in-camera for this?

13 MR. HATFIELD: Well, how about, let me ask
14 a couple of questions and see if I can avoid having to go
15 in-camera, because that might be easier.

16 JUDGE STEARLEY: I trust you'll let me
17 know.

18 MR. HATFIELD: I will. Let me just think
19 here.

20 JUDGE STEARLEY: We've got about a six
21 second pause, I think.

22 BY MR. HATFIELD:

23 Q. Well, let's try it this way, Mr. Blanc.
24 The Staff filed its report on December 31 of 2009. So on
25 that date, can you tell us how much of the project's

1 remaining costs were outstanding?

2 A. Sure. You can look at the chart, and
3 basically it's simply cost, actual cost incurred over time
4 going back to 2006 is when costs begin to be incurred,
5 significant costs incurred in 2008, and then trickle off
6 over 2009. And what the chart would tell you that blue
7 box --

8 Q. I guess without giving the numbers --

9 A. No, no. Yeah.

10 Q. -- maybe you could tell us the algebra.

11 A. Exactly. The blue boxed number there at
12 the bottom of the page would be what would remain
13 outstanding after the December 31st date of the audit
14 report, and it wouldn't be highly confidential to say that
15 that's roughly 8 percent of the project cost.

16 Q. And what types of things are still
17 remaining?

18 A. There are -- as Staff suggested, there are
19 some common facilities that were originally in the Iatan 1
20 budget that are being wrapped up, and then there's also,
21 as they mentioned, some site finalization, grading, that
22 type of work to be done.

23 Q. You heard Mr. Featherstone testifying about
24 his prediction in April that an audit could be completed
25 in six months, and he said one of the issues was that he

1 was assuming there would only be a small amount of costs
2 left. Did you hear what he said about that?

3 A. I understood him to say that there -- we
4 continued to spend significant amounts of money on the
5 Iatan 1 project.

6 Q. Is that correct?

7 A. I don't believe that to be true, and I
8 think this chart demonstrates that.

9 Q. And I guess what I was getting to as well
10 is when he said, he made the prediction to the Commission,
11 to Mr. Williams who passed it on to the Commission, that
12 the project could be completed, the audit could be
13 completed in the six months, that he was assuming there
14 would be, and I'm not trying to put words in his mouth,
15 but there would be some small cost left over, and is what
16 -- is your understanding of what was left consistent with
17 what he was talking about when he testified earlier today?

18 A. I guess I would maybe draw a distinction,
19 and I think it might be a fundamental one worth talking
20 about. The Commission directed Staff to complete a
21 construction audit and prudence review. To us and
22 particularly to Dr. Nielsen, those words have meaning.
23 Those are different distinct things, and the Commission
24 directed the Staff to do both.

25 A prudence review, you wouldn't need to

1 look at every dollar spent, every invoice to do a prudence
2 review, a decisional analysis of the project. But to go
3 do a construction audit that -- that would be looking at
4 invoices, and I believe it was Mr. Featherstone who
5 suggested that part of the rate case process is you have
6 to draw a line back from -- or forward from which you stop
7 looking at information isn't considered.

8 And in terms of what a construction audit
9 would be, I think the company would agree with that
10 position, and that whatever's left over after that is for
11 consideration in the next rate case. That's how it works.

12 Q. Let me ask you this one quick question
13 about that, because Mr. Nielsen's going to testify at
14 length. I have to think about that simply. If I'm going
15 to put a new roof on my house and the guy comes and he
16 says, here's the roof we're going to put on, we're going
17 to use these shingles and it's going to cost you \$10,000.
18 I say that's great. Go do it, get it done. I might not
19 get the bill for a few more months, but I've made a
20 decision to expend the money to put the roof on, et
21 cetera.

22 As to the Iatan 1 environmental upgrades,
23 have all the decisions been made about what needs to be
24 done?

25 A. Yes.

1 Q. But as I understand it, some of the bills
2 haven't come due?

3 A. That's correct. And there are -- there is,
4 as Mr. Featherstone suggested, some minor construction
5 work on facilities that will ultimately be common, but
6 those are very minor. But the decisions have been made.
7 But to your point, some costs, that blue figure number,
8 will continue to be incurred.

9 Q. And one other thing that came up this
10 morning with Mr. Featherstone -- let me ask it this way.
11 Did there ever come a time when you had a conversation
12 with the services staff about whether there might be a way
13 to accelerate those invoices so that they could get them
14 all in before the end of calendar '09?

15 A. Sure. We were aware that Staff had a
16 December 31st deadline, and we were trying to make sure
17 they had as current data as possible for that, and there
18 was a conversation where I indicated to Mr. Schallenberg
19 that we were doing everything that we could to get them
20 invoice data through, I believe it was November of 2009,
21 and he indicated that wouldn't be necessary because they
22 were cutting off their audit as of May 31. So anything
23 more recent than May 31st wouldn't be considered.

24 Q. All right. Does the fact that there
25 continue to be these invoices coming in, these bills to

1 pay, does that prohibit the Staff from doing a prudence
2 audit?

3 A. No. As I suggested earlier -- and
4 Dr. Nielsen's really the expert in this area -- a prudence
5 review doesn't require that kind of inquiry.

6 Q. All right. And then Mr. Dottheim related
7 that, talked about the meat cleaver approach where you
8 take, you just cut it off and you say we're going to meat
9 cleaver it and we're done. Were you here for that
10 discussion?

11 A. I was.

12 Q. Is Kansas City Power & Light's -- or are
13 you suggesting that we take a meat cleaver and cut off
14 review of invoices?

15 A. Yeah. No, we are not.

16 Q. And I think the worry that's being
17 articulated is that if you take the meat cleaver and cut
18 them off there might be some invoices that fall in the gap
19 and never are looked at, that there's some invoice that is
20 never reviewed by the Staff, and are you suggesting that
21 that be the case?

22 A. No. I think the way that argument's being
23 presented to the Commission is really a false choice. The
24 Commission is being presented with the options that it
25 either has to let the audit go on indefinitely as Staff

1 would have it done or the Commission has to tell Staff to
2 put down its pencil, walk away and never look at another
3 dollar spent. I think either of those extremes would be
4 bad, and neither of those extremes are our request.

5 The distinction I would raise is the one I
6 just described between what's a prudence review and what's
7 a construction audit. Construction audit, invoice review,
8 cost allocations between the plants, all that does end or
9 freeze at some point in time for the pending rate case,
10 and anything beyond that is in a subsequent case. That's
11 just how it works. There -- I believe you used the word
12 gap. There isn't a gap in what can be reviewed. It's
13 just deferred.

14 Q. And you refer to the overlap briefly, but I
15 think Mr. Dottheim read from some testimony in April, I
16 think it was in April, he read from some testimony
17 concerning the overlap between Iatan 1 and Iatan 2 and
18 what's common. Are you suggesting that the Staff not be
19 allowed to look at any of the overlapped expenses?

20 A. No. The company's position is that's not a
21 prudence issue, that's a cost allocation issue that can be
22 addressed in the rate case rather whether something was
23 incorrectly coded for two that should have been one or
24 vice versa. That's not imprudence. It's just an
25 allocation issue. It's a rate case issue.

1 Q. And then another thing Staff has raised is
2 that you can't really cut off because there might be some
3 something that's discovered later. Mr. Dottheim I think
4 had A through H of a legislator telling us something or
5 reading something in the paper.

6 Is the company advocating that there be a
7 cutoff and no new information can ever be received?

8 A. I guess the trouble with that is it's
9 always theoretically possible that new information might
10 become known at some point in the future. That could be
11 six months from now. That could be six years from now.
12 Companies' position is that's not a reason to hold open a
13 prudence audit, and that the Commission always has the
14 authority to investigate, look into, address should
15 something like that happen. You don't have to hold open
16 the prudence audit to do that.

17 Q. Let's talk just a little bit about the
18 Staff's audit itself. Have you gained an understanding of
19 how the Staff was conducting the construction audit and
20 prudence review?

21 A. I would have to add with a caveat, it
22 depends with what we understood the audit to be ongoing
23 versus what we've subsequently learned to be the process.
24 As I mentioned, the operations Staff were on site
25 beginning in 2007 monthly visits asking for and receiving

1 a lot of construction related data, and we understood that
2 to be the audit.

3 What we learned through the depositions is
4 that at some point along the way, Staff's procedure
5 changed. What we understood it to be is actually
6 consistent with surrebuttal testimony Mr. Schallenberg
7 filed in our last rate case, and I believe that testimony
8 indicated -- he's got it.

9 Each division has its responsibilities in
10 reviewing costs for prudence in each particular
11 construction audit. The Utility Operations Division is
12 expected to participate in all prudence audits with
13 assistance from the Utility Services Division.

14 And from what we observed, that's what we
15 believe to be transpiring, but what was explained to us
16 during the depositions is that at some point the procedure
17 changed and that now the Services Division, the auditors
18 are in control of prudence audits with the engineers, the
19 Operations Division in a supporting role, I believe with
20 the exception if a new nuclear power plant is built within
21 the state, operations would do that.

22 Q. Let's go back a minute. Earlier we were
23 talking about meetings that you've had in Kansas City and
24 onsite with engineers, I think is the word you and I both
25 used. Is that the Operations Division?

1 A. Correct.

2 Q. And so you assume they were coordinating
3 with Mr. Schallenberg's group on the auditing side?

4 A. Yes. We understood the process described
5 in his testimony to be the process that the Operations
6 Division, the engineers were doing the audit and then
7 Services Division was helping them.

8 Q. Now, do you now have an understanding -- I
9 think we probably all gained an understanding -- of when
10 Staff began its prudence audit?

11 A. With the same caveat, it depends. I would
12 say operations began back in 2007 with their monthly site
13 visits. But I think we've heard this morning that the
14 Services Division began theirs sometime after the April
15 15th Order. Mr. Featherstone said June or July. I don't
16 know what month exactly, but it sounds like it's pretty
17 clear it was after the April 15th, 2009 Order.

18 Q. Now, I want to talk lastly, I think, almost
19 lastly, about this issue of the Stipulation & Agreement.
20 The -- Mr. Fischer addressed at the start and Mr. Dottheim
21 has spent a lot of time on this Stipulation & Agreement
22 and whether either -- I'm just going to characterize it
23 this way; either this Commission has or could violate the
24 Stipulation & Agreement or whether Kansas City Power &
25 Light has done something that is a violation of the

1 Stipulation & Agreement.

2 Let me just start with this. When is the
3 first time you ever heard anyone on the Staff say that
4 there was a chance that Stipulation & Agreement had been
5 voided or violated?

6 A. It was at that meeting Mr. Featherstone
7 mentioned. I believe the date was April 15th of 2009.
8 That was the first time Staff suggested to us that what we
9 were doing with seeking of clarification about whether the
10 audit was done on what the Commission had ordered violated
11 the rate case settlement agreements from last year.

12 Q. You've read all the pleadings in this
13 docket; is that right?

14 A. I have.

15 Q. Have you ever seen that raised in any of
16 the pleadings in this docket?

17 A. I have not.

18 Q. You've read the preliminary audit report?

19 A. I have.

20 Q. You've read the construction audit report?

21 A. I have.

22 Q. Did you ever see it raised in any of those?

23 A. I have not.

24 JUDGE STEARLEY: I just had a
25 clarification. You said April 15th, 2009?

1 THE WITNESS: I'm sorry. April 15th, 2010.

2 Thank you very much. Just a couple weeks ago. Thank you.

3 MR. HATFIELD: I almost followed up,

4 Commissioner.

5 BY MR. HATFIELD:

6 Q. That's 13 days ago?

7 A. Yes.

8 Q. 13 days ago. All right. Well, let me ask
9 you about that. Mr. Dottheim and I think Mr. Featherstone
10 as well talked a little bit about what Staff thinks they
11 bargained for in that Stipulation & Agreement.

12 So let me just go ahead and ask you. When
13 Kansas City Power & Light signed that Stipulation &
14 Agreement, and I think this is the quickest way to frame
15 this up, did you intend to affect this Commission's
16 ability to control its own staff?

17 A. That wasn't our intent, and I wouldn't
18 believe we could by any kind of settlement agreement
19 impact the Commission's jurisdictional authority.

20 Q. And are you aware of any provisions of that
21 Stipulation & Agreement that hold out the Commission's
22 authority and specifically say that the Commission
23 maintains its authority?

24 A. There is a paragraph, I think it's
25 paragraph 27 in at least the KCP&L document, the standard

1 provision that's usually in a settlement agreement, the
2 Commission itself is not a contract, it retains its
3 discovery authority, its investigatory powers. It's a
4 pretty standard clause.

5 Q. I think we've probably hashed through the
6 Commission's actions enough, so let me move to, are you
7 aware of anything that Kansas City Power & Light has done
8 to void this Stipulation & Agreement?

9 A. No. We filed a joint motion with the Staff
10 concerning how the audit would continue, and that was to
11 fulfill, that was consistent with, however you want to
12 phrase it, our commitment in rate case settlement
13 agreements.

14 Q. And then I guess finally Mr. Dottheim has
15 raised the issue of whether -- and Mr. Dottheim will
16 characterize it if I get it wrong, I'm sure, but whether
17 something this Commission might do as a result of this
18 hearing could somehow void the Stipulation & Agreement.
19 And obviously, I think it's obvious, that would not be to
20 the benefit of the company to void the agreement.

21 But can you address that? Is there
22 something you've asked for that the Commission could do
23 that in your -- that you think would void that
24 Stipulation & Agreement?

25 A. No, not that I understand. I think as has

1 already been discussed this morning, Stipulation &
2 Agreement says what it says, and the Commission,
3 consistent with that Order, directed Staff to complete
4 audit by December 31st, 2009, and all we have done is seek
5 clarity about if we understood the Commission to have
6 ordered what we think it ordered and what the status is.

7 Q. And you already heard Mr. Fischer's opening
8 where he described the relief. Did you agree with the
9 relief that he proposed in terms of what the company
10 seeks?

11 A. Yes, I do.

12 Q. If that relief was granted, what does the
13 company envision Staff's role would be going forward with
14 respect to costs at Iatan 1?

15 A. Sure. I think it goes back to what I was
16 describing before, the distinction between a prudence
17 review and a construction audit. I think the prudence
18 review is done, it's behind us, and the construction audit
19 is ongoing as of some cutoff date in time. I'm not sure
20 what the Commission intended, what cutoff date the
21 Commission had in mind when it issued -- when it directed
22 the Staff to have the report done by December 31st.

23 I know Staff chose a cutoff date of
24 May 31st, 2009, but any costs we haven't incurred yet
25 would obviously be subject to review. Any AFUDC

1 calculations, there's a lot in Staff's report about that.
2 That's a rate case issue, not a prudence issue.
3 Allocations between Iatan 1, Iatan 2 and common, as we've
4 already talked about, that's a rate case issue. And those
5 would all be legitimate issues for the next case.

6 Q. I think we've covered it, but just in this
7 context, then, so if this Commission were to say prudence
8 review done December 31, 2009, and we get a, I don't know,
9 a mileage reimbursement on January 15, 2010, that is
10 billed to the wrong facility or it's just wrong for
11 whatever reason, would Staff be precluded from reviewing
12 that?

13 A. No, it would not. That would be part of
14 the construction audit.

15 Q. So again, then, how would they be allowed
16 to bring that up?

17 A. When we sought to recover those costs as
18 part of the next case, it would be reviewed as part of
19 that case.

20 Q. And then in terms of if new information
21 were to come about, I mean, if the relief was granted,
22 what do you envision the Commission's role would be with
23 regard to costs and expenses at Iatan 1?

24 A. Sure. The Commission has jurisdiction over
25 our rates, period, and that would include the question as

1 to whether those rates included imprudent costs. So if
2 future information did become available, the Commission
3 could address it.

4 MR. HATFIELD: I don't have any other
5 questions, Judge.

6 JUDGE STEARLEY: All right. Thank you,
7 Mr. Hatfield. Cross-examination, Mr. Dottheim?

8 MR. DOTTHEIM: Yes. Thank you.

9 CROSS-EXAMINATION BY MR. DOTTHEIM:

10 Q. Mr. Blanc, could I first refer you to
11 what's been marked Exhibit No. 1, KCPL GMO Exhibit No. 1.

12 A. I have it.

13 Q. Can we go to page 41? I've just referred
14 you to KCPL GMO Exhibit No. 1. I'd like to refer you to
15 page 41, and I'd like to refer you to that last -- that
16 line 2010.

17 A. I see it.

18 Q. And you've referred to that -- I think
19 you've referred to that line, that number there, and I
20 think maybe I really should go in-camera, because the way
21 I think you've described it, but I think you've described
22 that number there as inconsequential, and --

23 JUDGE STEARLEY: Before you go on,
24 Mr. Dottheim, do you want to go in-camera?

25 MR. DOTTHEIM: Yes, let's go in-camera.

1 (REPORTER'S NOTE: At this point, an
2 in-camera session was held, which is contained in
3 Volume 2, pages 154 through 158 of the transcript.)

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1 JUDGE STEARLEY: I trust the parties will
2 alert me if we need to go back in-camera. You may
3 proceed.

4 BY MR. DOTTHEIM:

5 Q. Is the auxiliary boiler for Iatan 1 all or
6 part in that \$41 million?

7 A. I would say the auxiliary boiler is not for
8 Iatan 1. I guess I would want to make that clarification.

9 JUDGE STEARLEY: Mr. Dottheim, I muted you
10 there, knowing I had a few seconds delay, on the actual
11 number.

12 MR. DOTTHEIM: Would you like me to repeat
13 the question?

14 JUDGE STEARLEY: I don't think that went
15 out on the webcast, but I'm assuming we were supposed to
16 keep the number highly confidential.

17 MR. DOTTHEIM: I'm sorry.

18 JUDGE STEARLEY: I think I caught it
19 because they built in this little pause for us. Also lets
20 me block people swearing and that going out over the
21 Internet. I think I cut the audio in time, but I'm going
22 to restore it.

23 MR. DOTTHEIM: If I say a highly
24 confidential number, I'll try not to swear also.

25 JUDGE STEARLEY: Yes. One infraction at a

1 time would be sufficient. Please proceed.

2 BY MR. DOTTHEIM:

3 Q. So you're telling me that the auxiliary
4 boiler, the costs of the auxiliary boiler are not charged
5 to Iatan 1?

6 A. No. I think this is a great example to get
7 into the distinction we were just talking about. The
8 prudence review would be the decision if an auxiliary
9 boiler is necessary for the project. That's the prudence
10 decision that would be judged as part of a prudence
11 review.

12 What budget it goes into, if we receive and
13 allocate the invoice correctly, those are rate case
14 issues. That's separate and distinct. So I think that
15 example highlights the difference between the two.

16 Q. Okay. Which dollars would the dollars for
17 the auxiliary boiler be allocated to?

18 A. My understanding is that the auxiliary
19 boiler is a common facility, but because there isn't a
20 common budget, there's a one budget and a two budget,
21 those dollars would come out of one budget.

22 Q. So the dollars for the auxiliary boiler
23 would be allocated to Iatan 1?

24 A. No. It's a common facility.

25 Q. Would they -- all right. Would they be

1 transferred to Iatan 1? Are they --

2 A. I'm afraid we're talking apples and
3 oranges, and I'm not sure the best way to clarify. I can
4 try.

5 Q. Try one more time.

6 A. Okay. For budget creation purposes, three
7 budgets were not created, separate budgets for Iatan 1,
8 common and Iatan 2. There's an Iatan 1 budget and an
9 Iatan 2 budget. And in the example of the auxiliary
10 boiler, it is a common facility, but because common
11 facility isn't its own bucket, for lack of a better term,
12 that money will come out of the Iatan 1 budget, is my
13 understanding.

14 Q. Could I refer you to page 43 of Exhibit 1,
15 Iatan Unit 1, the chart?

16 A. I'm sorry. I was on the wrong page.

17 Q. I'm sorry.

18 A. I have it before me.

19 Q. The Iatan Unit 1 major milestone schedule,
20 the last row, it shows reading across the page --

21 JUDGE STEARLEY: Is this highly
22 confidential?

23 THE WITNESS: It depends what counsel's
24 questions are.

25 BY MR. DOTTHEIM:

1 Q. I'm just going to read across the page.

2 A. Just the headings, the descriptors?

3 Q. That's right.

4 A. Absolutely.

5 Q. Okay. Does it show for milestone
6 description final acceptance and then parenthetically
7 substantial completion?

8 A. At the bottom of the table?

9 Q. Yes.

10 A. Yes.

11 Q. And then for the column completion date it
12 shows in black font April 2009 and in blue font September
13 2009?

14 A. I see that, yes.

15 Q. The last column status it shows complete.
16 Mr. Blanc, you've used the term prudence review. Do you
17 consider yourself an expert in this area?

18 A. No, and I've attempted to caveat my answers
19 with exactly that.

20 Q. And the term financial audit, have you
21 provided the definition of financial audit?

22 A. I have not.

23 Q. In the -- you've read the company's
24 pleadings of February 16th, March 22 and March 25, have
25 you not?

1 A. I have.

2 Q. And the term financial audit appears there,
3 does it not? Do you recall?

4 A. Without the documents before we, I don't
5 recall if those exact words appeared.

6 Q. Okay. The term construction audit appears,
7 does it not?

8 A. Yes.

9 Q. Do you consider yourself an expert in the
10 area of construction audit?

11 A. No, I do not.

12 Q. You've testified, I think -- well, you've
13 testified on the KCPL cost control system. Is KCPL
14 seeking in this proceeding any relief from the Commission
15 in regards to anything that the Staff has asserted or any
16 action taken by the Staff regarding KCPL's cost control
17 system?

18 A. Only to the extent that I understand
19 staff's pleadings to suggest that the two primary reasons
20 the audit wasn't completed as of December 31st, 2009 was
21 because of lack of cooperativeness by the company with
22 respect to discovery and that the cost control system is
23 inadequate.

24 The relief we're seeking is, if the audit
25 isn't done, it's not because of actions taken by the

1 company, which would include the alleged inadequacy of the
2 cost control system.

3 Q. Has the Staff in either its June 19th, 2009
4 preliminary report or the December 31, 2009 Staff report
5 stated that in order to complete a Staff audit, the Staff
6 needs to look at every Iatan 1 AQCS or Iatan 1 common
7 plant invoice?

8 A. The easiest answer is I don't know. I can
9 recall statements where Staff seems to suggest that for a
10 project like Iatan it would be impractical to review every
11 invoice, but I also recall sections where Staff says one
12 of the reasons the audit can't be completed is because
13 they haven't had an opportunity to review all the
14 invoices. So I guess I don't have a clear understanding
15 of Staff's position on that point.

16 Q. And again, do you recall whether the
17 Commission in any of its Orders provides a definition of
18 construction audit or prudence audit?

19 A. I don't believe those terms were expressly
20 defined in a definition section or anything like that, no.

21 Q. Do you recall whether the audits directed
22 by the Commission or audit directed by the Commission to
23 be completed is based on a review of invoices?

24 A. My answer is going to be similar. My
25 reading of the Staff's pleadings on that topic isn't

1 consistent. At times it seem to acknowledge that a
2 prudence review doesn't require the review of every single
3 invoice for the project, but other times I read the Staff
4 to believe that the Commission directed Staff to do an
5 invoice based review. So I don't know what Staff's
6 position is.

7 Q. Do you know whether the Missouri Staff had
8 access to the invoices that KCPL provided to the KCC
9 Staff?

10 A. I believe so. I believe the CaseWorks,
11 which is the Internet-based system we use for managing
12 data requests, has different databases in it, and Tim Rush
13 will be able to speak to this more specifically than I
14 can, but that one of databases is or -- yeah, is KCC Staff
15 data requests from the rate case, and I think that
16 information would appear there.

17 Q. Do you recall whether the Missouri Staff
18 had access to the same KCPL documents that the KCC Staff
19 did?

20 A. As far as document for document, I couldn't
21 say for certain. But I can say that both staffs requested
22 the same types of data, and we provided by responding the
23 same types of data, and that through the CaseWorks system
24 I mentioned, that the Missouri Staff had access to the
25 responses we provided to Kansas. I would think with that

1 explanation, I don't see how Kansas would be able to
2 review documents that Missouri wouldn't have access to.

3 Q. Did KCPL provide unredacted, certain
4 unredacted documents to the KCC Staff that it provided in
5 redacted form to the Missouri Staff?

6 A. Yes. There was an inadvertent disclosure.
7 As I explained before, we worked very hard to try and
8 protect the attorney/client communications and information
9 protected by the Work Product Doctrine. And in a Kansas
10 data request that resulted in handing over CDs with tens
11 of thousands of documents on them, there were some
12 documents in there that were unredacted. I believe they
13 were Schiff Hardin reports. Whereas, in the version we
14 had provided to Missouri Staff, a couple of sentences had
15 been redacted for privilege.

16 And we notified the Kansas Staff of that,
17 that it was an inadvertent disclosure. They returned them
18 to us, and we provided redacted copies in return. It's
19 the only incident I'm aware of like that.

20 Q. Does KCPL have a common budget?

21 A. Are you going -- if I understand your
22 question correctly, it goes to what I just described
23 before, that there's an Iatan 1 budget and an Iatan 2
24 budget. There isn't a separate bucket or budget for
25 common facilities.

1 Q. What is the reason for that?

2 A. Just the way the projects were contracted
3 for. Beyond that, I couldn't say.

4 Q. Have you determined -- has KCPL determined
5 what end date it thinks as far as invoices it believes the
6 Staff could have audited and still make a 12/31 -- a
7 December 31, 2009 filing of a report as the Staff did?

8 A. We haven't made that determination. The
9 date I can recall that might be relevant, I remember Staff
10 in one of its pleadings leading up to this hearing I
11 believe said that there was a 45-day delay in information
12 getting to the Staff as far as when the invoice is done,
13 and if that would be the case and if I'm conveying Staff's
14 position correctly, you could look at December 31st and
15 subtract 45 days.

16 MR. DOTTHEIM: Pardon me. If I could have
17 a moment, please, while I make a determination whether
18 this document is highly confidential or not.

19 JUDGE STEARLEY: Certainly, Mr. Dottheim.

20 BY MR. DOTTHEIM:

21 Q. Mr. Blanc, if I asked you about this, I am
22 going to ask you about the document, but if you don't
23 recognize it or have any familiarity with it, I think
24 there'll be a subsequent KCPL witness who might. So at
25 the moment, I'm just going to, if I may, approach you and

1 give you a copy and ask you if you recognize it and have
2 any familiarity with it before I mark it as an exhibit and
3 ask you any questions.

4 JUDGE STEARLEY: Please proceed,
5 Mr. Dottheim.

6 THE WITNESS: Are we just talking about the
7 first page or all the pages?

8 BY MR. DOTTHEIM:

9 Q. I'm -- I'm really not -- just in general
10 with the document, and the company's -- KCPL's objection
11 to responding to the Staff's data request, the basis for
12 the company's objection and then the company's subsequent
13 decision to respond to the data request, if you have
14 familiarity with that.

15 It's my understanding that there's some
16 detail involved. If you don't, if it is something that
17 you don't have any great familiarity with, again, I think
18 there's likely another KCPL witness who might.

19 A. Sure. I guess I would try this way. It's
20 data request --

21 Q. Well, before you go into any detail, do you
22 have some familiarity with it?

23 A. That's what I was going to describe. I'm
24 sorry.

25 MR. DOTTHEIM: Why don't I have it marked,

1 then, and then if -- if Mr. Blanc doesn't know the detail
2 of which I'm seeking, I'll refer to it later when another
3 witness takes the stand.

4 JUDGE STEARLEY: Okay. We'll mark it Staff
5 Exhibit 1. Do you have copies for the Bench?

6 MR. DOTTHEIM: Yes, I do. And I'd like to
7 have as Staff Exhibit 1, it's a Staff Data Request
8 No. 270.3, and the description is, please provide the
9 receipts for Mr. William H. Downey's local business meal
10 at the Capital Grill of \$405.26 on February 13, 2007.

11 (STAFF EXHIBIT NO. 1 WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. DOTTHEIM:

14 Q. Mr. Blanc, have you had an opportunity to
15 review Staff Data Request No. 270.3 and the attachments?

16 A. I have.

17 Q. All right. Do you recognize that data
18 request and the attachments?

19 A. I do.

20 Q. Okay. Do you have any familiarity with
21 the -- KCPL objected to the data request, did it not?

22 A. Initially, yes.

23 Q. Do you have any familiarity with the
24 objection --

25 A. Yes.

1 Q. -- that was raised?

2 A. Yes, some. I guess I will answer as many
3 questions as I can, and if I don't know, I'll indicate I
4 don't know.

5 Q. Okay. The objection reads, 02/11/09,
6 because KCPL has not included this amount in its cost of
7 service and, therefore, is not seeking to recover this
8 amount from ratepayers, KCPL objects to this data request
9 as it calls for information which is irrelevant,
10 immaterial and inadmissible and whose discovery is not
11 reasonably calculated to lead to the production of
12 relevant and admissible evidence.

13 Did I read that accurately?

14 A. That is what it says.

15 Q. Can you provide more of an explanation as
16 to the company's objection what is meant by that - that
17 response?

18 A. Sure. I can't speak to the legal reasons
19 for objecting, but from a regulatory point of view, it
20 would have been simply what it says, that we weren't
21 seeking to recover those costs in our rate, so we didn't
22 see how it was relevant.

23 Q. Initially on -- the data request was
24 submitted on February 8, 2009, and the objection is shown
25 as on February 11, 2009. Can you provide more of an

1 explanation as to on what basis KCPL was not seeking
2 recovery of the amount?

3 A. I'm not sure I understand the question.

4 Q. Do you know whether KCPL was not seeking
5 recovery of the amount because it was charging the cost to
6 Iatan 2?

7 A. I do not recall the exact accounting. I
8 just -- regulatory basis is as stated, that since we
9 weren't seeking recovery, we didn't think it was relevant.

10 Q. So you don't recall whether KCPL's
11 rationale was that it was charging the cost to Iatan 2,
12 and that because KCPL wasn't seeking recovery of Iatan 2
13 in rates, KCPL objected to the Staff's data request?

14 A. That's not what it says here, and I don't
15 recall that.

16 Q. Does -- do you have -- do you have some
17 other understanding as to what was the rationale on
18 2/11/09 than the one that I just indicated?

19 A. The stated the objection as stated is
20 consistent with my understanding.

21 Q. Which was exactly as I read?

22 A. Correct, not seeking to -- it's irrelevant
23 because we're not seeking to recover that amount.

24 Q. And not that you weren't seeking recovery
25 of the amount because you were charging it or KCPL was

1 charging it to Iatan 2, and since Iatan -- since KCPL
2 wasn't seeking to recover any Iatan 2 costs in rates, KCPL
3 wasn't seeking recovery as a consequence?

4 A. I don't recall that being the rationale,
5 and it's not what is stated.

6 Q. Is there another KCPL witness from your
7 perspective who I -- who might know something about this
8 data request and the KCPL rationale for objecting?

9 A. I guess it depends on if it's -- why the
10 company objected. I don't know who would be able to say
11 more than what's stated there. If it's how it was
12 accounted, there probably is someone who could explain how
13 the expense is accounted for.

14 Q. You don't know whether it might be
15 Mr. Giles or Mr. Rush?

16 A. You can ask them. They can say I don't
17 know or answer the question however they see fit.

18 Q. Mr. Rush, do you -- excuse me. I
19 apologize. Mr. Blanc, do you have any familiarity with
20 internal audits relating to the Iatan AQCS or Iatan 1
21 common plant audits?

22 A. Not in any great detail, no.

23 MR. DOTTHEIM: If I may have a moment,
24 please?

25 JUDGE STEARLEY: You may.

1 BY MR. DOTTHEIM:

2 Q. Mr. Blanc, are you familiar with the
3 Staff's data request requesting copies of David Price's
4 e-mails?

5 A. I am aware that Staff requested e-mails of
6 David Price, yes.

7 Q. Are you familiar with the interrogatories
8 or subpoena duces tecum -- well, it was really, I think,
9 interrogatories during the Staff's depositions in the
10 Great Plains Energy acquisition of Aquila case where the
11 e-mails of Mr. Price were requested?

12 A. I do recall that documents were requested
13 as part of those depositions. What specific documents
14 were requested, I don't recall in great detail.

15 Q. Do you recall during the depositions in
16 Case No. EM-2007-0374 the turnaround time that the company
17 provided as far as providing copies of Mr. Price's
18 e-mails?

19 A. Like I said, I don't recall if Price's
20 e-mails were part of that request or not, but I know we
21 tried to turn around the documents to Staff as quickly as
22 we could.

23 Q. Do you recall approximately number of days
24 that were involved or --

25 A. I do not. I know we were frantically

1 retrieving e-mails. From who to who, I don't recall if it
2 was Dave Price or not. But I know we were retrieving
3 e-mails, reviewing them for attorney/client communication
4 privilege and making copies of them for Staff as quickly
5 as we could, but how many days that took, I don't recall.

6 MR. DOTTHEIM: At this time I'd like to
7 have marked as, I guess it's Staff Exhibit 2.

8 JUDGE STEARLEY: Staff Exhibit No. 2.

9 MR. DOTTHEIM: It would be Staff Data
10 Request No. 673.

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

13 BY MR. DOTTHEIM:

14 Q. Mr. Blanc, have you had an opportunity to
15 take a look at what's been marked Staff Exhibit No. 2?

16 A. Yes, I have.

17 Q. Okay. Do you recognize that data request?

18 A. I do.

19 Q. And that data request asks, please provide
20 for review all David Price e-mails either received or sent
21 while in the employ of KCPL?

22 A. That is what it says.

23 Q. Do you recall approximately how many pages
24 resulted in being provided to the Staff in response?

25 A. Tim Rush handled this response. He'll be

1 able to speak more specifically. I remember the number
2 40,000, but what I don't recall is if that's number of
3 e-mails generated by the initial search, if it was number
4 of pages provided, number of e-mails provided. 40,000,
5 that number resonates, but Tim Rush will have to explain
6 what that means.

7 Q. And could you identify who David Price was?

8 A. Sure. He was the VP of Construction at
9 Iatan at one time.

10 Q. And when KCPL identifies the number of data
11 requests on expense reports, for example, as a hundred,
12 here we have an example of one expense report involving
13 the KCPL VP of Construction at Iatan that generated
14 possibly in the approximate number of 40,000 pages?

15 A. You said one expense report?

16 Q. No. I'm sorry. I meant -- when I was
17 referring to data requests, for example, I think KCPL
18 identified in its filings of March 22 and March 25 the
19 number of Staff data requests that involved KCPL expense
20 reports and compared that against the name of Staff data
21 requests that requested material more directly related
22 evidently from KCPL's perspective to Iatan 1.

23 And I was just saying, I guess I misspoke
24 when I said one expense report. Mr. Price was Vice
25 President of Construction at Iatan, and this one data

1 request resulted in approximately 40,000 pages of
2 documents?

3 A. If the question is if there were a lot of
4 documents involved in responding to this, yes, there were,
5 and the company had a hard time responding to this data
6 request because of that.

7 Q. And the data requests also -- the data
8 request response indicates also, even with the 40,000
9 pages, approximately, that were provided, it identified
10 documents that were not provided?

11 A. I didn't understand the question. I'm
12 sorry.

13 Q. I'm reading here on the second page, the
14 third sentence, for example, CD did not contain those
15 e-mails protected by attorney/client privilege or attorney
16 work product doctrine. The CD did not contain KCPL
17 employee related documents which can be reviewed onsite.
18 The CD also did not contain drafts of internal and
19 external audit reports. SEC and SOX filings, a privilege
20 log and a log of drafts and employee reviews was provided
21 to MPSC Staff on October 26, 2009.

22 Did I read that accurately?

23 A. You did, and that's precisely why data
24 requests like this is difficult to respond to. I can't
25 recall, like I said, if it generated 40,000 e-mail, 40,000

1 documents, but then somehow to review those to see if one
2 of those categories apply.

3 Q. And SOX stands for Sarbanes-Oxley?

4 A. Yes.

5 Q. And the data request is dated July 30,
6 2009, and the data response is November 6, 2009?

7 A. I'm sorry. I'm just looking for that date.
8 Yes, those dates are accurate, and I would note that the
9 due date was 8/13/2009, which would have been, I think my
10 math is right, the ten-day turnaround time. So assuming
11 that was the due date, ten days to 8/13, it appears the
12 response wasn't provided 'til 11/06 because we had to
13 review the documents.

14 Q. And there was a procedure that the Staff
15 and KCPL had whereby KCPL could routinely ask for
16 additional time to respond to Staff data requests, was
17 there not?

18 A. I know that's generically true, that we can
19 ask for extensions.

20 Q. Do you recall whether the Staff routinely
21 said yes to KCPL's request for additional time to respond
22 to data requests?

23 A. I believe they typically did.

24 MR. DOTTHEIM: I'm sorry. If I could have
25 a moment, please.

1 JUDGE STEARLEY: Mr. Dottheim, just to kind
2 of gauge things here, do you have a lot of questions left?
3 I want to give my court reporter a break here pretty soon.
4 We've been going about two hours.

5 MR. DOTTHEIM: I think probably about five
6 minutes; five, ten minutes. That's it.

7 JUDGE STEARLEY: All right. We'll go ahead
8 and continue.

9 BY MR. DOTTHEIM:

10 Q. Mr. Blanc, do you recall when KCPL -- the
11 Staff put in a data request asking for the same documents
12 that KCPL provided to the KCC Staff in unredacted form,
13 did it not?

14 A. I guess caveat that I understand the
15 question correctly. If you're referring to the
16 inadvertent disclosure we discussed earlier, there was a
17 data request from the Missouri Staff saying, give us the
18 inadvertent disclosure, yes.

19 Q. Did the Missouri Staff's data requests
20 state as you just said, provide to us the inadvertent
21 disclosure that you provided to the KCC Staff?

22 A. I don't remember the exact wording of the
23 DR. I remember in conversations with Staff, there was some
24 skepticism as to whether it was an inadvertent disclosure
25 and that we were intentionally giving the Kansas Staff

1 information we wouldn't give the Missouri Staff.

2 Q. The Missouri Staff did take -- Kansas City
3 Power & Light did object to providing that information to
4 the Missouri Staff, did it not?

5 A. Sure. We said it was protected.

6 Q. And that is a dispute that the Missouri
7 Staff took to the Regulatory Law Judge, is it not?

8 A. My recollection, that's one of the
9 disputes, yes.

10 MR. DOTTHEIM: Again, I'm sorry. If I
11 could have one moment.

12 JUDGE STEARLEY: That's quite all right,
13 Mr. Dottheim.

14 BY MR. DOTTHEIM:

15 Q. Mr. Blanc, did you and Mr. Schallenberg
16 have any meetings regarding the Staff's audit,
17 construction audit, prudence audit of Iatan 1 and Iatan 1
18 common costs?

19 A. Yes. The one I recall was the one I
20 discussed earlier, I think in response to a question from
21 Mr. Hatfield on the invoice cutoff date, that we were
22 trying to get invoices as of November, recognizing they
23 had this deadline, and he said, don't worry about it,
24 we're cutting off as of May 31st.

25 Q. Did you at that meeting discuss with

1 Mr. Schallenberg or raise with Mr. Schallenberg any
2 concerns or problems that Kansas City Power & Light
3 believed it was having with the Missouri Staff?

4 A. I'm trying to recall. It was largely a
5 social meeting. We talked about several issues. I don't
6 recall saying to Mr. Schallenberg, here's a list of
7 problems we're having with the Missouri staff. No, I
8 don't recall saying anything like that.

9 MR. DOTTHEIM: That's all the questions I
10 have. Thank you.

11 JUDGE STEARLEY: Thank you, Mr. Dottheim.
12 Are there any questions from the Bench for this witness?

13 COMMISSIONER KENNEY: Yes.

14 COMMISSIONER JARRETT: Yes, I have just a
15 few questions. Judge, was Staff Exhibit 1 received?

16 JUDGE STEARLEY: It has not been offered.
17 KCPL has not offered their first exhibit yet either.

18 COMMISSIONER JARRETT: Mr. Dottheim, are
19 you going to offer it?

20 MR. DOTTHEIM: Yes. Staff would like to
21 offer Staff Exhibit 1.

22 JUDGE STEARLEY: Did you want to determine
23 if it was going to be highly confidential or not,
24 Mr. Dottheim?

25 MR. DOTTHEIM: Yes. We -- yes, it should

1 be treated as highly confidential.

2 JUDGE STEARLEY: All right. Very well.

3 Are there any objections to the offering of Staff

4 Exhibit 1?

5 MR. HATFIELD: We do object as to whether

6 it's relevant at all to these proceedings.

7 MR. DOTTHEIM: And my intention -- and I

8 offered it because if Commissioner Jarrett has questions

9 on it is why I offered it. It was my intention to ask

10 questions of Mr. Giles and Mr. Rush to see if I might

11 obtain further information based upon greater knowledge on

12 their part that they might have regarding the document.

13 That's in part why I hadn't offered it to this point.

14 Again, if Commissioner Jarrett had questions, I was

15 offering it.

16 JUDGE STEARLEY: I'm not sure that answers

17 the relevance objection.

18 MR. DOTTHEIM: I know -- I mean, the Staff

19 does believe it's -- it's relevant. The staff has

20 referred to it. It's in the Staff's pleading. The Staff

21 believes it's relevant from the perspective because it's

22 nature -- it's in the nature of the items that the Staff

23 believes the Commission should always be wary of and not

24 definitively close audits so that if something such as the

25 nature of Staff Exhibit 1 comes to light either through an

1 informant or the media or the Legislature, that it can be
2 investigated by the Commission or looked into by the Staff
3 on its own. It's an item that -- that routinely the Staff
4 looks into when it becomes the knowledge of the Staff
5 without going to the Commission for authorization to do
6 so, and that's why the Staff even raised it in the
7 pleading which it did.

8 COMMISSIONER KENNEY: Mr. Dottheim, are you
9 referring to Data Request 270.3?

10 MR. DOTTHEIM: Oh, I'm sorry.

11 COMMISSIONER KENNEY: Is that what we're
12 referring to?

13 MR. DOTTHEIM: No. Yeah. We're talking
14 about a second one. Well, Staff --

15 COMMISSIONER KENNEY: Which data request
16 are we referring to?

17 COMMISSIONER JARRETT: I was asking about
18 Staff Exhibit 1, which is Data Request No. 0270.3.

19 COMMISSIONER KENNEY: Okay.

20 MR. DOTTHEIM: I guess I -- I guess,
21 Commissioner, you're telling me I'm referring to the wrong
22 data?

23 COMMISSIONER KENNEY: I don't know if you
24 are or not. I just want to be clear which one we're
25 referring to. My question is, if we are referring to

1 270.3, was that data request issued as a result of some
2 outside information that Staff had from an informant or
3 the Legislature or something?

4 MR. DOTTHEIM: No. No. The Staff -- no.
5 And that's -- I was referring to the correct data request.
6 I believe the Staff became aware of that information in
7 the context of its rate case audit of Kansas City Power &
8 Light in the 0089 case.

9 COMMISSIONER KENNEY: I didn't mean to
10 interrupt you. I just wanted to be clear which DR we were
11 talking about.

12 MR. DOTTHEIM: That is the DR I was
13 referring to, and --

14 JUDGE STEARLEY: Go ahead, Mr. Dottheim.

15 MR. DOTTHEIM: And it is the Staff's
16 understanding, it is my understanding that KCPL's
17 objection to that Data Request initially was not on the
18 basis that KCPL was being reimbursed because it was an
19 improper charge. It is my understanding that the actual
20 objection to the data request is that the charge was to
21 Iatan 2. In that sense, there was no seeking of recovery
22 of the cost of Iatan 2. Those costs were not in the 0089
23 case. That was the initial objection.

24 COMMISSIONER KENNEY: So it's relevant to
25 demonstrate why we need to not cut off audits at a

1 particular specific point in time, is that --

2 MR. DOTTHEIM: Yes.

3 COMMISSIONER KENNEY: And I'm asking these
4 because I've got to leave soon to get to a local public
5 hearing.

6 MR. DOTTHEIM: That's the -- that's the
7 relevance, and also to -- also to on the face of the
8 objection. On the face of the objection, one would
9 logically -- one would logically believe, and when you
10 look at the supporting documentation to it, one would
11 think that KCPL was being -- was being reimbursed the
12 money, but it's -- and the Staff has witnesses and we will
13 get to it if we can't get to it through a KCPL witness.
14 The Staff was told that the initial objection was the
15 dollars were being charged to Iatan 2.

16 JUDGE STEARLEY: Mr. Dottheim, just to be
17 clear, I'm going to overrule the objection and allow it
18 into evidence, but you have not -- what you've just stated
19 is not testimony.

20 MR. DOTTHEIM: Yes, I realize that.

21 JUDGE STEARLEY: You have not established
22 that.

23 MR. DOTTHEIM: I realize that.

24 JUDGE STEARLEY: The Commission will regard
25 this piece of evidence for the weight and credibility that

1 it has.

2 COMMISSIONER JARRETT: And it's HC?

3 JUDGE STEARLEY: It is Staff Exhibit 1 and
4 it is HC.

5 QUESTIONS BY COMMISSIONER JARRETT:

6 Q. I don't think my questions will go in to
7 anything, but if I ask you something you think you need to
8 go in-camera, please let me know.

9 Now, the date that this was requested, I'm
10 talking about Data Request No. 0270.3, was February 8th of
11 2009; is that correct?

12 A. Yes, that's the date on the data request.

13 Q. Okay. And then KCP&L responded with this
14 objection on February 11th of 2009; is that correct?

15 A. That's correct.

16 Q. Okay. So in the context of this case, were
17 you here when Mr. Fischer gave his opening statement?

18 A. Yes, I was.

19 Q. Do you recall him stating something to the
20 effect that Mr. Schallenberg had been deposed recently and
21 in that deposition Mr. Schallenberg said that the
22 construction imprudence audit of Iatan 1 did not start
23 until sometime after our April 15, 2009 Order?

24 A. I was here for the opening statements where
25 he said that, and I also sat in on Mr. Schallenberg's

1 deposition where he said that.

2 Q. Okay. And then were you also here when
3 Mr. Featherstone was on the stand?

4 A. I was.

5 Q. And do you recall Mr. Featherstone stating
6 that in his recollection it didn't -- the prudence audit
7 may not have started until June or July of 2009?

8 A. I heard him say that, yes.

9 Q. Now, I notice that sometime on May 8th, you
10 did provide the information requested by Data Request
11 0270.3; is that correct?

12 A. We did, and there's a reason for that. We
13 were in the process of trying to settle a KCPL rate case,
14 and a condition for settling that case, which I believe
15 was in the amount of \$95 million revenue requirement
16 increase, a condition of executing that agreement was us
17 providing this receipt.

18 Q. So it was provided on May 8th of 2009; is
19 that correct?

20 A. I'm just looking for the date on the page.
21 I'm sorry. I don't see a date.

22 Q. I was looking at page -- it was the third
23 page, and it looks like you sent an e-mail dated May the
24 8th with the attachment to Mr. Schallenberg.

25 A. Yes. I guess there's a bit of a story to

1 tell. This is our initial attempt to respond. We
2 responded by providing the backup documentation, the
3 internal documentation that KCP&L has to provide, but we
4 were informed that that wasn't good enough. They wanted
5 the actual receipts. That's why I was getting confused,
6 Commissioner Jarrett.

7 Q. So do you know when you provided the
8 actual?

9 A. That's the document I was looking for the
10 date on that I couldn't see. It's in the back. Let me
11 see. Yeah. The second to the last page is the one I was
12 looking at. It's the cover page of the response that
13 conveys it, and it says date of response is blank. So
14 that was source of my confusion.

15 Q. So do you recall when that was provided?

16 A. It was around the time the rate case
17 settlement was reached because it was a condition for
18 signing it.

19 Q. So when was that, approximately?

20 A. As I recall, April'ish of 2009.

21 Q. Okay.

22 JUDGE STEARLEY: We convened the
23 evidentiary hearing April 20, I believe, and recessed.
24 There was a settlement reached within a couple of days.
25 BY COMMISSIONER JARRETT:

1 Q. I'm just trying to figure out exactly when
2 you provided it. It was somewhere the April/May
3 timeframe?

4 A. Right. It was before the construction
5 audit, and that leads to the point that Staff routinely
6 reviews expense reports as part of the rate case process.
7 It's not a prudence review issue.

8 Q. That was my -- that was my question. Staff
9 got this information certainly before Mr. Featherstone
10 says his recollection was that the prudence audit didn't
11 start 'til June or July. So Staff had this information
12 either around the time that prudence audit started or even
13 before?

14 A. Sure, and certainly would have uncovered it
15 as part of their routine rate case work.

16 Q. Around certainly six or seven months before
17 the December 31st deadline that we posted in our Order?

18 A. Correct.

19 COMMISSIONER JARRETT: Thank you. I have
20 no further questions.

21 JUDGE STEARLEY: Commissioner Kenney?

22 QUESTIONS BY COMMISSIONER KENNEY:

23 Q. I'll be brief. I don't want to -- if I
24 don't mention the numbers that are in this highly
25 confidential document on page 41 of the -- this was

1 KCP&L's exhibit, right?

2 A. Yes, it is.

3 Q. Exhibit 1.

4 MR. HATFIELD: Judge, if it would be all
5 right, I'd move the admission of Exhibit 1 as HC, please.

6 COMMISSIONER KENNEY: This is KCPL's
7 exhibit, right?

8 JUDGE STEARLEY: Right. Are there any
9 objections to admission of Exhibit 1 for KCPL?

10 (No response.)

11 JUDGE STEARLEY: It shall be received and
12 admitted into evidence.

13 (KCPL GMO EXHIBIT NO. 1 WAS RECEIVED INTO
14 EVIDENCE.)

15 COMMISSIONER GUNN: As long as I don't
16 mention numbers, we don't have to go in-camera?

17 JUDGE STEARLEY: Well, you can ask a
18 question that would prompt an answer which would be
19 considered confidential. I'm expecting someone to say
20 hey, and I'm going to hit the mute button.

21 BY COMMISSIONER KENNEY:

22 Q I'm going to discuss the percentages that
23 we were discussing before.

24 A. Okay.

25 Q. And just with respect to the number that's

1 in the blue shaded box, you said that's 8 percent of the
2 overall project?

3 A. Correct.

4 Q. So to put it conversely, 92 percent of the
5 project is complete?

6 A. I guess to try and put it as --

7 Q. 92 percent of the expenses have been --

8 A. That's exactly the distinction I was going
9 to make. As of December 31st, 92 percent of the -- and
10 these are actual costs, so costs would have been paid.

11 Q. And there is a witness that will testify
12 for KCP&L that at that stage, the 92 percent of these
13 expenses that have been booked, that that is enough
14 information to conclude or complete a prudence audit?

15 A. Yes. That would be Dr. Kris Nielsen.

16 Q. My second question is with respect to Data
17 Request 270.3. This was supplied in the context of the
18 rate case, correct?

19 A. Correct.

20 Q. Okay. And I don't know which components of
21 it are highly confidential, the documents themselves, or
22 just the numbers and figures that are referenced in the
23 document?

24 A. I believe just the numbers and figures.

25 Q. And I'm sure your attorneys will cut us off

1 if need be. The expense that's discussed in the body of
2 these documents was incurred in '07; is that right?

3 A. Flip back to the receipt. Yes, in February
4 of 2007.

5 Q. And the person that incurred the expense
6 reimbursed company for the expense in '09; is that right?

7 A. That is correct.

8 Q. And the data request is dated February 8th
9 of '09, right?

10 A. Correct.

11 Q. And the reimbursement occurred on
12 February 9th of '09, the day after the data request; is
13 that right?

14 A. Flipping to that page so I make sure we
15 have the dates right. Yes. Correct.

16 Q. Is there any correlation between the date
17 of the reimbursement and the date of the data request?

18 A. I think it's simply that Staff pointed out
19 that there was an error in the accounting for something
20 and we corrected it.

21 Q. Got you. Prior to Staff pointing that
22 error out to the company, was the company seeking to
23 get -- put that into the rate case or seeking
24 reimbursement of that in the rate case?

25 A. I'm trying -- I have to think back for what

1 the test year would have been for our last rate case. As
2 I sit here, I can't answer that.

3 Q. And the reason I ask the question is that
4 the objection, the basis for the objection is that the
5 company's not seeking reimbursement for it, not seeking to
6 charge the amount to ratepayers, was the reason that was
7 the company at any point trying to recover that amount
8 from ratepayers?

9 A. I understand the question, but not knowing
10 what the test year would have been, I can't answer that.

11 Q. Is there anybody that's going to testify
12 that would be able to answer that question?

13 A. I think Tim Rush might be able to answer
14 that.

15 COMMISSIONER KENNEY: I don't have any
16 other questions. Thanks for your patience.

17 JUDGE STEARLEY: Commissioner Gunn?

18 COMMISSIONER GUNN: I just have a couple
19 questions.

20 QUESTIONS BY COMMISSIONER GUNN:

21 Q. On the Data Request 0673, in the course of
22 a rate case, do you typically get Data Requests like this?

23 A. We didn't used to, I guess is the simple
24 answer. Recently, I think it began in the merger case,
25 and then in this case we've began getting requests for all

1 e-mails either to or from an individual or to or from a
2 particular group of people.

3 Q. And this Data Request contemplates all
4 e-mails even prior to Mr. Price becoming Vice President of
5 Construction?

6 A. It would have been -- I read -- we read the
7 DR to mean all e-mails sent or received while he was at
8 KCP&L. But to your point, I think he came to the company
9 as VP of Construction.

10 Q. Okay.

11 A. And I do feel it's important to point out
12 that we did tell Staff that we thought -- well, we
13 described the data request as onerous and thought it would
14 be duplicative to give both received and sent, and I can't
15 remember if we agreed to just provide sent or just agreed
16 to provide received, but they did allow us to narrow our
17 response in that fashion.

18 Q. Who reviewed the e-mails for privilege
19 issues?

20 A. Counsel for the company.

21 Q. Do you know if that was included in rate
22 case expense?

23 A. It would have been -- why I'm pausing is
24 there's a general legal expenses account and then there's
25 a rate case legal expenses account. We certainly would

1 have sought recovery, by which bucket, for lack of a
2 better term, that would have fallen in, I'm not sure.
3 Since it was in response to a DR in the rate case, I would
4 presume we would have treated it as a rate case expense.

5 Q. Is that what you would do typically, you
6 think?

7 A. Yes.

8 Q. So for the hours and hours that it takes to
9 review these e-mails and create a privilege log, that
10 eventually goes in the rate case expense?

11 A. Yes.

12 Q. You didn't make any relevance objections to
13 the request from what I can tell; is that accurate?

14 A. No. We didn't formally object. We try and
15 be as responsive as we can.

16 Q. The only things you did not provide were
17 what appeared to be privileged documents for whatever
18 reason?

19 A. Exactly. The second page explains what we
20 didn't provide, and then shows that a log of what we
21 didn't provide was created and provided.

22 COMMISSIONER GUNN: I don't think I have
23 anything further. Thank you.

24 JUDGE STEARLEY: At this time we're going
25 to take about a 15-minute recess. Mr. Blanc, when we come

1 back, we'll start with the recross based on the questions
2 from the Bench and move to redirect.

3 Also, I do want to advise the parties, it
4 is getting late in the day and we're on our first
5 scheduled witness out of a total of eight. So plan on
6 staying late tonight. If you've got arrangements that
7 need to be made, take the time to make them now while
8 we're on recess. Thank you all very much.

9 (A BREAK WAS TAKEN.)

10 JUDGE STEARLEY: We are back on the record
11 and we're continuing with the examination of Mr. Blanc.
12 Before we pick up, though, it's been brought to my
13 attention, we do have a distinguished guest in our gallery
14 today. I'd like to call her forward. Captain McNeill,
15 would you please come to the podium.

16 CAPTAIN MCNEILL: Thank you, sir. That was
17 quite an introduction. Captain Shayla McNeill on behalf
18 of Whiteman Air Force Base and the Federal Executive
19 Agencies. I have been leaving the room during the highly
20 confidential discussions, but I'm going to remain in the
21 room for the remainder of them via the counsel's
22 permission. Thank you very much.

23 JUDGE STEARLEY: Thank you. And the
24 Federal Executive Agencies were a party to KCPL's prior
25 rate cases, is my understanding; is that correct?

1 CAPTAIN MCNEILL: Yes. They're under GMO's
2 jurisdiction.

3 JUDGE STEARLEY: Thank you. We're happy to
4 have you.

5 CAPTAIN MCNEILL: Thank you, sir.

6 JUDGE STEARLEY: Mr. Blanc, I remind you
7 that you're still under oath. And I believe Commissioner
8 Jarrett has a couple more questions for you before we go
9 to recross.

10 FURTHER QUESTIONS BY COMMISSIONER JARRETT:

11 Q. And I apologize. We shouldn't take breaks
12 because I think of things during breaks.

13 A. Not a problem at all.

14 Q. I wanted to explore a little bit, when you
15 were talking about, you know, the prudence -- the prudence
16 issue, and my understanding from what you said, I just
17 want to make sure I understand it, that all the decisions
18 have been made regarding expenditures on the Iatan 1
19 project. So the decisional prudence is done. It's all
20 been taken -- I mean, it's all been done. Decisions have
21 been made, and that can be audited as far as whether the
22 decisions were prudent?

23 A. That's precisely the company's position,
24 yes.

25 Q. Right. And then while there may be some

1 invoices that might come in later, those can be looked at
2 in the context of the next rate case?

3 A. Exactly. There's some period of time
4 before that was in the last case, after that's in the next
5 case.

6 Q. Okay. Got you. Thank you for clearing
7 that up for me. And then the second area I wanted to
8 explore, you remember Commissioner Gunn asked you about
9 the e-mails, and Data Request No. 0673 related to one
10 certain employee, David Price. Did you receive any other
11 Data Requests for all the e-mails of any other employees?

12 A. I'm trying to recall, and I'm pausing
13 because I'm trying to remember in what proceeding
14 different data requests were in. We received data
15 requests, for example, between I think executives at the
16 company and regulatory, people in the regulatory
17 department, all e-mails between those two groups, but I'm
18 pausing because now I don't remember if that was in the
19 last case or in the merger proceeding. But I know that
20 was another DR between groups, DR for e-mails between
21 groups.

22 And I think there was another one, but what
23 the details -- the details of it are escaping me. I guess
24 there have been a couple. We don't get a lot, but there
25 are a couple.

1 Q. Did you get any of those prior to the
2 merger case, any of those types of data requests for
3 e-mails?

4 A. No. The merger case is the first case we
5 got those kind of requests in.

6 COMMISSIONER JARRETT: That's all I have.
7 Thank you.

8 JUDGE STEARLEY: Thank you, Commissioner.
9 All right. Recross based on questions from the Bench.
10 There is only Staff.

11 MR. DOTTHEIM: Thank you.

12 RE-CROSS-EXAMINATION BY MR. DOTTHEIM:

13 Q. I think in questions from the Bench, you
14 made reference to decisional prudence review. What are
15 the decisions that make up a decisional prudence review?

16 A. I guess as you had me acknowledge before, I
17 am not a prudence review expert or prudence expert.
18 That's Dr. Kris Nielsen. But my own layman opinion is
19 that there are decisions involving a construction project,
20 whether to do a turnkey contract, for example, or what's
21 called a multi-prime where you're the general contractor,
22 what vendor to use, I mean, decisions about the
23 construction of the project is how I as a layman would
24 describe it.

25 Q. There were questions from Commissioner Gunn

1 and Commissioner Jarrett about the e-mails, Dave Price's
2 e-mails. And I previously had discussed with you, I
3 believe, that the Staff had put in a request for
4 Mr. Price's e-mails in the Great Plains Energy acquisition
5 of the Aquila entity. The Staff's request for Mr. Price's
6 e-mails in the Iatan 1 AQCS and Iatan 1 common plant
7 audit, the Staff requested e-mails that had not previously
8 been provided to the Staff, did it not?

9 A. I guess consistent with my previous answer
10 and what I just said to Commissioner Jarrett, I don't
11 recall the specific data requests from the merger hearing
12 as to e-mails as to what groups. I recall the one
13 between, I think it was all regulatory employees and all
14 executives of the company, and I think there were others,
15 but I just don't recall those data requests. If you have
16 copies, I can try and --

17 JUDGE STEARLEY: Mr. Dottheim, could you
18 please speak a little bit more into your microphone?

19 MR. DOTTHEIM: I'm sorry. I apologize.
20 It wasn't on.

21 JUDGE STEARLEY: All right. Thank you.

22 MR. DOTTHEIM: Well, actually, I do have a
23 copy of the Staff's data request that I could provide that
24 might be helpful as far as Commissioner Jarrett's question
25 and Mr. Blanc's response. I could mark it as Staff

1 Exhibit No. 3.

2 JUDGE STEARLEY: All right. And which data
3 request is this?

4 MR. DOTTHEIM: I'm sorry. It's CEP Staff
5 investigation. It's 0401-615 up at the top, and it's
6 question No. 22.

7 (STAFF EXHIBIT NO. 3 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 BY MR. DOTTHEIM:

10 Q. Mr. Blanc, have you had a chance to take a
11 look at what's been marked as Staff Exhibit No. 3?

12 A. I have.

13 Q. Do you recognize that document?

14 A. I do. This is one of the examples I
15 mentioned with Commissioner Jarrett of the subpoenas for
16 the depositions as part of the merger proceeding. The
17 subpoenas included requests for production of documents.
18 This is one of those.

19 Q. And again, you don't recall whether the
20 e-mails that were provided to Staff in its audit of
21 Iatan 1 AQCS and Iatan 1 common plant were in addition to
22 the data request -- excuse me, the e-mails of Mr. Price
23 that were provided in the GPE acquisition of Aquila?

24 A. I'd say just on the face of the documents,
25 they were. They were different searches. As we talked

1 about before, Data Request 673 was all David Price e-mails
2 sent or received, and I believe we negotiated with Staff
3 to provide one or the other and not both. I don't recall
4 offhand which one.

5 But going back to what's labeled here as
6 question 2 from the merger proceeding, that was for a
7 specific set of time, the e-mails between those three
8 individuals named. And if I recall, it was you and I,
9 Mr. Dottheim, agreed that we would use specific search
10 terms for the e-mails, and that may have altered search
11 results in some way. So I think they're different
12 searches is long story short.

13 Q. Do you recall whether there was an
14 anonymous letter to the Commissioners submitted in KCPL's
15 rate case, ER-2007-0291, and the GPE acquisition case of
16 Aquila, EM-2007-0374, that referenced Mr. Price and
17 e-mails?

18 A. I don't recall if the Data Request -- I'm
19 sorry, if the letter came in as part of the rate case or
20 the merger case, but there was an anonymous letter. I
21 think there may have been more than one, but I don't
22 recall the exact contents.

23 MR. DOTTHEIM: I'd like to have marked as
24 Staff Exhibit No. 4 a Notice of Ex Parte Contact as a
25 cover page and a second page, a one-page document that has

1 at the top Chairman Davis and other concerned parties.

2 JUDGE STEARLEY: Mr. Dottheim, which case
3 was this filed in and what's the date of it?

4 MR. DOTTHEIM: It was -- it appears that it
5 was filed in ER-2007-0291 and EM-2007-0374, and the date
6 is February 13, 2008, and the -- it's the Notice of Ex
7 Parte Contact to the data center from Chairman Davis,
8 Commissioner Murray, Commissioner Clayton, Commissioner
9 Appling and Commissioner Jarrett.

10 JUDGE STEARLEY: All right. Thank you.

11 (STAFF EXHIBIT NO. 4 WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. DOTTHEIM:

14 Q. Mr. Blanc, have you had an opportunity to
15 review what's been marked Staff Exhibit 4?

16 A. I have.

17 Q. Do you recognize that document?

18 A. Yes. I remember seeing this ex parte
19 contact notice come out.

20 Q. If I could refer you to the second page,
21 the second paragraph after the very first line, the second
22 paragraph. Is Dave Price referred to in that paragraph?

23 A. He is.

24 Q. And the very last sentence in that
25 paragraph states, does it not, you need to ask for e-mails

1 to and from our regulatory group, Chris Giles and senior
2 management, related to these expenses and why they should
3 not be disclosed. Did I read that correctly?

4 A. It does say that.

5 Q. Thank you.

6 MR. DOTTHEIM: At this time I'd like to
7 offer Staff Exhibits No. 3 and 4.

8 JUDGE STEARLEY: All right. Any
9 objections? Any objections to the admission of Staff
10 Exhibits No. 2, 3 and 4?

11 MR. HATFIELD: No, no objection.

12 JUDGE STEARLEY: Very well. They will be
13 received and admitted into the record.

14 (STAFF EXHIBIT NOS. 2, 3 AND 4 WERE
15 RECEIVED INTO EVIDENCE.)

16 MR. DOTTHEIM: Mr. Blanc, you've been very
17 patient. Thank you very much.

18 THE WITNESS: Thank you, Mr. Dottheim.

19 JUDGE STEARLEY: All right. Any redirect?

20 MR. HATFIELD: No, Judge, thank you.

21 JUDGE STEARLEY: Thank you, Mr. Blanc.

22 Appreciate your testimony.

23 THE WITNESS: Thank you.

24 JUDGE STEARLEY: I will not fully excuse
25 you at this time, though, just in case the Commissioners

1 would want to call you back for some additional questions
2 for you.

3 THE WITNESS: Thank you.

4 JUDGE STEARLEY: And you may call your next
5 witness, counsel.

6 MR. FISCHER: We would call Dr. Kris R.
7 Nielsen.

8 (Witness sworn.)

9 JUDGE STEARLEY: Thank you. Please be
10 seated, and you may proceed, Mr. Fischer.

11 MR. FISCHER: Thank you, Judge.

12 KRIS R. NIELSEN testified as follows:

13 DIRECT EXAMINATION BY MR. FISCHER:

14 Q. Please state your name and business
15 address.

16 A. Kris, K-r-i-s, Nielsen, N-i-e-l-s-e-n,
17 1750 Emerick, E-m-e-r-i-c-k, Road, Cle Elum, two words,
18 C-l-e E-l-u-m, Washington 98922.

19 Q. Sir, what's your occupation?

20 A. I'm trained as both a mechanical and civil
21 engineer. I'm also trained as an attorney. I'm licensed
22 as an attorney. I'm a project management professional.

23 Q. What's your current employment situation?

24 A. I'm chairman and president of Pegasus
25 Global.

1 Q. Okay. Would you describe what Pegasus
2 Global would be?

3 A. We do -- we operate in three business
4 areas. Our management consulting business unit does
5 prudence audits, construction audits, performance audits
6 and the like. We do strategic consulting in another area
7 of the business. And then a third area of the business we
8 do economic consulting, primarily in all three areas in
9 the infrastructure area, general infrastructure area,
10 power area, and the oil and gas area.

11 Q. Has Pegasus Global been engaged by Kansas
12 City Power & Light in connection with any of the Iatan
13 projects?

14 A. Yes. We've been engaged to perform an
15 independent review, prudence review of Iatan 1 and common.
16 We're currently engaged in doing similarly for Iatan 2.

17 Q. For purposes of this proceeding, what is
18 the purpose of your testimony today?

19 A. The purpose of my testimony today is to
20 explain, as the independent auditor hired by KCP&L, that
21 we can conclude and conduct the prudence audit and to
22 explain the difference between a construction audit and a
23 prudence audit.

24 Q. Have you also been asked to relate your
25 experience in conducting prudence audits in other areas?

1 A. Yes, I have.

2 Q. Dr. Nielsen, have you previously provided
3 testimony to the Missouri Public Service Commission that
4 would include your educational background and professional
5 experience?

6 A. Yes, I have. It was the Iatan 1.

7 Q. That would be the ER-2009-0089 rate case;
8 is that right?

9 A. And it might have been the GMO case as
10 well.

11 MR. FISCHER: Judge, just to short circuit
12 the process, I'd like to have marked an extract from his
13 testimony in the 089 case that includes his educational
14 background and professional experience. I'd like to show
15 him a copy of that, and could I have it marked as an
16 exhibit?

17 JUDGE STEARLEY: Yes, you may. That will
18 be KCPL GMO Exhibit No. 2.

19 (KCPL GMO EXHIBIT NO. 2 WAS MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)

21 BY MR. FISCHER:

22 Q. Dr. Nielsen, I've handed you pages 4
23 through 9 of your rebuttal testimony in that ER-2009-0089
24 docket. Does that -- do those pages look familiar to you?

25 A. Yes, they do, and this was part of the

1 testimony that I filed previously in Missouri.

2 Q. Would you identify what it is and what it's
3 intended to show?

4 A. Well, the first two and a half pages cover
5 what my expertise is and what we have done regarding my
6 professional experience. The pages 6 through 8, halfway
7 down page 8 is where I've provided testimony before
8 various commissions for both staffs and for utilities in
9 various jurisdictions throughout the U.S.

10 And then the last page 8 and 9 and part of
11 10 give my experience in doing prudence reviews of nuclear
12 power generation that were settled or otherwise didn't go
13 to hearings.

14 Q. Is that information contained in that
15 exhibit still accurate today?

16 A. Yes, it is.

17 MR. FISCHER: Judge, I'd ask that the
18 exhibit -- what was the number?

19 JUDGE STEARLEY: No. 2.

20 MR. FISCHER: -- No. 2 be admitted into the
21 record.

22 JUDGE STEARLEY: Any objection to the
23 admission of KCPL's Exhibit No. 2?

24 (No response.)

25 Judge STEARLEY: Hearing none, it will be

1 received and admitted into the record.

2 (KCPL GMO EXHIBIT NO. 2 WAS RECEIVED INTO
3 EVIDENCE.)

4 BY MR. FISCHER:

5 Q. Dr. Nielsen, did you previously provide
6 testimony to the Missouri Commission regarding regulatory
7 proceedings involving utility prudence where you've been
8 involved as either an auditor or as a witness?

9 A. Well, I haven't been a witness unless I had
10 previously been an auditor. So yes, I provided testimony
11 in the various commissions that I referenced in Exhibit 2
12 where I was both an auditor and a witness. Then I also
13 provided those in which I was the auditor but not a
14 witness.

15 Q. On a very high level, could you summarize
16 your prudence experience with regard to regulated
17 utilities?

18 A. Approximately 50 percent of the time,
19 slightly over 50 percent of the time I've been the
20 commission's auditor or the commission staff's consultant
21 auditor, and 50 percent of the time I've been also
22 retained as the utility's auditor.

23 Q. Can you give us an idea of approximately
24 how many clients you're talking about there?

25 A. Oh, it's approximately 30 clients, and as I

1 recall, it's probably between 30 and 40 individual units,
2 power generation units.

3 Q. Dr. Nielsen, what's been your most recent
4 prudence experience?

5 A. It was actually in Kansas, I believe,
6 regarding Iatan 1, and in regards to Iatan 1 in Missouri.
7 The most recent experience before that was three or four
8 months before in Georgia regarding the new units 3 and 4,
9 the nuclear units which Georgia Power is building, Vogel 3
10 and 4.

11 Q. Did you file testimony in the Kansas
12 Corporation Commission that dealt with prudence reviews of
13 Iatan 1?

14 A. Yes, I did.

15 Q. For KCP&L?

16 A. Yes.

17 Q. Do you also have experience with
18 construction audits?

19 A. Yes, extensive experience with construction
20 audits.

21 Q. Can you describe that at a high level?

22 A. We do it for both government agencies as
23 well as private companies involving major construction
24 projects. We've done so for over 30 years, for various
25 stakeholders that may be involved in the construction of

1 those particular projects, including power generation
2 facilities, general infrastructure facilities, major oil
3 and gas infrastructure.

4 Q. Have you reviewed the Staff report of the
5 construction audit slash prudence review of environmental
6 upgrades to Iatan 1 and Iatan common plant that was filed
7 on December 31st, 2009 in this proceeding?

8 A. Yes, I have.

9 Q. Have you also reviewed KCPL and GMO's
10 initial responses to that Staff report that was filed I
11 think on February 16, 2010?

12 A. Yes, I have.

13 Q. And have you also reviewed Staff's reply to
14 KCPL and GMO's February 16 initial response?

15 A. Yes, I have.

16 Q. And then finally, did you also review the
17 Order establishing the investigatory docket and setting up
18 this on-the-record proceeding?

19 A. You mean the Order itself?

20 Q. Yes.

21 A. Yes, I did.

22 Q. The Order itself issued on March 15.

23 A. Yes.

24 Q. And then I guess did you also review KCPL
25 and GMO's response to that Order and to the response of

1 the Staff to open a construction audit and prudence review
2 investigation case that was filed on March 22nd?

3 A. Yes, I did.

4 Q. Why did you conduct a review of those
5 documents?

6 A. I was asked by the company, as I said
7 earlier, to review what we had done for the prudence audit
8 of Iatan 1 and common, and then the various pleadings and
9 motions that had been made and the various Orders that
10 have been made by the Staff and the company, and to become
11 familiar with those documents and provide my professional
12 opinion on whether the Staff could have completed the
13 prudence review.

14 Q. Have you developed an opinion on that
15 topic?

16 A. I did actually back in my rebuttal
17 testimony originally in unit 1.

18 Q. What did you conclude with regard to that
19 question?

20 A. I concluded, I think it was in March, the
21 testimony that was filed March of 2009 testimony, that
22 there was sufficient information to judge the decisional
23 prudence of the facility. Both myself and Pegasus Global
24 were able to conduct the audit and reach conclusions just
25 as the Kansas staff and their consultant had reached

1 conclusions, and I saw no reason at that time that the
2 Missouri Staff could not similarly reach decisional
3 prudence.

4 Q. As you reviewed the Staff filings, did you
5 have any areas where you disagreed with the Staff
6 positions?

7 A. Substantive?

8 Q. Yes. On how they were approaching the
9 audits?

10 A. It wasn't entirely clear on the face of the
11 documents or the report of December 31st last year how
12 they conducted the prudence audit, but it was also they
13 merged what I felt were normally construction audit areas
14 and prudence audit areas and seemingly merged the two
15 concepts together.

16 Q. Can you explain the difference from your
17 perspective of a prudence audit versus a construction or
18 financial audit?

19 A. Yes. A prudence audit, first of all, are
20 to judge the prudent decisions regarding a project, and
21 those prudent decisions are made looking prospectively
22 from what the decision-maker knew or reasonably should
23 have known, whether he actually followed practices and
24 procedures that were reasonable at the time, reached the
25 conclusion and implement the decision until such time as

1 that decision is rereviewed, changed or otherwise
2 reevaluated.

3 And then that -- relating that back to the
4 construction audit, that's purely a financial type of
5 audit that looks with hindsight at the actual bookings of
6 costs and pursuant to an audit plan, whether they are
7 reasonable, we can assure the stakeholder for which the
8 audit is being done that they can rely on those costs or
9 documents, et cetera, that they're auditing.

10 Q. Are there -- excuse me.

11 A. From a -- and that's looking from a
12 hindsight perspective. A prudence audit is looking
13 prospectively.

14 Q. Are there guidelines and standards that are
15 accepted across the industries related to these types of
16 audits?

17 A. Yes, there are. The GAO produces
18 guidelines and standards for conducting both financial
19 audits and performance audits. They're called the
20 government -- Generally Accepted Government Accounting
21 Standards, generally called the Yellow Book, and most
22 government agencies of the states adopt those standards.
23 They are essentially almost in all respects the same
24 standards that are used for auditing standards, the AICPA
25 standards.

1 There are some differences for government
2 agencies. The standards differentiate between financial
3 audits, which a construction audit is a subsegment of the
4 financial audits, from performance audits, which prudence
5 audits are a subsection or subset of performance audits.

6 Q. Are there some generally accepted standards
7 for reporting audit results and conclusions that you could
8 discuss?

9 A. Yes. The standards besides setting out the
10 differences between those two areas also set out standards
11 for field work under both audits and also reporting
12 standards to which auditors are generally expected to
13 follow, and those include specifying with specificity
14 whether the audit results conform with the standards and
15 lay out so that the auditee, the company or agency or
16 other third party being audited, can reasonably ascertain
17 why the auditor does not believe that the documents or the
18 prudence or the performance is reliable.

19 Q. Now, have you reached any conclusions in
20 this case relative to the Staff's audit of the
21 construction costs of the Iatan 1 unit and the common
22 project to date?

23 A. I'm sorry.

24 Q. Any opinions relative to what Staff has
25 been doing out at the Iatan construction audit?

1 A. Recently, at least looking at the data
2 requests in the last six months, they seem to be looking
3 at construction audit related issues, typical financial
4 audit issues, not prudence related issues, because they
5 had most if not all of the information available to them
6 to make the prudence audit findings back in March.

7 Q. Would you elaborate on what you believe you
8 need to render decisions about prudence in a
9 construction -- in a construction setting?

10 A. A prudence audit starts with what we call
11 data development, data gathering, which you review the
12 systems, procedures and processes that -- gather data
13 which the decision-maker can use. You then evaluate the
14 processes and procedures and personnel who are making the
15 decisions.

16 Third, you evaluate the decisions that are
17 actually made and whether they fall within a zone of
18 reasonableness, not something in the auditor's judgment,
19 but if a reasonable person could arrive at the conclusion
20 or the decision that was made, it's generally prudent.
21 And then it's actually -- we audit then also then the
22 implementation of those decisions and whether subsequently
23 reasonably known or reasonably should have been known
24 information arose that caused the auditee to necessarily
25 change the decision or otherwise affect those decisions.

1 Q. In a prudence review, do you need to have
2 all of the invoices in and the expenditures made before
3 you can complete a prudence review?

4 A. No, you do not. By it's very nature, a
5 prudence review is prospective, and the actual results
6 might become important only if the decision extends beyond
7 the in-service date of the plant. And typically the
8 commissions that I've been involved with, which are an
9 extensive number of commissions, cut off, just like in any
10 public service or public utility commission, as of a date
11 certain, which is the in-service of the asset.

12 Q. I believe in this case there's been
13 testimony that the Iatan 1 plant is in service. Is that
14 your understanding?

15 A. Yes. And I believe it's April that it went
16 into -- April last year, 2009.

17 Q. Would that be more than a year ago?

18 A. Yes.

19 Q. And I believe there's also been testimony
20 that approximately 92 percent of the expenditures have
21 been incurred?

22 A. I think most of the -- it's probably more
23 than 92 percent have been incurred. With the 92 percent
24 level, I think, as I understood the testimony, has been
25 paid as of December 31st.

1 Q. I stand corrected. I believe you're
2 correct. Under those circumstances, do you believe that a
3 prudence review could be completed?

4 A. Yes.

5 Q. Would you explain?

6 A. As I just said a few moments ago, the
7 decisional prudence, issues that are raised on decisional
8 prudence would affect the project during construction, and
9 once the plant is declared in service or commercially
10 operatable by the utility, that's when the utility comes
11 in and asks for that utility to be put into rate base.
12 And most statutes explain that the utility is only allowed
13 to put in prudent capital costs of those expenditures that
14 are spent on that asset.

15 Q. Would you discuss what you believe the
16 appropriate standard would be for judging prudence?

17 A. The standard that I have used all the way
18 through the last 30 years on prudence audits, especially
19 in regards to electric power generation cases, is, as I
20 articulated, if those expenses flow from decisions that
21 were prudently made, and prudently made decisions are
22 defined as those decisions that are based on reasonable
23 policies, procedures and personnel evaluations, upon what
24 the manager that made those decisions reasonably knew or
25 could have reasonably known at the time, and it fell

1 within a reasonable zone -- fell within a zone of
2 reasonableness, then that was a prudent decision, and
3 those costs or the consequences that flowed from those
4 decisions are legitimately put in to rate base.

5 Q. Is it appropriate to use hindsight in that
6 analysis?

7 A. No. Almost universally the decisions from
8 courts and the commissions alike have said that you cannot
9 use hindsight. It's not proper to test the decision by
10 whether actual results were or that they hadn't -- the
11 intended result wasn't achieved judged from hindsight. It
12 was whether it was reasonable at the time it was made.

13 Q. In preparation for this testimony, did you
14 happen to research whether this Commission has issued
15 decisions that include standards such as that?

16 A. Nor for this proceeding. I authored an
17 article that appeared in December of 2009 in Utilities
18 Fortnightly that discusses the new emerging issues on
19 prudence and those that are common and have been common
20 for 25 to 30 years on prudence.

21 Q. In that article, did you cite a Missouri
22 Public Service Commission decision --

23 A. Yes, I did.

24 Q. -- or two?

25 A. And you cited it as well this morning in

1 your opening statement.

2 Q. Would that be the Wolf Creek and the
3 Callaway cases?

4 A. And the subsequent case.

5 Q. To Associated Natural Gas case?

6 A. Yes.

7 Q. Okay. Is it necessary to conduct a
8 construction audit prior to conducting a prudence review?

9 A. No, it's not, and typically construction
10 audits go beyond prudence reviews. Maybe there's a cutoff
11 date for the actual cost, but subsequent rate cases can
12 also open up and review subsequent expenditures.

13 Q. You mentioned the GAO standards or the
14 Yellow Book. In performing your prudence review of
15 Iatan 1, did you follow that particular standard?

16 A. Yes, I did. I used a prior edition because
17 we were evaluating decisions that were made before the
18 current edition of the Yellow Book, which came out
19 sometime near the end of 2010, but there's no substantive
20 changes between the two.

21 Q. Can you just describe for the Commission
22 how prudence reviews generally are conducted within the
23 industry?

24 A. The way that they're generally conducted in
25 the industry is just as I said before. You have to

1 identify and gather sources of data pursuant to an audit
2 plan. Typically in any audit, construction or a prudence
3 audit, there's a plan by which it will be completed. And
4 according to those plans, you identify the types of
5 documents that you're going to review. You typically have
6 interviews of people for the record or off the record.
7 Off the record really are more explanatory of what
8 information you're seeing. On the record are to get
9 actual on-the-record evidence.

10 The evaluation is iterative. It takes
11 place over several months. And then the auditor and his
12 team actually evaluate everything that they have found,
13 and then they issue a report that lays out the audit plan,
14 the results that were found, if there was any changes that
15 they wanted to make in the audit plan, and what their
16 findings were, and specifically requires the auditor to
17 weigh out the reasons with specificity that the auditor is
18 making its recommended disallowances or questioning of
19 various sums that are being audited.

20 Q. When you're reviewing a specific decision
21 for prudence, what would you look at? What would you need
22 as far as data development or information or the analysis
23 or decisions?

24 A. Well, in terms of a capital construction
25 project such as a power generation facility, you would

1 typically look at, depending upon the level of the
2 personnel that are making decisions, project-related
3 documents for the project management staff rolled up to
4 the information that executive management which might have
5 a broader perspective of industry or conditions that the
6 project management team didn't have, and then you also
7 roll it up further to the level of the board of directors.

8 And similarly, you look at the audit, the
9 audit trail, the source documents that are involved in
10 every decision-making process to an extent that it meets
11 the audit plan.

12 An audit -- particularly in a performance
13 audit or prudence audit, you're not going to substitute
14 your knowledge for what was known or should have been
15 known. You make an evaluation of whether the auditee, the
16 company, actually had information that was readily
17 available or reasonably available to them when they made
18 the decision.

19 Q. In prudence reviews, is it necessary to
20 understand the condition of the project at the point in
21 time when the decisions are being made?

22 A. Absolutely.

23 Q. Why is that?

24 A. Because management is asked to make
25 decisions typically on less than perfect information.

1 There's no such thing as perfect information. If there
2 was -- if they knew everything that was going to happen,
3 it would be easy, but management is paid to make decisions
4 that are not easy. And so you have to look at the
5 information and the condition of the project or the status
6 of the project whenever that decision is made. That's an
7 absolute necessity.

8 Q. Is that the approach you took when you
9 evaluated the prudence of the Iatan construction project?

10 A. Yes.

11 Q. Have you used that approach consistently in
12 other jobs that you've had?

13 A. Yes, without fail, for 30 years.

14 Q. Is this the approach customarily used in
15 conducting a prudence audit by other commission staffs and
16 prudence experts?

17 A. For instance, the Kansas staff and their
18 consultant used exactly the same approach that we did.

19 Q. In your opinion, was there sufficient
20 information available for the Missouri Staff to have
21 conducted a prudence review of the decisions made by KCPL
22 during the execution of Iatan 1 and the common plant?

23 A. Yes, there was, and I wasn't treated any
24 differently than the Missouri Staff or the Kansas Staff
25 and their consultant. I was treated just like an

1 independent auditor, which I was. And I've heard
2 testimony about the various issues, and I -- regarding
3 privileged documents. I suffered from the same problems.

4 Q. You didn't receive privileged documents in
5 your review?

6 A. No, I didn't.

7 Q. Did you find that unusual?

8 A. No.

9 Q. Did you have any difficulty getting data
10 from KCP&L personnel?

11 A. No.

12 Q. Dr. Nielsen, I think you said you reviewed
13 the Staff report that was filed on December 31; is that
14 correct?

15 A. Yes.

16 Q. Have you seen a document like that Staff
17 report before, anything like that?

18 A. Not specifically with respect to prudence.
19 They allege that there's some imprudent areas of costs
20 among the 18 disallowances that they recommend, but by far
21 the majority of the disallowances or questionable items
22 are on construction prud-- or not construction prudence
23 but construction audits, are typical of construction
24 audits and financial audits.

25 But even then the auditor doesn't really

1 convey all the information that I would expect from an
2 auditor.

3 Q. You mentioned that you were also engaged by
4 Kansas City Power & Light to conduct a prudence audit for
5 use in the Kansas proceeding?

6 A. Yes.

7 Q. Are you familiar with the Kansas staff and
8 their outside consultants and what they've been doing in
9 that proceeding?

10 A. Yes.

11 Q. Did the approach taken by -- was it Vantage
12 Consulting?

13 A. Yes.

14 Q. Did the approach taken by Vantage
15 Consulting in Kansas differ from the approach you took at
16 all?

17 A. No.

18 Q. In the course of your work, did you have
19 the occasion to review the company's cost tracking system?

20 A. Yes.

21 Q. Would you describe that cost tracking
22 system at a high level?

23 A. The cost tracking system laid out what was
24 the definitive estimate, which is really the control
25 budget estimate, the 2006 control budget estimate and the

1 variances from that estimate, and the reasons were
2 typically gone over during every quarterly meeting. And
3 if I had questions, as did the Kansas Commission staff and
4 their consultant, at the same time we had to understand
5 how the various source documents that go in to that cost
6 tracking system enable you to track every reason for every
7 budgetary change.

8 So that typically at a high level we've
9 looked at the contingency logs, the change orders and the
10 purchase order logs as a way of tracking, and then we
11 could get down to a lower level by various source
12 documents as well. We -- we expected or anticipated this
13 process. We discerned this process. And that was what I
14 was saying before. We had informal discussions with the
15 company, just like Vantage and the Kansas City staff had
16 informal discussions.

17 And so we both had problems at first
18 understanding, thought we had sorted it out, and we
19 confirmed that we had sorted it out and we had no problem.
20 So as a result, in March, the March rebuttal testimony I
21 filed, I found that their tracking system was very
22 consistent, maybe even best industry standards at today's
23 juncture to other major capital projects.

24 Q. Dr. Nielsen, are you familiar with Kansas
25 City Power & Light's response that included an

1 Attachment 2 with Data Requests that have been a matrix or
2 a summary of data requests?

3 A. I think that that's the March 15th or
4 March 22?

5 Q. Yes, I believe that was.

6 A. Yeah, that I am familiar with. I looked at
7 both that attachment and I think I also looked at the
8 Kansas City equivalent tracking, which is in the same
9 system, and I --

10 Q. I'd like to focus on those data requests,
11 that attachment.

12 A. Yes.

13 Q. Have you ever in your experience requested
14 the type of information detailed in those data requests in
15 support of prudence audits?

16 A. Not to that level of detail. I don't
17 typically want to request every e-mail on a project
18 because management wouldn't see every detail, every item
19 of information there. I wouldn't want to see expense
20 reports, for instance. If there was some reason during a
21 construction audit that I wanted to go to that detail, I
22 would typically lay it out in the plan, test it. If the
23 test weren't sufficient, then I would go and expand the
24 audit plan pursuant to a request from the party that
25 wanted me to conduct the audit.

1 Q. In a prudence audit, would you typically
2 ask to check the mileage charges for persons working on
3 the construction site?

4 A. I would not ask for the mileage charges,
5 especially when there are vendors such as contractors
6 because that's normally covered within their contract. I
7 would typically ask to see the policies of the major
8 vendors, in this case Alstom, Kiewit, Burns & McDonnell,
9 for example, and if they were consistent with the policies
10 and procedures, fine. That's all that I would go into in
11 the prudence audit area to see that there was a process in
12 place, there was a reasonable process and a comprehensive
13 process.

14 Now, if I was doing a construction audit, I
15 would test those. If there was some reason that I had
16 that led me to want to expand the audit, I would go, like
17 I said, and ask the party that sponsors the audits whether
18 I could expand from the original plan.

19 Q. Based on your experience in these other
20 proceedings that you've been involved with, what type of
21 information does the staff or staff-retained prudence
22 experts normally request?

23 A. What type?

24 Q. In other proceedings that you've been
25 involved with, what type of information would you see

1 generally from staff or consultants working for a
2 commission staff?

3 A. I thought I answered that before, but it
4 depends on the area of management. For the project
5 management staff, I would typically ask for those
6 policies, procedures, systems, the qualifications of
7 project management personnel that met areas such as
8 quality control, schedule, cost, scope control, change
9 control, et cetera.

10 Then when I get up to the management area,
11 I would ask for the information that was presented to
12 management, in this case the CEP oversight committee,
13 which was the executive management committee of the
14 project. And then I also asked for the information that
15 was given to the board for their decision.

16 MR. FISCHER: Judge, I think that's all I
17 have. I tender the witness.

18 JUDGE STEARLEY: All right. Thank you,
19 Mr. Fischer. Cross-examination by Staff.

20 MR. DOTTHEIM: Yes.

21 CROSS-EXAMINATION BY MR. DOTTHEIM:

22 Q. Dr. Nielsen, did you attend any of the
23 quarterly meetings --

24 A. No, I did not.

25 Q. -- that you referred to?

1 A. I have to -- I didn't attend them in
2 person. The quarterly meetings I've listened to since the
3 second quarter of 2008. I've been a silent party to each
4 of those presentations.

5 Q. When you say a silent party, what do you
6 mean by silent party?

7 A. I would dial in to the presentation. As
8 you know, the presentations were typically on speaker
9 phones, and I was listening.

10 Q. Did you announce yourself?

11 A. Yes, I did.

12 Q. Okay. Good. When were you retained by
13 Kansas City Power & Light?

14 A. Second quarter of 2008.

15 Q. Okay. What percentage of Iatan 1 AQCS was
16 completed at that time? Do you know?

17 A. What percentage?

18 Q. Yes.

19 A. I don't recall.

20 MR. DOTTHEIM: If I could have a moment,
21 please. If I could have marked as an exhibit Staff
22 Exhibit 5.

23 JUDGE STEARLEY: Yes, you may,
24 Mr. Dottheim. What will the exhibit be?

25 MR. DOTTHEIM: It will be Kansas City

1 Power & Light Company Iatan Construction Project Audit,
2 GPE Audit Services, July 2007. We're determining whether
3 it's still highly confidential.

4 MR. FISCHER: Yes, it would be.

5 MR. DOTTHEIM: Okay. And I'll distribute
6 copies at this time.

7 (STAFF EXHIBIT NO. 5 WAS MARKED FOR
8 IDENTIFICATION BY THE REPORTER.)

9 BY MR. DOTTHEIM:

10 Q. Dr. Nielsen, if you'd take a look at that
11 document, please.

12 A. The entire document, or do you want to
13 refer me to certain parts of the document?

14 Q. Yes. Do you recognize that document?

15 A. Yes.

16 Q. And could you identify that document?

17 A. This was an audit report performed jointly
18 by the internal management auditors of GPE in conjunction
19 with Ernst & Young.

20 Q. And have you previously reviewed this
21 document? Do you recall?

22 A. Over a year ago, yes.

23 Q. Okay. And I'd like to refer you to page 5.

24 A. Yes.

25 Q. Okay. And in the left-hand column, audit

1 area.

2 A. Yes.

3 Q. Toward the bottom of the page, reporting.

4 A. Yes.

5 Q. Risk rating, medium.

6 A. Yes.

7 JUDGE STEARLEY: Excuse me, Mr. Dottheim.

8 That's --

9 MR. DOTTHEIM: We should be in-camera. I'm

10 sorry.

11 (REPORTER'S NOTE: At this point, an
12 in-camera session was held, which is contained in
13 Volume 2, pages 232 through 248 of the transcript.)

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1 JUDGE STEARLEY: Please proceed.

2 BY MR. DOTTHEIM:

3 Q. The phrase or the term Generally Accepted
4 Government Auditing Standards abbreviated GAGAS --

5 A. GAGAS, yes.

6 Q. GAGAS, is that how it's pronounced? But
7 generally referred to as the Yellow Book?

8 A. Yes.

9 Q. When agencies or governments adopt the
10 Yellow Book, do you know whether they adopt it in entirety
11 or do they -- is the practice to just adopt certain
12 portions of it?

13 A. Depends on what the agency has mandates
14 for. If they only do financial audits, only the financial
15 auditing procedures would typically be adopted. If they
16 do performance audits and not financial audits, the
17 performance audit portions.

18 Q. And is the Yellow Book used for purposes of
19 auditing other governmental entities?

20 A. Or outside vendors or third parties.

21 Q. If I could refer you to page 5, the bottom
22 of page 5, and I don't -- I don't want to make this an
23 exhibit. I just want to read a couple of sections, but
24 I'm looking at Section 1.03, purpose and applicability --

25 A. Yes.

1 Q. -- of GAGAS.

2 The professional standards guidance
3 contained in this document commonly referred to as
4 Generally Accepted Government Auditing Standards, paren,
5 GAGAS, quote, paren, comma, provide a framework for
6 conducting high quality government audits and attestation
7 engagements with competence, integrity, objectivity and
8 independence. These standards are for use by auditors,
9 Footnote 2, of government entities and entities that
10 receive government awards and audit organizations,
11 Footnote 3, performing GAGAS audits and attestation
12 engagements.

13 GAGAS contained engagements and guidance
14 dealing with ethics, independence, auditors' professional
15 competence and judgment, quality control, performance of
16 field work and reporting. Audits and attestation
17 engagements performed under GAGAS provide information used
18 for oversight, accountability and improvements of
19 government programs and operations.

20 GAGAS contained requirements and guidance
21 to assist auditors in objectivity, acquiring and
22 evaluating sufficient appropriate evidence and reporting
23 the results. When auditors perform their work in this
24 manner and comply with GAGAS in reporting the results,
25 their work can lead to improved government management,

1 better decision-making and oversight, effective and
2 efficient operations, and accountability for resources and
3 results.

4 Footnote 2. The term auditor, in quotation
5 marks, throughout this document include individuals
6 performing work under GAGAS, paren, including audits and
7 attestation engagements, close paren, and therefore
8 individuals who may have the titles auditor, analyst,
9 evaluator or inspector or other similar titles.

10 Footnote 3. The term, in quotation marks,
11 audit organization is used throughout the standards to
12 refer to government audit organizations as well as public
13 accounting firms that perform audits using GAGAS.

14 Did I read Section 103 accurately?

15 A. Yes.

16 Q. Section 104 is brief. I'd like to read
17 that, too. Section 104, which is still under purpose and
18 applicability of GAGAS. 104, laws, regulations,
19 contracts, grant agreements or policies frequently require
20 audits in accordance with GAGAS. Many auditors and audit
21 organizations also voluntarily choose to perform their
22 work in accordance with GAGAS. The requirements and
23 guidance in this document apply to audits and attestation
24 engagements of government entities, programs, activities
25 and functions and of government assistance administered by

1 contractors, nonprofit entities and other non-government
2 entities when the use of GAGAS is required or is
3 voluntarily followed.

4 Did I read that accurately?

5 A. Yes.

6 Q. I'd just like to read two more sections.

7 The sections are Section 1.11, 1.12, which are under the
8 heading stating compliance with GAGAS in the auditor's
9 report.

10 1.11. When auditors are required to follow
11 GAGAS or are representing to others that they follow
12 GAGAS, they should follow all applicable GAGAS
13 requirements, ensure compliance with GAGAS in the
14 auditor's report set forth in paragraphs 1.12 and 1.13.

15 1.12. Auditors -- did I read 1.11
16 accurately?

17 A. Yes.

18 Q. 1.12. Auditors should include one of the
19 following types of GAGAS compliance statements in reports
20 on GAGAS audit and attestation engagements as appropriate.
21 Footnote 5. A, unmodified GAGAS compliance statement:
22 Stating that the auditor performed the audit or
23 attestation engagement in accordance with GAGAS. Auditors
24 should include an unmodified GAGAS compliance statement in
25 the audit report when they have, paren, 1, close paren,

1 followed all applicable unconditional and presumptively
2 mandatory GAGAS requirements or, paren, 2, close paren,
3 followed all unconditional requirements and documented
4 justification for any departures from applicable
5 presumptively mandatory requirements and have achieved the
6 objective of those requirements through other means.

7 B, modified GAGAS compliance statement:
8 Stating either that, paren 1, close paren, the auditor
9 performed the audit or attestation engagement in
10 accordance with GAGAS except for specific applicable
11 requirements that are not followed or, paren 2, close
12 paren, because of the significance of the departure, paren
13 S, close paren, from the requirements, the auditor was
14 unable to and did not perform the audit or attestation
15 engagement in accordance with GAGAS.

16 Situations when auditors use modified
17 compliance statements include scope limitations such as
18 restrictions on access to records, government officials or
19 other individuals needed to conduct the audit. When
20 auditors use a modified GAGAS statement, they should
21 disclose in the report the applicable requirement, paren
22 S, close paren, not followed, the reasons for not
23 following the requirement, paren s, close paren, and how
24 not following the requirement affected or could have
25 affected the audit and the assurance provided.

1 Dr. Nielsen, there's a third short section
2 which I think you would probably want me to be complete,
3 so you would probably want me to read that third short
4 section Under Stating Compliance with GAGAS in the
5 Auditor's Report. It's Section 1.13.

6 When auditors do not comply with any
7 applicable requirement, they should, paren 1, close paren,
8 assess the significance of the compliance to the audit
9 objectives, paren 2, close paren, document the assessment
10 along with their reasons for not following the
11 requirement, and paren 3, close paren, determine the type
12 of GAGAS compliance statement. Footnote 6. The auditor's
13 determination will depend on the significance of the
14 requirements not followed in relation to the audit
15 objective.

16 And the two footnotes, 5 and 6.
17 Footnote 5, for financial audits and attestation
18 engagements AICPA reporting standards provide additional
19 guidance when some or all of the standards are not
20 followed.

21 Footnote 6, see Footnote 35 for
22 applicability of peer review and quality assurance
23 requirements for this assessment.

24 Did I read that accurately?

25 A. You did.

1 Q. Okay.

2 MR. DOTTHEIM: One moment, please.

3 BY MR. DOTTHEIM:

4 Q. Dr. Nielsen, when you referred to prudence
5 decisions and prudence decisions specifically to Iatan 1
6 AQCS, can you provide some specific decisions that you
7 would identify that you looked at for prudency
8 determinations in your analysis?

9 A. The types of decisions that I looked at at
10 the highest level, at the board of directors level, was
11 the decisions to proceed ahead with the plant, the
12 decisions of major procurement that had to be taken to the
13 board of directors.

14 At the next level down, the executive
15 management level, I would look at decisions on use of
16 personnel, the quality of systems and procedures, whether
17 they were improving over time, decisions made to improve
18 the systems over time.

19 At the project management level I would
20 deal with issues such as selection of vendors, significant
21 vendors, you know, below the level that they had to be
22 approved by the board of directors, for example, or
23 quality control management, scheduling management, cost
24 management, budget controls.

25 Q. Any further levels down?

1 A. If there was -- if there was something that
2 looked like it had to be evaluated below the project
3 management level, I would go down to, for instance, the
4 project controls level.

5 MR. DOTTHEIM: Dr. Nielsen, thank you.
6 You've been very patient. At this time I'd like to offer,
7 I think Staff Exhibits 5 through 8.

8 JUDGE STEARLEY: Are there any objections
9 to the admission of Staff Exhibits 5, 6, 7 and 8?

10 (No response.)

11 JUDGE STEARLEY: Hearing none, they shall
12 be received and admitted into the evidence.

13 (STAFF EXHIBIT NOS. 5, 6HC, 7 AND 8 WERE
14 RECEIVED INTO EVIDENCE.)

15 JUDGE STEARLEY: Before we move to
16 questions from the Bench, too, let me ask GMO, did we get
17 an offering of your Exhibit 2 earlier?

18 MR. FISCHER: I thought I did, but perhaps
19 I didn't. I'd move for the admission of Exhibit 2, which
20 I think contained the educational and background
21 information for this witness.

22 JUDGE STEARLEY: That's refreshing my
23 memory there. I'm getting old today. And with that, I
24 just wanted to make sure all the exhibits were admitted.
25 And any questions from the Bench for Dr. Nielsen?

1 COMMISSIONER JARRETT: Yes, Judge. Thank
2 you.

3 QUESTIONS BY COMMISSIONER JARRETT:

4 Q. Good afternoon. I guess good evening,
5 Dr. Nielsen.

6 A. Good evening, Commissioner.

7 Q. I can't remember. Did you indicate that
8 you had reviewed the Staff report of the constriction
9 audit slash prudence review of environmental upgrades to
10 Iatan 1 and Iatan common plant?

11 A. The December 31st report?

12 Q. Yes.

13 A. Yes.

14 Q. You have reviewed that?

15 A. Yes.

16 Q. Is it important for an auditor to be
17 impartial, unbiased and open minded when going in to an
18 audit?

19 A. Under a construction audit or a prudence
20 audit, yes.

21 Q. Basically any type of audit?

22 A. Yes.

23 Q. So I guess my question is, you've read
24 these and you've read the tone within the language of it,
25 and I'll just ask you pointblank, does it look like from

1 the language that was used and the tone that was used in
2 this document that the auditors were fair, unbiased,
3 impartial going in to the audit or during the audit?

4 A. I would have to say that I wouldn't
5 conclude that on the face of the document, but I think
6 from reading what the data requests have been, all of the
7 data that they've had available to them, I don't think
8 there's a bias, just taking that document on its own.

9 Q. What about overall in general, then, all of
10 the -- all of the information that you reviewed?

11 A. I think they have been less than impartial.
12 Not going so far as to say that they're biased, but there
13 are indications of less than impartiality.

14 Q. And could you give me some examples
15 perhaps?

16 A. One of the examples we've heard about today
17 is the expense report issues. As I recall, the full
18 tracking of everything that has been done with regards to
19 that expense report, I think the company said that
20 Mr. Downey had -- it was a private dinner, and he did not
21 realize that he had not paid for it and then subsequently
22 returned the money to the company.

23 Q. As I recall --

24 A. So that would -- raising that again and
25 again, because they had raised that even before the

1 filings in March, seems a little bit odd to me that they
2 continually raise that issue.

3 Q. Well, and that seemed odd to me, too.
4 Spent a lot of ink on that. They talked about how they
5 tried to get the information and the company refused to
6 give it to them, implying wrongfully refused to give it to
7 them. And then they finally got it, and they -- they had
8 some more problems, and then they finally, aha, we found
9 them, they were trying to put through a \$405 cost that
10 shouldn't have been there out of how many hundreds of
11 millions of dollars project, and they devoted paragraph
12 after paragraph to that in their report.

13 A. That's what I'm referring to as, on the
14 face of the document, it appears to be not fully
15 impartial.

16 Q. Even giving them the benefit of the doubt,
17 would you say that, from the report, that at best they
18 missed forest for the trees maybe is a good way to
19 describe it?

20 A. Yes, I think I would conclude that with
21 that particular instance. You know, an auditor can't
22 review every invoice and everything or they become the
23 accounting staff, which is a duplication of the accounting
24 staff of the company being audited.

25 An auditor's role is to test, and then if

1 they feel that this is an example of where the company has
2 failed, they can take several actions. They can call it
3 out and give sufficient documentation. The company can
4 correct it. If they find multiple instances of the same
5 type of abuse or what they said was abuse, that might be
6 reason to look deeper.

7 But taking nine months, in essence, ten
8 months from when the issue first arose to solve this
9 problem without raising similar problems or recommended
10 disallowances I find odd at best.

11 Q. Another question I wanted to ask you about
12 the report was, you know, you talked about -- you've
13 talked about decisional prudence review.

14 A. Yes.

15 Q. Can you tell me in Staff's report where
16 they talk about decisional prudence review? I have a hard
17 time finding anything that talks about it.

18 A. No, and that's what I have the basic
19 problem with it as a prudence review, there's -- you can
20 draw suppositions or assumptions from what is presented,
21 but there is not any real decisional prudence called out
22 that they found fault with.

23 Typically you have to find imprudence in
24 the decision-making process or the decision that was made
25 and then a causal connection to some impact that you have

1 to subsequently quantify. I didn't find that audit trail
2 at all in that report.

3 Q. And if you were doing a prudence audit,
4 would you put that in your audit report?

5 A. Yes, I would, and I have done so many
6 times, whether I worked for the utility or worked for the
7 commission, if I felt truly it was an imprudent decision
8 or decision-making process.

9 COMMISSIONER JARRETT: Thank you. I have
10 no further questions.

11 QUESTIONS BY JUDGE STEARLEY:

12 Q. Dr. Nielsen, I have one quick question for
13 you.

14 A. Yes.

15 Q. Staff has presented you with a number of
16 documents we've labeled and admitted them into the record
17 as Staff Exhibits 5, 6, 7 and 8, which have various
18 captions on them using the word audit, and I believe you
19 referred to these as performance audits?

20 A. What they -- what did they -- it's covered
21 by the section that covers performance audits within
22 this -- within the Yellow Book standards. Those involve
23 things like prudence audits or projective audits or
24 improving audits that are used typically by companies.
25 Internal auditors of companies probably I would say

1 two-thirds of their time do that type of audit so they can
2 improve the overall processes. Then the other third of
3 the time are audits in which they actually find and
4 evaluate compliance.

5 These audits were cast, from the first time
6 the first audit was done, they were looking to give
7 management insight on which they can improve their overall
8 processes. If a company doesn't engage in improvement,
9 they're lost.

10 JUDGE STEARLEY: All right. Thank you very
11 much. Recross based on questions from the bench?

12 MR. DOTTHEIM: No questions.

13 JUDGE STEARLEY: Very well. We're going to
14 come back to KCPL for redirect. Mr. Fischer, do you have
15 a significant number of questions or just a few?

16 MR. FISCHER: No, sir. I've just got a
17 couple.

18 JUDGE STEARLEY: We'll let you finish
19 redirect, then we'll take a break after that point.

20 REDIRECT EXAMINATION BY MR. FISCHER:

21 Q. Dr. Nielsen, I believe I heard you testify
22 that GAGAS is used in audits of third parties; is that
23 correct?

24 A. Absolutely.

25 Q. Would you explain how third parties use

1 GAGAS?

2 A. Actually, I think that was read into the
3 record. Let me find --

4 Q. You don't need to read it into the record,
5 but can you just explain your understanding of how third
6 parties use GAGAS?

7 A. First of all, any grantee such as, for
8 instance, I'm familiar with the National Science
9 Foundation which gives grants to universities to do
10 research, they hire contractors. The contractors and the
11 universities are subject to audits pursuant to the GAGAS
12 rules.

13 In addition, third parties in my experience
14 include the adoption of the staffs, when I worked for the
15 staffs, always include in the RFPs that we respond to that
16 bid against other firms that we have to indicate that
17 we're going to conduct the audit according to the Yellow
18 Book standards.

19 Q. So the Yellow Book would -- or would the
20 Yellow Book be used in something like a prudence audit
21 or --

22 A. I have used the Yellow Book in every audit
23 I've done since 1983.

24 Q. In your review of the Staff documents in
25 this case, did you see any evidence that Staff was using

1 the Yellow Book or anything like that in their audit?

2 A. From the deposition transcripts that I've
3 read from the last week and earlier this week, there's
4 nothing contained in those depositions that indicate that
5 Staff uses the Yellow Book standards.

6 Q. Did you see anything in those depositions
7 that would indicate that they even had a finalized audit
8 plan?

9 A. No, nothing.

10 Q. The Staff showed you a number of documents.
11 I think some were internal audits.

12 A. Yes.

13 Q. What are internal audits used for?

14 A. Well, as I was explaining to either the
15 Judge or the Commissioner, typically good management
16 involves using internal audits to improve processes,
17 procedures and compliance, and so by definition they're
18 expected to find deficiencies that could result in
19 improvement.

20 Q. Did you --

21 A. And so the audit plan that has been
22 followed by GPE's internal auditing group and ENY from the
23 beginning, the audit plan that I reported on in -- I can't
24 remember in which testimony it was, either in Missouri or
25 Kansas -- specifically I addressed what their audit plan

1 was and any adjustments to that plan that was made over
2 the -- over time.

3 Q. In your review, did you see evidence that
4 Kansas City Power & Light reacted to recommendations from
5 internal auditors?

6 A. I saw that the CEP oversight committee
7 responded to various items that were at the management
8 level, that they saw that there wasn't sufficient
9 resources, they provided sufficient resources, for
10 example. On the project management team and project
11 management team level, they addressed issues such as
12 bringing in the SKIRE system.

13 Q. One of the recommendations I think
14 addressed allocations issues. Do you recall that?

15 A. Yes. I think it was one of -- I can't
16 remember the exhibit. Yes, I do remember.

17 Q. Is the allocation issue a prudence issue
18 from your standpoint?

19 A. No, it's not. It's a ratemaking issue.

20 Q. Staff counsel also asked you about the
21 Vantage report. Is it --- is it true -- or did you
22 testify that Vantage had reduced the disallowances that
23 they were recommending?

24 A. The first filing that Vantage made, which I
25 think was in January of 2009, included testimony, and they

1 attached to that testimony their report. I think the page
2 that I was referring to was in their report.
3 Subsequently, in rebuttal to the company's rebuttal, which
4 included my testimony, they adjusted their recommended
5 disallowances.

6 Q. By adjusted you mean lowered?

7 A. Lowered, yes.

8 MR. FISCHER: That's all I have, Judge.

9 JUDGE STEARLEY: All right. Thank you very
10 much. Thank you, Dr. Nielsen, for your testimony.

11 THE WITNESS: Thank you.

12 JUDGE STEARLEY: You are excused right now.
13 I will not fully excuse you, just in case the
14 Commissioners will want to call you back for additional
15 questions.

16 THE WITNESS: Thank you.

17 JUDGE STEARLEY: And at this point we'll
18 take about a ten-minute break and we'll start up with your
19 next witness.

20 (A BREAK WAS TAKEN.)

21 JUDGE STEARLEY: Please proceed.

22 MR. FISCHER: Yes, Judge. Before we go on
23 to the next witness, I'd inquire whether I might excuse my
24 last witness, Dr. Nielsen, or whether the Bench or other
25 parties would need him to stay. He has to catch a flight

1 if we're done with him.

2 JUDGE STEARLEY: Go ahead and excuse him.

3 MR. FISCHER: Thank you very much.

4 JUDGE STEARLEY: If the Commission should
5 have additional questions for him, I'm sure we can arrange
6 a conference call or something.

7 MR. FISCHER: We'll make him available for
8 sure.

9 JUDGE STEARLEY: If he has a flight to
10 catch, by all means.

11 THE WITNESS: I can arrange that for
12 tomorrow morning.

13 JUDGE STEARLEY: Okay. And you may call
14 your next witness.

15 MR. HATFIELD: The company would call Chris
16 Giles, Judge.

17 JUDGE STEARLEY: And Mr. Giles is already
18 at the witness stand.

19 (Witness sworn.)

20 JUDGE STEARLEY: Thank you. Please be
21 seated. And Mr. Hatfield, you may proceed.

22 MR. HATFIELD: Thank you, Judge. And as I
23 explained before, Commissioners, I have a direct, but if
24 at any point you would like to interrupt, please do. The
25 witness is prepared to answer whatever questions you have.

1 Be happy to stop and address those at whatever point you
2 think is appropriate.

3 CHRIS GILES testified as follows:

4 DIRECT EXAMINATION BY MR. HATFIELD:

5 Q. Mr. Giles, could you state your name again
6 for the record, please.

7 A. Chris Giles, G-i-l-e-s.

8 Q. Have you had the privilege of testifying
9 before this Commission in the past?

10 A. Yes, I have.

11 Q. In what capacity have you done so?

12 A. I was formerly an employee of Kansas City
13 Power & Light for 34 years. During that timeframe, I've
14 testified numerous times before both the Missouri
15 Commission and the Kansas Commission on a variety of
16 regulatory matters.

17 Q. And you said you were formerly an employee
18 of Kansas City Power & Light. Until when?

19 A. I was employed with Kansas City Power &
20 Light until June of 2009. My last position there was Vice
21 President Regulatory Affairs. I retired and went into
22 consulting. I'm currently employed by Nextsource on a
23 contract basis, and through Nextsource have been retained
24 by Kansas City Power & Light as a regulatory consultant
25 until the conclusion of the Iatan 2 rate case.

1 Q. And can you explain your -- in your
2 position as Vice President of Regulatory Affairs for
3 Kansas City Power & Light, what generally did that job
4 entail?

5 A. It entailed all aspects of regulatory work,
6 revenue requirement, rate cases, cost of service. During
7 that timeframe, I was also involved with the regulatory
8 plan. Between myself and our general counsel,
9 Mr. Riggins, we were the lead negotiators on the
10 regulatory plan. I was also responsible for the language
11 or co-responsible for the language in the reg plan
12 concerning the cost control system.

13 Q. Now, have you previously been involved in
14 either construction audits or prudence reviews?

15 A. I have, as I indicated, been employed by
16 KCP&L since 1975. During that timeframe, I have not
17 conducted a prudence review. I have been involved in them
18 with the LaCygne 2 coal generation unit, Iatan 1 initial
19 construction, which was in service in 1980, Wolf Creek
20 1986, the rebuild of Hawthorn 5, and various other rate
21 cases and plant expansions during that timeframe.

22 Q. We're here today talking about the
23 construction audit and prudence review for environmental
24 upgrades at Iatan 1, and could you just at a high level
25 characterize for us the company's approach to this review,

1 prudence review contrasted to the others you've been
2 involved with?

3 A. Probably the fundamental difference is, and
4 it really goes back to the regulatory plan, where it all
5 started, and it was my personal intent as well as Kansas
6 City Power & Light's intent that we make this audit and
7 this prudence review as transparent and provide as much
8 information to both Staff, Public Counsel and other
9 parties throughout the construction cycle so that they
10 would have an easier time and a more productive time
11 conducting their audit.

12 That's probably the biggest difference. I
13 have never in my 34 years with the company seen any
14 generating unit that has been constructed that we've been
15 as transparent and provided as much data, not just when
16 the Staff requested it once a case was filed, but all the
17 way back to 2005 and 2006 when we first broke ground.

18 Q. And as you know, we're going to talk a
19 little bit about cost controls. That's the purpose of
20 Mr. Giles' testimony. But I wanted to just follow up on a
21 few things that have come up tonight, I guess, while
22 they're still fresh in everybody's mind.

23 You were here for the testimony of Mr. --
24 or Dr. Nielsen a moment ago?

25 A. Yes, I was.

1 Q. And you may have heard Mr. Dottheim discuss
2 Staff Exhibits, I think it's 5, certainly 6, 7 and 8 -- 5,
3 6, 7 and 8, and these are internal audit reports. Are you
4 familiar with those exhibits?

5 A. Yes, I am.

6 Q. And how is it you were familiar with those?

7 A. I have been extremely involved in both the
8 construction management project team, the internal audit
9 team, the executive oversight committee team during the
10 construction of both unit 1 and unit 2. During that
11 timeframe, I have reviewed all of the audit reports. I've
12 also reviewed during that same timeframe company responses
13 to the audit reports.

14 Q. Now, how is it that Staff obtained these
15 audit reports?

16 A. Staff requested the audit reports in a data
17 request. I don't recall the exact number, but it was part
18 of an ongoing data request, in fact, that as each audit
19 was completed we were to provide it to Staff.

20 Q. How long did it take to provide internal
21 audit reports to the Staff, once they were completed?

22 A. Matter of days.

23 Q. And so has the company provided each and
24 every internal audit report in compliance with those data
25 requests?

1 A. Yes.

2 Q. And these audit reports that have been
3 discussed here today, did Staff ever have any follow-up
4 questions for you as head of regulatory affairs about any
5 of these audit reports?

6 A. They had none with me during my term as
7 vice president. To my knowledge, they had no discussions
8 with Mr. Rush or Mr. Blanc either prior to my retirement
9 or after my retirement.

10 Q. Did these come up in the quarterly meetings
11 that were referred to earlier, I think about 16 quarterly
12 meetings that have occurred concerning Iatan 1?

13 A. No.

14 Q. Did you receive any follow-up data requests
15 concerning information contained in these internal audit
16 reports?

17 A. None that I can recall.

18 Q. All right. And what -- did you -- at the
19 time these audit reports were done, did you review them in
20 your capacity as Vice President for Regulatory Affairs?

21 A. Yes, I did.

22 Q. And what action did you take as a result of
23 reviewing these audit reports?

24 A. The action that I took personally, I would
25 comment on them at the time they were produced. There

1 were various points in time when I would see a draft
2 before they were issued. I would at times make comments.
3 But probably my primary responsibility was to ensure that
4 management responded to the audit reports in a timely
5 manner.

6 Q. And when you say responded, what do you
7 mean by that?

8 A. In each audit report, there would be a
9 requirement, to the best I can recall, that management
10 respond, either agree with or take an action item to
11 either take an action to correct the situation or explain
12 why not.

13 Q. And did you find these audit reports at all
14 helpful in your role as Senior Vice -- or as Vice
15 President for Regulatory Affairs?

16 A. Yes. It was a good indication that
17 management was on top of the processes and procedures at
18 the site. To the extent the audit reports identified
19 certain areas that could be improved or processes
20 improved, management responded. And I can say that having
21 gone through nearly five years now of construction with
22 both unit 1 and unit 2, it's a lot different today than it
23 was day one.

24 Q. That's the other thing that, before we
25 leave these audit reports, that I want to make sure the

1 Commission has a sense of. One of the issues that's
2 raised in the audit reports is tracking of costs and
3 contracts and that sort of thing.

4 For a project like -- let's just take the
5 Iatan 1 environmental upgrades. I realize there's a lot
6 more. Can you give us any idea of the volume of
7 documentation and data we're talking about?

8 A. I'm trying to think of a good analogy, but
9 obviously it's an immense amount of data, and it's a
10 multiple -- there's multiple documents, source documents
11 for information. There's correspondence files with
12 contractors, purchase orders, contracts, amended
13 contracts, notices to proceed, contingency logs, many of
14 the things that Dr. Nielsen mentioned.

15 But just the sheer number of invoices is
16 immense. That's the best way I can describe it. There
17 are probably over 180 contractors on the project. So that
18 can give you an idea.

19 Q. All right. So let's talk a little bit
20 about the Iatan cost control system. Are you familiar
21 with that term?

22 A. Yes.

23 Q. And what is or was, as you care to share,
24 the Iatan cost control system?

25 A. We agreed, KCPL agreed in the regulatory

1 plan that we would develop and implement a cost control
2 system that allowed the company to identify, quote, cost
3 overruns from the definitive estimate and explain those
4 cost overruns.

5 To do that, the cost control system is not
6 just a summary page. It is a system. It includes a
7 number of documents, a number of source documents that you
8 can drill down from the summary page to identify and
9 explain cost overruns as they're described in the
10 regulatory plan.

11 The definitive estimate as it's called in
12 the regulatory plan we called initially the control budget
13 estimate. That estimate was prepared in December of '06
14 when the project was 20 to 25 percent engineered.
15 Subsequent to that, we learned from experience working
16 with our consultants and other contractors that a
17 definitive estimate is really an estimate that's developed
18 much further along in the process, for instance, when the
19 project would be 75 percent engineered.

20 At the time we learned this and
21 subsequently learned that the definitive estimate was not
22 even used in the industry anymore, it has now become a
23 series of numbers that classified that type of estimate
24 from one to five, one being fully developed and five being
25 very, very preliminary and very inaccurate.

1 But having said all that, I did not want
2 there to be an issue over a name, and I made it clear to
3 the Commission Staff and all the parties that for purposes
4 of tracking, we would use the control budget estimate, the
5 December '06 estimate as, quote, the definitive estimate
6 for purposes of tracking costs.

7 Our cost control system does that. It
8 tracks the costs to both the control budget estimate and
9 the reforecasted budget estimates, which was completed in
10 May of '08. To track the cost is really pretty simple.

11 Q. Let's come back to that in just a moment if
12 we can because I want to make sure the Commission is
13 following and the record's clear. They're probably
14 following. I may not be.

15 You have a system in place that -- does it
16 track all of the costs?

17 A. Yes.

18 Q. And all of the documents you've talked
19 about, et cetera. Has the Staff of the Missouri Public
20 Service Commission been given access to all of the
21 documents that show the costs associated with, let's just
22 keep it at the Iatan 1 environmental upgrades?

23 A. Yes.

24 Q. Have they ever been denied access to any
25 document, to your knowledge --

1 A. No.

2 Q. -- that has to do with those costs?

3 A. No.

4 Q. And what are the ways they can access those
5 documents?

6 A. They can access them, I believe, and I'm
7 not sure whether it's the audit staff or the operations
8 staff, actually have access to where they can sit down at
9 the computer onsite and access the majority of the data.
10 In fact, the Operations Division has done that in the past
11 and they continue to do that.

12 Q. And in terms of both the system and
13 tracking to the budget, would you just walk through what
14 you've done to explain to the Missouri Staff how that
15 system works.

16 A. Our cost control manager, Forrest
17 Archibald, is the expert on all of the cost tracking
18 mechanisms and the source documents that support the
19 summary portfolio. I know Mr. Schallenberg and perhaps
20 others have met with Forrest to explain the system. I'm
21 not sure to what extent they have either understood or
22 actually walked through examples. That I'm not sure.

23 I was informed that the Kansas Staff and
24 Dr. Nielsen had to go through the same stepping through
25 the process with Mr. Archibald to understand the system.

1 Q. How has the Kansas's interaction regarding
2 the cost tracking system differed from how Missouri's
3 interacted?

4 A. The Kansas Staff has been much more engaged
5 in coming to the site, walking through, as I indicated,
6 with Mr. Archibald and others on exactly how the system
7 works. They took examples and took actually a month of
8 data and walked it all through the system to make sure
9 they understood it and what it could do. To my knowledge,
10 the Missouri Staff has not done that.

11 Q. And now on the -- let's talk briefly about
12 the budget. So you were talking about a control budget
13 estimate a minute ago. Is it possible to track any cost
14 variations, I'm going to say over the control budget
15 estimate?

16 A. Yes.

17 Q. And generally, how would one do that?

18 A. Generally, one would drill down to the
19 source documents for change orders, purchase orders and
20 contingency log identification, and those documents would
21 also have an explanation regarding the cost.

22 Q. And has Staff been denied access to any of
23 the documents to which you just referred?

24 A. No.

25 Q. All right. I think the easiest way to do

1 this is going to be to just show you some -- Staff's
2 reply.

3 MR. HATFIELD: And, Judge, we've referred
4 to this earlier. This is a pleading in the current
5 docket. This is from Staff's reply to KCP&L's and GMO's
6 February 1, 2010 initial response. This was filed by
7 Staff on March 9 of 2009. And similar to what we did
8 before, I'm just going to try to show Mr. Giles here some
9 specific things.

10 BY MR. HATFIELD:

11 Q. And let's just start with paragraph 35
12 here, Mr. Giles. It says, on February 21, 2008, the
13 Staff, on behalf of the non-utility signature parties to
14 the KCPL Experimental Regulatory Plan Stipulation &
15 Agreement, requested a meeting with KCPL to discuss
16 several topics, including the status of Iatan 1 and 2
17 costs and schedule controls.

18 Do you know what meeting's referred to
19 there?

20 A. Yes, I do.

21 Q. And then it says, on March 12, 2008, the
22 meeting was held. Were you in attendance at that meeting?

23 A. I was.

24 Q. And then it says, at that meeting, a
25 representative of KCPL regulatory indicated that KCPL

1 would still be able to track change orders back to the
2 CBE -- I think that means control budget estimate, right?

3 A. Correct.

4 Q. -- consistent with the KCPL Experimental
5 Regulatory Plan Stipulation & Agreement requirement even
6 if the CBE was no longer in the current budget for the
7 Iatan 1 AQCS project segment.

8 Let me ask you about that. Do you know who
9 the representative of KCPL regulatory was?

10 A. I'm pretty sure it was me.

11 Q. All right. So then did you indicate that
12 Kansas City Power & Light would still be able to track
13 change orders back to the CBE?

14 A. What I indicated was KCPL and the Staff
15 would still be able to track costs to the CBE, and I don't
16 know whether Mr. Schallenberg and I were talking past each
17 other or what, but I never indicated that you could track
18 only with change orders.

19 Q. And can just explain to us -- then it says
20 track change orders consistent with the experimental
21 regulatory plan. Can you explain your understanding of
22 what the experimental regulatory plan required with regard
23 to tracking?

24 A. The regulatory plan required that the
25 company track costs to the definitive estimate and explain

1 variances. It does not require that the only way to do
2 that is with a change order, and it was never
3 contemplated. Obviously, it was never in the language.

4 Q. Okay. And then the next sentence says --
5 I'm up at the top there for you, Mr. Giles -- the Staff
6 asked if the reforecast effort then underway, and let's
7 make sure we all understand what that is. Was there a
8 reforecast effort?

9 A. Yes. Beginning in early '08 and concluding
10 in May of '08, as the project, Iatan 1, became further
11 developed and outage schedule became more definitive, it's
12 industry practice to do a reforecast, and we were doing
13 one at that time. As I indicated, it was completed in
14 May.

15 What I -- I was concerned at that time that
16 Staff was concerned. And, in fact, I made an offer to
17 Staff, in particular Mr. Schallenberg, that we would be
18 glad and happy to have Staff come onsite and observe the
19 reforecast process.

20 Q. And did he accept that offer?

21 A. No. I then was contacted by Mr. Henderson
22 and Mr. Schallenberg, perhaps even Mr. Dottheim, but I'm
23 not sure if he was involved. Basically the question was
24 why, why are you doing this? And my response --

25 Q. Let's be clear. Doing what?

1 A. Why was I inviting them to observe the
2 reforecast process. And my response was, as we've tried
3 to do throughout this construction, is we want to be as
4 transparent as possible.

5 Q. Let's stop on this reforecast and make sure
6 we're clear on what's happening. So there was an initial
7 budget, control budget estimate, and then the reforecast,
8 is it fair to say we're setting a new budget?

9 A. Yes.

10 Q. And that reforecasted budget was higher?

11 A. Yes.

12 Q. Turned out to be higher than the control
13 budget estimate?

14 A. Yes.

15 Q. When you say you invited Mr. Schallenberg
16 to come and observe, what is that? Is that a meeting? Is
17 that a calculation?

18 A. My intention was to have them sit in the
19 meetings and, you know, if they so desired, to watch how
20 the pro-- how the reforecast was being conducted, both
21 schedule and cost, to see what kind of factors had
22 occurred that would cause the rebudget or the reforecast,
23 to see what risks and potential risks were there with the
24 project so they could understand the necessity to do the
25 reforecast. To me, it was all about being transparent.

1 Q. And so I think we finished this story, but
2 did they ever participate, did the Staff ever participate
3 in the reforecast process?

4 A. No.

5 Q. And so where we were was on the -- the
6 Staff asked, if the reforecast effort then underway, so
7 this new budget, would result in an increase in the budget
8 to levels such that KCPL would assert after the reforecast
9 that it did not have cost overruns, and since it did not
10 have cost overruns it was not required to identify and
11 explain changes in project costs.

12 Is that your understanding? I mean, was
13 that the conversation you were having at the time?

14 A. That was the conversation, and my response
15 was, we will -- you will always be able to track costs to
16 the definitive estimate, the control budget estimate.

17 Subsequent to that, Staff alleges in its
18 reply that we, in fact, did say we did not have cost
19 overruns because we were now below the new budget.

20 Q. Hold on. You're getting ahead of me. I've
21 got this cool ELMO. It says, KCPL indicated that this
22 concern would not materialize. So was it you, Mr. Giles,
23 who told them this concern would not materialize?

24 A. Yes.

25 Q. And then when we go down, again, this is

1 Staff speaking through their reply. The attachment to
2 quarterly status reports when compared to the Iatan 1 AQCS
3 expenditure summary for the fourth quarter contained in
4 the instant Staff reply -- I'm sorry -- contained in the
5 instant Staff reply above indicates that the anticipated
6 issue did materialize. Is that correct?

7 A. No.

8 Q. It goes on to say, as one sees, the
9 tracking by KCPL of actual costs to the current estimate
10 adopted -- or amounts after KCPL adopted the higher --
11 higher current budget estimate with the control budget
12 estimate for analysis purposes.

13 I think they're just saying you're tracking
14 to a different budget now, not CBE. Is that how you
15 understand it?

16 A. Yes.

17 Q. Then it says, in actuality, what is
18 occurring is KCPL increases its current budget and uses it
19 for tracking purposes to prevent the very recognition of
20 and the requirement to explain cost overruns.

21 Is that what you did? Did you refigure the
22 budget just so you can say we don't have any cost
23 overruns?

24 A. Absolutely not.

25 Q. Are there -- if we use the control budget

1 estimate as the estimate, are there cost overruns on
2 Iatan 1?

3 A. Yes.

4 Q. And has KCPL ever tried to deny, have you
5 ever tried to deny that there are cost overruns?

6 A. No.

7 Q. And so how -- how can you -- how do you
8 know when there are cost overruns?

9 A. My understanding is anything above the
10 control budget estimate, or definitive estimate as it's
11 described in the rate plain, is considered a cost overrun.
12 I don't -- I don't like that term obviously because it
13 implies there's something wrong when it could just be a
14 budget issue.

15 But given that any dollar above the CBE is
16 considered cost overruns, then Iatan 1 has cost overruns.
17 We're not hiding it. We're not saying we can't explain
18 it. We can do both. We can explain it.

19 Q. And when was the reforecast done?

20 A. May of '08.

21 Q. So is it reasonable to say that the
22 reforecast was an attempt to predict what those overruns,
23 for want of a better word, might be?

24 A. Yes.

25 Q. Now, let me just read you a couple more

1 allegations here from Staff's reply. And they're
2 continuing on.

3 MR. HATFIELD: And again, Judge, this
4 entire pleading is in your record if anybody needs to go
5 back and get better context.

6 BY MR. HATFIELD:

7 Q. So we're still talking about this budget
8 comparison, and the Staff has said in its reply, instead,
9 noting its reliance on its tracking of actual costs
10 against the new higher current budget estimate amount,
11 KCPL denies the existence of cost overruns for Iatan 1
12 AQCS.

13 I think you've already covered it, but
14 there it is very specifically. Is that true?

15 A. It's not true. I think if -- to clarify
16 that, I believe Staff in one of the documents referred to
17 a data request that indicated compared to the reforecast
18 number, KCPL did not have cost overruns. That's a correct
19 statement as well.

20 But as I've stated before, we never claimed
21 we didn't have cost overruns when compared to the control
22 budget estimate. We certainly do.

23 Q. So if you compare it to the budget that was
24 done when the project was 20 percent engineered, you have
25 a cost overrun, but if you compare it to the budget that

1 was done when the project was how much engineered?

2 A. 75 percent roughly.

3 Q. 75 percent engineered, you have no cost
4 overruns?

5 A. That's correct.

6 Q. Now, paragraph 39 says, when actual costs
7 increased to a level that would constitute cost overruns,
8 KCPL simply abandoned its control budget estimate which
9 was to be based on a definitive estimate.

10 Has KCPL abandoned its control budget
11 estimate?

12 A. No. In fact, it is still on the cost
13 summary report.

14 Q. All right. And then moving on down on that
15 page, it says, while a large amount of the budget
16 increases -- increase attributed to these -- R&O is risk
17 and opportunity, right?

18 A. Right.

19 Q. -- items are general in nature, KCPL never
20 tracked actual costs against these items to determine if
21 these items actually resulted in an overrun. Is that
22 true?

23 A. That's true.

24 Q. Now, moving on to paragraph 40. This is a
25 slightly different issue, but I do want you to address it

1 for the Commission. Now, here in Staff's reply they
2 attach the LaCygne Unit 1 SCR system project. Just real
3 short, real briefly, what's that?

4 A. The LaCygne SCR was part of the
5 comprehensive energy plan that was implemented with the
6 regulatory plan. It was an SCR, selective catalytic
7 reduction system on Unit 1. It was completed, I believe,
8 in the second rate case under the CEP. And that project
9 was about an \$80 million project, and the same identical
10 cost control system was used for LaCygne 1 that was used
11 for Iatan.

12 Q. Let's talk through that. So it says
13 Attachment 3, it shows that KCPL did develop and track
14 against a definitive estimate for the LaCygne
15 environmental projects consistent with the KCPL
16 Environmental Regulatory Plan Stipulation & Agreement cost
17 control requirements. That's the same regulatory plan
18 you've been talking about, right?

19 A. Correct.

20 Q. Then it says, Attachment 3 further shows
21 that KCPL is now applying a different cost control system
22 to the Iatan project, thus making its audit more
23 difficult. Did you use a different cost control system
24 with Iatan in order to make it more difficult?

25 A. No.

1 Q. Did you use a different cost control system
2 with Iatan at all?

3 A. No.

4 Q. Exact same one as LaCygne; is that right?

5 A. Yes.

6 Q. Now, you're familiar with Staff's
7 December 31st audit report?

8 A. Yes.

9 Q. And you're aware that Staff in there raises
10 issues with the cost tracking system; is that right?

11 A. I'm aware of that, yes.

12 Q. And says that they cannot track cost
13 overruns to the current budget estimate; is that right?

14 A. That's correct.

15 Q. In any of the 16 quarterly meetings that
16 Kansas City Power & Light had with the Staff, did Staff
17 raise that concern?

18 A. No. The first time I was aware of that
19 concern was when I read the December 31 report.

20 Q. So did Staff raise it in any informal
21 meetings that were held at the Kansas City Power & Light
22 headquarters or onsite?

23 A. None that I'm aware of.

24 Q. Are you aware of any time that Staff raised
25 that in testimony that was filed in the Iatan 1 rate case?

1 A. Not that I'm aware of.

2 Q. Did you see that issue raised anywhere in
3 the preliminary audit report that was filed on June 10th?

4 A. No.

5 Q. And I think you said, when was the first
6 time you'd seen that?

7 A. In the December 31 report.

8 Q. And if Staff had raised this issue with you
9 during the period that you were Vice President for
10 Regulatory Affairs and said, hey, we're having trouble
11 tracking costs, how would you have handled that?

12 A. I would have insisted that the Staff spend
13 enough time with our cost control manager, Forrest
14 Archibald, to walk through however many examples were
15 required to give them the ability to track the costs. We
16 did that with Dr. Nielsen and we did that with the Kansas
17 staff.

18 Q. As far as you know, were they able to
19 understand and use the cost tracking system?

20 A. Yes.

21 Q. And then just lastly, I think, you've been
22 here through all the testimony?

23 A. Yes.

24 Q. I talked to Mr. Blanc about the Great
25 Plains Code of Ethical Conduct that discusses obstruction

1 of investigations. Were you here for that?

2 A. I was.

3 Q. During your tenure as Vice President of
4 Regulatory Affairs, were you aware of anyone at Kansas
5 City Power & Light that -- or at GMO that acted
6 inconsistent with that ethical policy?

7 A. Absolutely not.

8 Q. Did you ever direct anyone to do anything
9 that would violate that policy?

10 A. I did not.

11 MR. HATFIELD: I don't have any further
12 questions, Judge.

13 JUDGE STEARLEY: Thank you very much.

14 Cross-examination by Staff.

15 CROSS-EXAMINATION BY MR. DOTTHEIM:

16 Q. Good evening, Mr. Giles.

17 A. Good evening.

18 Q. Mr. Giles, did I hear you correctly, you
19 said there are cost overruns associated with Iatan 1
20 environmental enhancements?

21 A. Compared to the control budget estimate,
22 yes.

23 MR. DOTTHEIM: At this time I'd like to
24 have marked as an exhibit Staff Exhibit 9.

25 JUDGE STEARLEY: And which document will

1 that be, Mr. Dottheim?

2 MR. DOTTHEIM: That will be Staff Data
3 Request 445 in Case No. ER-2009-0089. The date of the
4 response is February 3, 2009.

5 JUDGE STEARLEY: Is this an HC document,
6 Mr. Dottheim?

7 MR. DOTTHEIM: It is not marked as an HC
8 document. At least I don't see it is.

9 (STAFF EXHIBIT NO. 9 WAS MARKED FOR
10 IDENTIFICATION BY THE REPORTER.)

11 BY MR. DOTTHEIM:

12 Q. Mr. Giles, have you had a chance to take a
13 look at what's been marked as Staff Exhibit 9?

14 A. I have.

15 Q. Do you recognize that document?

16 A. I do.

17 Q. And the question No. 445 asks, please
18 provide all Iatan 1 reporting documentation that states
19 that the Iatan 1 cost overruns are related to labor,
20 productivity and availability, availability of qualified
21 personnel, rapid increases in commodity prices, and
22 scarcity of materials and qualified vendors.

23 Response: The Iatan 1 environmental
24 upgrade project has not incurred cost overruns. The
25 current budget estimate, the 484 million, has not been

1 exceeded, and management does not believe it will be
2 exceeded. Response provided by Iatan construction
3 project, project controls.

4 Is that consistent with your prior
5 statements this after -- this evening I should say?

6 A. No. This is -- this is the data request I
7 was referring to. The comparison being made here is to
8 the reforecast, or I think this refers to it as the
9 current control budget estimate. As I indicated, the
10 documentation Staff has that supports the cost overruns
11 for the control budget estimate.

12 Now, I must say, this one got by me. This
13 is not a good response. And I do review most all of
14 these.

15 Q. Mr. Giles, are you aware whether this is
16 the only Data Request response that got by you?

17 A. No. I'm sure there were others.

18 Q. Earlier this evening you indicated that you
19 have not performed a prudence audit, I believe. Did I
20 hear that correctly?

21 A. Yes.

22 Q. You haven't performed a construction audit,
23 have you?

24 A. I have not performed a construction or a
25 prudence review. I must say, the difference between this

1 project and the ones I referred to earlier, the LaCygne 2,
2 Iatan 1 and Wolf Creek --

3 Q. Was the answer to my question no?

4 A. It was no, yes.

5 Q. Okay. Thank you. Do you know whether the
6 prudence reviews that you were involved with followed
7 GAGAS?

8 A. I don't have any idea what the term is and
9 how it's used.

10 Q. Were you here -- well, do you know whether
11 the prudence reviews that you were involved with followed
12 the Yellow Book?

13 A. I don't know.

14 Q. Do you know, have you -- Mr. Giles, can you
15 identify who is Maria Jinks?

16 A. Maria Jinks was the -- I don't recall what
17 her title is, but basically Maria Jinks was the head of
18 internal audit for Kansas City Power & Light. She is no
19 longer in that position, but that's what her previous job
20 was. She is now head of procurement.

21 Q. Okay. So if I understand correctly, she
22 had a role in relation to the audit reports that are Staff
23 Exhibits 5 through 8?

24 A. Yes.

25 Q. Okay. Staff met with Maria Jinks regarding

1 the audit reports, did they not?

2 A. I don't know. I would assume they did, but
3 I wasn't in those meetings.

4 Q. Do you know whether the KCPL audit reports
5 followed the Yellow Book?

6 A. I don't know.

7 Q. Mr. Giles, are you aware that Forrest
8 Archibald and his Staff made a presentation to the
9 Missouri Staff or members of the Missouri Staff on
10 April 28th, 2009?

11 A. I know Mr. Archibald made presentations to
12 Staff. I'm not sure of the date. There may have been
13 more than one.

14 Q. You don't recall, not that you necessarily
15 would, that that was approximately the date or the date
16 that Staff deposed you in Kansas City in relation to the
17 GMO rate case?

18 A. I don't recall that.

19 Q. Okay. Mr. Giles, do you know whether
20 Mr. Downey contacted Wes Henderson about Staff
21 participation in the reforecast that occurred in 2008?

22 A. I don't know if he did or not. He may
23 have. He and I were in discussions. We were both -- in
24 other words, it was a mutual agreement between Mr. Downey
25 and myself that we should offer this. So he very well

1 could have called Mr. Henderson.

2 Q. Did the KCC staff participate in the
3 Iatan 1 reforecast in 2008?

4 A. No. We did not offer.

5 Q. Mr. Giles, did you discuss with anyone on
6 Staff the issues that Kansas City Power & Light has with
7 the Staff's filing on December 31, 2009, before KCPL made
8 its filings on February 16, March 22 and March 25, 2010?

9 A. I'm sorry. I missed the first part of your
10 question.

11 Q. Certainly.

12 A. Was your question did I?

13 Q. Yes.

14 A. No, I did not.

15 Q. Do you know whether anyone representing
16 Kansas City Power & Light talked with Staff regarding the
17 Staff's filing of its report on December 31, 2009 before
18 KCPL made its filings on February 16, March 22 and
19 March 25, 2010?

20 A. Not to my knowledge.

21 MR. DOTTHEIM: If I may have a moment,
22 please.

23 JUDGE STEARLEY: You may.

24 BY MR. DOTTHEIM:

25 Q. Mr. Giles, you may have already said this,

1 but do you recall when KCPL made its first presentation to
2 the Staff regarding the cost tracking system for Iatan 1
3 AQCS?

4 A. I believe it was sometime in early '07. I
5 did not participate for some reason. I can't recall why.
6 But that was about the timeframe.

7 Q. Okay.

8 MR. DOTTHEIM: May I approach the witness?
9 May I approach the witness?

10 JUDGE STEARLEY: You may, Mr. Dottheim.

11 BY MR. DOTTHEIM:

12 Q. Mr. Giles, I'm going to hand you a copy of
13 the staff report filed on December 31, 2009, and I'm going
14 to hand you a copy of the version filed in the KCPL rate
15 case, the 0089 case, and I'm going to ask you to look at
16 in particular the documents that I have tabbed, but you're
17 certainly free to look at any of the pages.

18 A. Okay.

19 Q. And in particular what I directed you to is
20 Schedule 10.1, and it's the -- it's the same schedule in
21 both the Staff's filing on December 31, 2009 in the 0089
22 case and the 0090 case.

23 A. Okay.

24 Q. And I've tabbed several pages,
25 Schedule 10-1, which is an e-mail string starting with Tim

1 Rush, and I believe you're shown as being copied. And
2 ultimately it's an e-mail from me copying Bob Schallenberg
3 involving pages of a presentation to be made. And I've
4 tabbed what I'll represent to you are the page Schedule
5 10-2, which is labeled presentation outline at the top,
6 and I've tabbed three more pages, Schedule 10-12, 10-13,
7 and 10-14.

8 Do you recognize that, those pages that are
9 marked Schedule 10?

10 A. Yes.

11 Q. Could you identify them?

12 A. Well, which one first?

13 Q. Well, how about Schedule 10-1?

14 A. Okay.

15 Q. The cover page.

16 A. Yes. This is an e-mail from Tim Rush that
17 shows the information that was to be presented, looks like
18 in a meeting on January 22nd, 2007. Looks like the actual
19 documents that were to be presented at that meeting.

20 Q. And if you could identify Schedule 10-2.

21 A. 10-2 is a presentation outline of that
22 January 22nd, 2007 meeting.

23 Q. And does it show, is one of the line items
24 a line item level one in three schedules, paren, cost
25 control system, close paren, Terry Foster?

1 A. Yes.

2 Q. And the three pages, other pages that's out
3 of Schedule 10 that I've tabbed, do you recognize those
4 pages?

5 A. Yes.

6 Q. Could you identify those pages?

7 A. 10-12 is a Level 1 summary schedule, Iatan
8 No. 1 upgrades. Schedule 10-13 is Level 1 schedule, Iatan
9 Unit 2. And the 10-14 is Iatan Unit No. 1 and 2 support
10 structures, Level 1 summary schedule.

11 Q. Are those schedules related to the cost
12 control system?

13 A. They are a part of the cost control system.
14 They're not the cost control system.

15 Q. Are any of the other pages in the
16 Schedule 10 related to the cost control system?

17 A. Yes.

18 Q. Okay. What -- what pages, if you could
19 identify them?

20 A. There's a Schedule 12-2, Unit 1 reforecast
21 analysis. That entire --

22 Q. I'm sorry, sir. What page was that again?

23 A. That is Schedule 12-2, and it's titled
24 Unit 1 Reforecast Analysis, Unit 1 Iatan Project. And
25 then this appears to be a summary of the reforecast

1 analysis for Unit 1. And Schedule 12-4 and 12-5 is the
2 same information for Unit 2. So all of that would be part
3 of the cost control system.

4 Q. Okay. And 12-1, there's a cover page?

5 A. Yes.

6 Q. And that cover page is May 15, 2008?

7 A. Yes.

8 Q. And it's from Curtis Blanc to Harold
9 Stearley?

10 A. That's correct.

11 Q. And the re line is late-filed Exhibit 209,
12 Case No. EM-2007-0374?

13 A. That's correct.

14 MR. DOTTHEIM: One moment, please.

15 Mr. Giles, thank you for your patience.

16 JUDGE STEARLEY: Mr. Dottheim?

17 MR. DOTTHEIM: Yes. At this time I'd like
18 to offer Exhibit -- Staff Exhibit 9.

19 JUDGE STEARLEY: Any objections to the
20 offering of Exhibit 9?

21 MR. HATFIELD: No objection.

22 JUDGE STEARLEY: All right. Hearing none,
23 it will be received and admitted into the record.

24 (STAFF EXHIBIT NO. 9 WAS RECEIVED INTO
25 EVIDENCE.)

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

3 QUESTIONS BY COMMISSIONER JARRETT:

4 Q. Good evening, Mr. Giles.

5 A. Good evening.

6 Q. I believe you indicated earlier in your
7 direct when Mr. Hatfield was questioning you that you had
8 participated in several construction and prudence audits
9 of our Staff regarding other -- other projects of KCP&L;
10 was that correct?

11 A. That's correct.

12 Q. Would it be fair to say that all -- you
13 know, the audits are different because the projects are
14 different, obviously, but that there is some commonality
15 in the way that the auditor approaches the audit and sort
16 of how they gather the information, sort of the procedures
17 that an auditor uses to gather the information to prepare
18 their report; would that be a fair statement?

19 A. That would be fair, yes.

20 Q. Was there anything different in the way
21 that Staff handled this Iatan 1 environmental upgrades
22 audit versus the other construction and prudence audits on
23 other projects that you observed?

24 A. Yes.

25 Q. And can you tell me what those are?

1 A. In short -- and by the way, I expressed
2 this same concern to Staff, particularly Mr. Schallenberg.
3 This audit has proceeded in a manner that I have never
4 experienced in my 34 years with the company, and I
5 expressed that on several occasions, and as an example,
6 the focus on minutia of this audit. Rather than first
7 focussing on prudence and large contracts and a half a
8 billion dollar investment, Staff has spent an unusual
9 amount of time tracking mileage, tracking expense reports.

10 It was mentioned earlier, this \$405 lunch
11 that, by the way, was really a dinner and should not have
12 been charged to the company. Mr. Downey corrected that.
13 That was corrected a year ago. It's still showing up in
14 reports. I've never seen that until this case. That's --
15 that's one example.

16 My experience with prior construction
17 audits and prudence reviews is the Staff, whether it's
18 Missouri Staff or the Kansas Staff, first focuses on the
19 construction, were the right contractors contracted with,
20 were the decisions that were made appropriate decisions?

21 That has been a focus of Staff, but
22 relative to the minutia, I've never seen it in that
23 relationship prior to this case.

24 Q. When the -- when the Kansas Commission was
25 doing their prudence and construction audit, did they get

1 out and measure distance between the parking lot,
2 employees' parking lot and the project?

3 A. No.

4 Q. Have you ever seen our Staff do that in any
5 other project other than this one?

6 A. No.

7 Q. Do you have any other examples of what you
8 call, what you would call differences between the way
9 Staff previously audited projects versus how they audited
10 this one, other than what you've said?

11 A. I don't recall the number of data requests
12 that would be classified as attorney/client privilege.
13 Typically in an audit, most of the data that Staff would
14 request is related to construction and prudence issues.
15 It typically never got into the attorney/client privilege
16 that we had to assert the privilege. I've seen more of
17 that in this case. And I think, you know, in large part
18 that's sort of been the philosophy of the Staff in this
19 particular audit.

20 I guess the other thing I can say
21 that's different in this case, I have never been as
22 confused about the Staff's position on this audit. When I
23 read the December 31 report and the subsequent pleadings,
24 I couldn't tell what the Staff was doing. And
25 subsequently, sitting in all the depositions, I learned

1 and it made a lot more sense to me what Staff was doing.
2 Basically, Staff indicated the December 31 audit was a
3 special project for the Commission, and the Staff audit is
4 yet to be completed and will be done sometime in the
5 future. That was never apparent to me until the
6 depositions.

7 Q. And can you explain what you mean by
8 special project?

9 A. Well, the way I interpreted that was
10 that -- and Staff can speak for themselves, but this is
11 just my interpretation. They may disagree.

12 Staff indicated that it was unprecedented
13 what the Commission was requesting, and they would comply
14 with the Commission's order to do an audit, but that's an
15 audit just for the Commission. That's not Staff audit
16 that they're going to do and present in the next rate
17 case. So that was termed a special project for the
18 Commission, but our real work you'll see later. That's an
19 example.

20 Q. Now, as part of your preparation to testify
21 here today, did you read copies of our Orders --

22 A. Yes, I did.

23 Q. -- regarding ordering Staff to perform the
24 prudence and construction audits?

25 A. Yes, I did.

1 Q. I don't know if you're qualified to answer
2 this question, but you can tell me you're not if you're
3 not. Did what Staff provided in the December 31st report
4 look like any construction and prudence review that you've
5 ever seen before?

6 A. No.

7 Q. And can you tell me why it didn't?

8 A. It didn't deal with the prudence of
9 decisions. It was more of a, as Dr. Nielsen describes it,
10 a construction audit or financial audit. It was not an
11 audit of -- for instance, I'll take the resurfacing of the
12 site after there was a -- there was two crane incidents
13 out there, so I'll say the small crane incident, and I
14 believe the Staff did a disallowance for that. They
15 stopped short of going to the next step and saying, well,
16 why did KCPL pay 2 or \$3 million to resurface, 2 million I
17 think it was, to resurface? That then caused Alstom to
18 claim that the company had disrupted their schedule. And
19 as Mr. Schallenberg stated, I think, or Mr. Hyneman in
20 their deposition, I'm not sure which at this point, we
21 paid Alstom for that delay even though we had plenty of
22 documentation to show they weren't delayed.

23 Now, the next step to that is why did we
24 pay that? Well, following that decision, the decision we
25 had other issues with Alstom, potentially \$50 million

1 worth of an issue. Alstom informed the company, we would
2 like -- we wanted to go to arbitration. We wanted to sit
3 down and work this out. And more importantly, KCPL wanted
4 Alstom to meet some additional milestones. We had to move
5 the schedule out and we -- because of another issue with
6 an economizer.

7 So all of this goes, you know, hand in
8 hand. Well, Alstom told the company, we won't even meet
9 with you on this \$50 million issue if you don't agree to
10 pay the 3. So that was never investigated or at least, if
11 it was, it wasn't addressed in the report.

12 COMMISSIONER JARRETT: Thank you,
13 Mr. Giles. I don't have any further questions, Judge.

14 JUDGE STEARLEY: Mr. Chairman.

15 QUESTIONS BY CHAIRMAN CLAYTON:

16 Q. Mr. Giles, I just wanted to first take an
17 opportunity to welcome you back to the Commission. It's
18 been a long time. Hope you're doing well --

19 A. Thank you.

20 Q. -- that the new chapter in your life,
21 things are going well.

22 I just want to ask a couple of questions.
23 The hour's getting late tonight, and there's a tremendous
24 amount of material involved in this case as well as the
25 cases that led up to this. So I tend to be prone in

1 making some mistakes. Feel free to correct me. I'm sure
2 that you will.

3 First of all, with the discussion that you
4 had with Commissioner Jarrett, you mentioned that things
5 have not proceeded in a manner that you consider ordinary,
6 perhaps they're out of the ordinary or different than they
7 have in prudence audits in the past. Is that a fair
8 statement?

9 A. Fair statement.

10 Q. Would it be a fair statement that there are
11 many things out of the ordinary associated with the --
12 with the environmental upgrades at Iatan 1 as well as the
13 construction plan associated with Iatan 2, including the
14 2005 regulatory plan? That would be somewhat out of the
15 ordinary?

16 A. Oh, yes. Yes, I would agree.

17 Q. And the planning associated with rate cases
18 in steps over time, that would be out of the ordinary?

19 A. Yes.

20 Q. And a merger took place between several
21 utilities. That would be somewhat out of the ordinary,
22 I'm assuming?

23 A. Yes.

24 Q. Additional amortizations have been part of
25 KCP&L's rates for a number of years since I've been here.

1 That would be somewhat out of the ordinary?

2 A. Yes.

3 Q. In the last -- the last rate case, do you
4 recall the in-service date for the Iatan 1 improvements?
5 I believe they're called Iatan 1 AQCS.

6 A. The actual in-service date I believe was
7 around April 22nd. The original planned in-service date
8 was closer to end of the year of 2008.

9 Q. Okay. So the project was about four
10 months --

11 A. Yes.

12 Q. -- behind schedule?

13 A. And some of that -- if I may clarify, some
14 of that was due to construction, and some of that was also
15 due to, as you recall, we had a rotor failure on startup,
16 which is really nothing to do with construction, but it
17 was operation of the plant.

18 Q. Now, do you recall when KCP&L's last rate
19 case was filed? My next question, I'm going to have to
20 compute the 11-month time period. Do you recall?

21 A. Oh, golly.

22 Q. Does anyone remember that off the top of
23 their head? It's not a trick question.

24 A. I think Mr. Rush may remember that.

25 MR. FISCHER: How about September 5th?

1 THE WITNESS: That's it.

2 BY CHAIRMAN CLAYTON:

3 Q. September of 2008. And do you recall what
4 the -- were you working for KCPL during this case? When
5 did you leave?

6 A. I left the end of June of '09.

7 Q. Okay.

8 A. So yes, I was -- I was employed with KCPL.

9 Q. You saw this case through to the end --

10 A. Yes.

11 Q. -- that's a fair statement?

12 Okay. And this case also had an odd
13 circumstance where you-all extended your tariffs for a
14 longer period of time. So I think didn't we go out an
15 extra couple of months to address some of these issues?

16 A. We did.

17 Q. Now, do you recall the test year in the
18 last rate case?

19 A. I believe it was calender year 2007.

20 Q. 2007?

21 A. Mr. Rush is shaking his head, so I'm not
22 sure that's --

23 Q. Let me ask you this question. This is
24 really what I'm getting to. You have your calendar year
25 and then you have an update and a true-up period; is that

1 correct?

2 A. That's correct.

3 Q. And you recall the ending date of that
4 period? I'm confusing two different things, so feel free
5 to explain.

6 A. The true-up date ended up being April 30th
7 of 2009.

8 Q. 2009, that would be right, because the case
9 concluded sometime after that. So April 30th, 2009, and
10 was that date set at the beginning of the case? When it
11 gets filed and you have a procedural schedule set, is that
12 when the true-up date is set?

13 A. I believe the true-up date was originally
14 set end of March of 2009, and we asked the Commission to
15 give us an extra month. Because of the rotor incident, we
16 had delays getting the in-service criteria met. So I
17 believe we asked the Commission for another month, were
18 granted that, and we ended up needing that because, as I
19 said, it came in toward the end of April.

20 Q. Would it be a fair statement that the
21 true-up date of April 30th was specifically designed to
22 include the investments made in the Iatan 1 AQCS project
23 as it would have been completed and fully in service by
24 that date?

25 A. Yes.

1 Q. So there's no coincidence associated with
2 April 30th?

3 A. No.

4 Q. Is it a public number if I ask, what would
5 be -- what would be KCP&L's total cost for the Iatan 1
6 AQCS standalone projects and not including common plant?
7 Is that a public number?

8 A. I believe -- I believe it is. I -- right
9 now, the total cost of the Iatan Unit 1 project estimate
10 was 484 million.

11 Q. That's the total cost, and then KCP&L would
12 have 70 percent of that --

13 A. Right.

14 Q. -- or whatever the percentage is?

15 A. Right. And of that 484, we still -- or
16 KCPL still projects to be under that amount roughly
17 \$20 million when all the contract --

18 Q. And that would be exclusive of common
19 plant?

20 A. Yes. Well, it's a -- it's a weird
21 description, but let me make -- I don't want to mislead
22 you.

23 Q. I'm easily misled. Go ahead.

24 A. The 484 million did include about
25 114 minimum of common. That wasn't all the common,

1 though. So if you -- but it's part of that 484. The
2 total common that we allocated, that was allocated to both
3 units was 353 million.

4 Q. Say that number again.

5 A. 353 million is the total common for both
6 units.

7 Q. Is that the anticipated or the total
8 incurred to date?

9 A. That was -- that's the anticipated?

10 Q. The budget?

11 A. Yeah.

12 Q. Budgeted number. Okay. So the true-up
13 date was set as April 30th of 2009 with the idea that the
14 Iatan 1 improvements would be completed and fully in
15 service by that date. And so there was an assumption that
16 at least a portion if not all of those costs would be
17 addressed in that pending rate case; is that a fair
18 statement?

19 A. Yes.

20 Q. Now, was the -- were there overruns over
21 and above the budget control number associated with the
22 Iatan 1 AQCS?

23 A. Yes.

24 Q. And in that -- in that rate case, can you
25 tell me how much the commission authorized KCPL to add to

1 rate base?

2 A. I believe -- you get into the
3 jurisdictional allocation and the partners and that kind
4 of thing. I believe Mr. Rush has that number in his head,
5 but I -- you know, roughly I want to say roughly KCPL's
6 share of common and Iatan 1 in rates is about
7 \$380 million.

8 Q. 380.

9 A. That's rough.

10 Q. So how much -- how much would -- and feel
11 free to do what you need to do. I'm not looking for the
12 exact figures.

13 A. Okay.

14 Q. So how much of those dollars would be in
15 play for the Commission to consider in terms of prudence
16 associated with this report, the amount that are included
17 in rates right now?

18 A. The Stipulation & Agreement would have that
19 amount capped at 30 million for KCP&L and 15 million for
20 GMO's share of that roughly 380, 390 million.

21 Q. Okay. So you've got 380 included. KCP&L
22 that entity, only 30 million could be disallowed as not
23 being a prudent expenditure in the next rate case
24 potentially; is that correct?

25 A. That's correct.

1 Q. Now, that leaves some additional dollars
2 that have yet to be included in terms of common plant?

3 A. Most --

4 Q. Common costs?

5 A. Yeah. There's a little bit, not a lot.
6 Site finishing, once we're -- both units are completed
7 there will be some pavement and some refinishing of roads.
8 That and I believe there's some interconnection on
9 transition. That's the only pieces that are left on
10 common, with the exception of the auxiliary boiler, which
11 is also common. That's about \$5 million.

12 Q. So how much would you say if we say total
13 costs for Iatan 1 that are still left that they're not
14 included in rate base that KCPL would be asking for
15 inclusion in the next rate case, total Iatan 1 AQCS and
16 Iatan 1's share of the common plant that is not included
17 in rate base today? And we're talking in KCPL
18 jurisdictional or total numbers, whatever you have.

19 A. In total, I would say in total 20 million,
20 25 million.

21 Q. Okay. Now, would you say it is a common
22 occurrence or a rare occurrence or some mixture of both
23 for significant -- a significant investment or cost
24 associated with that investment being part of the true-up
25 case of a utility when it files its case? Is such a large

1 expenditure normally included as part of the true-up
2 rather than included in the test year?

3 A. I think your analogy is a good one. What I
4 would consider is, very similar to a regular rate case,
5 the bulk of the hearing, the prudence issues could be
6 tried in the normal hearing rate case. Final invoices,
7 numbers, even if you had an invoice, say, that came in by
8 the time of the true-up that even impacted a prudence
9 adjustment, that would be fair for the true-up.

10 That's one of the -- one of the things that
11 we think of in terms of an analogy of a prudence review
12 versus an invoice or an update type review.

13 Q. Do you know when Staff concluded its audit
14 in the last rate case? If the case was filed in September
15 of 2008, do you have an idea of when Staff would have
16 concluded its case?

17 A. It would have been when they filed their
18 direct testimony, and I'm thinking September, they
19 probably filed in February or March.

20 Q. So early 2009?

21 A. Yes.

22 Q. Late 2008, early 2009. Now, at that point,
23 how much of the Iatan 1 expenditures were available for
24 audit by the time Staff concluded its direct case audit?
25 Of the -- of what, the 353 million eventually added to

1 rate base, how much would have been spent by the time
2 Staff filed its direct case?

3 A. I don't have a handle on that. I do
4 believe -- the best I can do, I think, is to say that
5 about by the May 31, 2009 date, I think testimony earlier
6 was about 92 percent had been spent.

7 Q. By May?

8 A. By May. So I can't really say by February.

9 Q. But it would be something less than
10 92 percent?

11 A. Correct.

12 Q. Because there would be expenditures ongoing
13 throughout this time period? From the time KCPL filed the
14 rate case in September of 2008, the construction was
15 ongoing, there were expenses being incurred, that was all
16 taking place over this time?

17 A. Yeah. The construction was actually
18 completed by February of '09.

19 Q. Okay.

20 A. But there's a lag for invoices to come in.

21 Q. Yeah, that word comes up a lot around here.
22 Comes up a lot around here.

23 A. So construction was actually completed, and
24 the unit was started up in February. And then we had the
25 rotor incident, which was not a construction issue but an

1 operations issue. But those invoices would probably take
2 two, three, four months to May to get -- to get in, but
3 the construction activity had actually been completed.

4 Q. So -- well, since you clarified that, do
5 you recall whether Staff had filed its direct case by the
6 time Iatan 1 AQCS projects were completed and in service?

7 A. Yes, they had.

8 Q. They had filed their audit?

9 A. Yes.

10 Q. So their direct case had been filed. So
11 what did KCP&L anticipate that Staff would do or the type
12 of audit or analysis or recommendations, what did KCP&L
13 anticipate considering that Staff had concluded its audit,
14 then the plant went into service, then you have the
15 problems with the rotor and you've got three or four
16 months that pass? What was KCP&L's position at that point
17 in terms of what Staff should have done?

18 A. KCPL's position at that time was that Staff
19 should have completed a prudence review that -- decisional
20 prudence review of the cost, the construction, when they
21 filed their testimony. You know, the invoice review, the,
22 you know, check the invoices as they come in could have
23 been done in the true-up proceeding or --

24 Q. I'm sorry. Go ahead and finish.

25 A. -- or even in the next case.

1 Q. Let me ask you if -- you're suggesting two
2 different types of audit, what you just said, prudence on
3 the front end and then an invoice audit I guess on the
4 back end; is that a fair statement?

5 A. That's fair, yes.

6 Q. So would the prudence review relate to
7 dollars at all?

8 A. Yes.

9 Q. Or would that just be assessing whether the
10 equipment was necessary or whether the site was the right
11 place or whether to keep the plan going?

12 A. No. It would be dollars.

13 Q. Explain to me how the dollars -- how the
14 dollars would be assessed in the prudency review versus
15 the invoice review.

16 A. Well, the dollars in the prudence review,
17 for instance -- and I'll use the Alstom example. The
18 settlement with Alstom occurred sometime in
19 October/November of 2008. That settlement, all the
20 rationale for that settlement and the cost of that
21 settlement, which in this case was \$22 million, all of
22 that's known and the dollar amount is known, and the
23 question there is, was it a prudent settlement?

24 All the documentation supporting that
25 decision is available. The arbitrator's information is

1 available. So that decision of prudence could be made
2 prior to filing the case.

3 Another example would be one that we've
4 talked about. During the outage we had about 4,000
5 workers onsite at the Iatan site, not all on Unit 1, but
6 that many people. KCPL was required to bus a number of
7 employees, and we selected Kiewit to make it less
8 confusing. So all Kiewit employees were bused about a
9 mile and a half to the site.

10 The project, the Unit 1 project incurred
11 about 2, 2 and a half million dollars for that busing.
12 And I don't know what the Staff's position is on that
13 issue today, but, for instance, they have investigated
14 that issue and, you know, should there have been more
15 parking or what -- you know, why did you have to -- is it
16 just because you had a lot of workers onsite but part of
17 the workers onsite was due to the fact the outage had to
18 extend because we had economizer work that we had to do.

19 So all of that information is available,
20 and the costs are available. So it's saying, well, was
21 that a prudent decision, and could you have mitigated that
22 at the time or -- so I think those kind of decisions, the
23 costs are known. You may not have the final invoice, but
24 let's say for some reason in that busing scenario it's
25 2 and a half million, and then when you get the final

1 invoice it ends up being 2.6 million. You just add
2 \$100,000 to the prudence.

3 Q. In your example, the busing issue, what is
4 Staff's position on that issue? Specifically what was the
5 finding, if any?

6 A. I am not sure. They did not include that
7 in their December report, so it's one of those out -- I
8 don't know at this point.

9 Q. Now, if Staff were to make the finding
10 that -- well, let's say that they recommend that it's not
11 a prudent expenditure for whatever reason. Now, KCP&L
12 doesn't dispute that that issue could be brought up, a
13 recommendation to disallow the amount could be brought up,
14 and then that would be fair game in the next rate case.
15 That would be appropriate under the stipulation and the
16 comprehensive energy plan, correct?

17 A. Correct.

18 Q. So is it a fair statement that KCPL'S gripe
19 in this instance is that basically no decision or
20 recommendation was made on it at all?

21 A. Well, that and there was no decision made
22 by December 31, 2009. In other words, all -- KCPL's
23 position is in this instance is all of those disallowances
24 in that report will be presented in the next case, and
25 that's consistent with the stipulation, but there should

1 be no more prudence issues introduced in that case, other
2 than what's in that December 2009 report.

3 Q. Associated with those issues?

4 A. Yes. Well, any prudence issue.

5 Q. Any prudence issue?

6 A. (Witness nodded.)

7 Q. So is there a -- is there a -- is there a
8 date on which KCPL believes that the Commission or the
9 Staff should not look backward beyond a certain date in
10 terms of expenditures or decision-making?

11 A. Not -- only on prudence issues. Not on
12 invoices or --

13 Q. So on what date were all decisions made
14 about the Iatan 1 AQCS?

15 A. Everything was completed by first of
16 February 2009.

17 Q. So basically you're suggesting that
18 decisions prior to that February 1st date, a
19 recommendation should have been made or should be made at
20 this point?

21 A. Yes.

22 Q. How many years have you been in the utility
23 business?

24 A. 34.

25 Q. 34. And prior to the Iatan 1 -- prior to

1 the comprehensive energy plan of 2005, had you been with
2 any utility, including KCPL, where a large generating
3 station had been under construction, placed into service?

4 A. Yes.

5 Q. Which were those?

6 A. LaCygne 2; KCP&L, Iatan 1, the original
7 construction, which was 1980; Wolf Creek, 1986.

8 Q. Now, let's go back to Wolfe Creek, 1980 I
9 believe you said. Did Staff conduct a prudency -- when
10 did Staff conduct a prudency audit of -- I'm going to go
11 back. I keep thinking of a prior question.

12 Do you recall the in-service date for Wolf
13 Creek?

14 A. It was -- the actual in-service date was, I
15 believe, in the fall of 1985. The rate case and rates
16 weren't effective until, I believe, May of 1986.

17 Q. What was the process that Staff used in
18 completing the prudency audit of Wolf Creek if the
19 decisions that the plant went into service in the fall of
20 1985, I'm assuming that prudency would be reviewed as of
21 that date or a similar date?

22 A. The prudency was reviewed between the
23 1980 -- September sticks in my mind, September of '85 and
24 the rates went in in May of '86. So during that
25 timeframe, the hearings were being conducted and that kind

1 of thing. So the prudence decisions were already on the
2 record by that time.

3 Q. And when did Staff conduct its audit? When
4 did Staff conduct its prudency audit on Wolf Creek? Did
5 it occur in the direct filing of the rate case that took
6 place immediately following the in-service date of Wolf
7 Creek?

8 A. That is my recollection, but I -- you know,
9 that's been a long time ago, but -- but Staff, my
10 recollection is they did an audit, about a two-year audit
11 long before Wolf Creek was even near completion. So they
12 were already in onsite. I think Mr. Featherstone
13 mentioned this morning they actually had a trailer onsite
14 dedicated to the Staff. So it was different. As you say,
15 it was different then than it is now.

16 Q. What was the total cost of Wolf Creek? Do
17 you remember?

18 A. I believe it was 3 billion total.

19 Q. And do you recall, did the Commission
20 approve adding 3 billion in equivalent to rate base?

21 A. There was some disallowance, and I -- I
22 don't recall the exact amount. There were categories of
23 disallowance. I believe one was -- and I have to remember
24 whether it was Missouri or Kansas, but there were
25 disallowances. Some were for -- well, the prudency

1 disallowances I think were around \$200 million, but my
2 memory is not very good anymore. I'm sure Mr. Dottheim
3 would know.

4 Q. Okay. Do you recall with Wolf Creek, was
5 its in-service date included in the test year or in the
6 true-up period, or do you recall?

7 A. I don't recall. In fact, I don't believe
8 we had true-ups back in that day.

9 Q. So true-ups are a relatively recent
10 phenomena?

11 A. Yeah. I would say definitely within the
12 last ten years.

13 Q. When you compare the difference between a
14 prudence audit and then the invoice audit, the close-out
15 bills associated, if you make -- if you make a decision on
16 prudence, doesn't that restrict what you're able to do in
17 terms of an invoice audit in terms of making decisions on
18 disallowances?

19 A. I don't think so. Like I said before, if,
20 for instance, you made a prudence disallowance of
21 \$20 million based on the facts you had at the time and the
22 actual invoices come in and instead of 20 million related
23 to that issue it's 20.1, then you would adjust your
24 prudence to 20.1 based on the invoice. So it's -- I don't
25 think it conflicts at all.

1 Q. Has the -- are you aware, has the
2 Commission ever ordered in your experience, 34 years,
3 completion of an audit in the manner that the Commission
4 has done in this case?

5 A. No.

6 Q. So that's a little out of the ordinary?

7 A. Well, may I explain?

8 Q. Please.

9 A. Never before in my experience has there not
10 been an audit conducted in the rate case where the
11 investment was proposed to be in service. So in other
12 words, the initial oddity was Staff filed their case with
13 no audit, no review, and a presumption that we can just do
14 this and take everything above the control budget estimate
15 and make it subject to refund.

16 That is really -- and I don't want to use
17 an inappropriate word here. It's really unusual and
18 potentially devastating to the company. And I'll use
19 Iatan 1 as an example, and I want to use Iatan 2 as an
20 example. Iatan 2, as you may or may not know, we are
21 going to have the same issue. Based on everything I've
22 seen from Staff, every report and pleading I've read, when
23 we filed the Iatan 2 case, which we will probably do
24 within the next month or so, they won't have a prudence
25 audit on Iatan 2. Are they going to come in to that case

1 and say, make everything above the CBE subject to refund
2 and we'll audit it later? That's \$600 million.

3 Q. Is the overrun?

4 A. Yes, compared to the control budget
5 estimate. Now, in Iatan 1's case, it's 100 million, which
6 causes, as you'll hear Michael Cline testify, causes some
7 concern in the investment community. Can you imagine in
8 the Iatan 2 case Staff takes the same position? Well,
9 Commission, we didn't do our audit, we're not done,
10 600 million, make it subject to refund. That's -- that's
11 unusual, which is why I think the Commission ordered the
12 Staff to complete the audit by December 31.

13 Now, obviously there's some confusion about
14 is that the prudence audit, is that the full invoice
15 audit. I think the company's position is it was a
16 prudence audit and finish it and let's go down the road.

17 Q. Do you recall -- and I can't remember if
18 I've asked this question. Wolf Creek went into service at
19 a \$3 billion cost. Do you recall what its budget control
20 estimate was and what the overrun was associated with Wolf
21 Creek?

22 A. I don't. I know it was substantial because
23 of all the, you know, the nuclear issues during that time,
24 Three Mile Island, new safety, new reengineering. And I
25 don't recall what was called the, what would be equivalent

1 to our control budget and tracking. I don't recall what
2 that number was, but it was substantial.

3 Q. Do you remember what the disallowance was
4 when compared to the overrun?

5 A. Like I said, in Missouri, I'm thinking
6 KCPL's share was about 1.5 billion. I seem to recall a
7 disallowance of a 200 million range out of 1 and a half
8 billion.

9 Q. And of that 1.5, what would have been the
10 overrun?

11 A. I don't know. I can't remember, because
12 I -- I just don't know when that budget was set, and there
13 were --

14 Q. Well, I guess what I'm getting at, did the
15 Staff in that instance -- you're suggesting that the
16 subject to refund component of the last rate case was out
17 of the ordinary, so I'm just trying to get a sense.

18 A. Sure.

19 Q. In Wolf Creek, since there wasn't a subject
20 to refund component, I'm assuming, how did the
21 disallowance compare to that overrun? Was it just
22 disallowed, is I guess what I'm getting at? I'm assuming
23 your answer is no.

24 A. Well, the total disallowance -- and I'm not
25 clear, but I seem to remember about 200 million out of a

1 1.5 billion investment. I can't really say was the
2 control budget estimate in that case a half a million or a
3 billion. I just don't know.

4 Q. I want to go back just to clarify, and I'm
5 going to finish here very quickly. What was the dollar
6 amount that KCP&L believes is still in play associated
7 with Iatan 1? I just -- identify either total or KCP&L's
8 share.

9 JUDGE STEARLEY: Before you answer that, I
10 believe this was the subject of that highly confidential
11 document, the dollar amount. I just muted our webcast
12 because if we need to go in-camera for that, we've got to
13 go in-camera.

14 CHAIRMAN CLAYTON: I don't want to go
15 in-camera. I thought we'd already covered that.

16 JUDGE STEARLEY: There was a percentage
17 given, but the actual dollar amount was part of one of
18 Staff's exhibits, I believe, or one of KCPL exhibits that
19 was highly confidential.

20 CHAIRMAN CLAYTON: Well, there was a number
21 that was thrown out, the total -- I don't know. I want to
22 say it was around \$80 million. Wait. Did you turn that
23 on, now that I said it? That was a number that he said on
24 the --

25 JUDGE STEARLEY: That number was out there.

1 There's another number that's in one of the exhibits that
2 was HC, and I want to be sure we're not going into that
3 territory.

4 CHAIRMAN CLAYTON: I'll go back and read
5 the transcript and I won't ask that.

6 BY CHAIRMAN CLAYTON:

7 Q. I did want to ask this question. This came
8 up in some discussion earlier. What were the -- do you
9 recall the total amount of legal fees associated with
10 Iatan 1?

11 A. No.

12 Q. Do you know what the percentage of
13 disallowed legal fees are compared to the total legal
14 fees?

15 A. No.

16 Q. Thank you very much.

17 A. You're welcome.

18 JUDGE STEARLEY: Recross based on questions
19 from the Bench.

20 MR. DOTTHEIM: Yes, very briefly. May I
21 approach the witness?

22 JUDGE STEARLEY: You may.

23 RE-CROSS-EXAMINATION BY MR. DOTTHEIM:

24 Q. Mr. Giles, I'm going to hand to you a
25 packet of materials that I distributed this morning,

1 copies of Orders and pleadings from Case No. EO-82-88, in
2 the matter of construction audit of Kansas City Power &
3 Light Company's Wolf Creek Nuclear Generating Station.

4 And if you'd just take a moment to look at that,

5 A. Okay.

6 Q. And you indicate any number of times the
7 longevity with which you've been with Kansas City Power &
8 Light, and I think those number of years would carry you
9 back beyond this case, EO-82-88, and I just wanted to ask
10 you if you had any memory of that case?

11 A. Some.

12 Q. What is your recollection of that case?

13 A. It was a nightmare.

14 Q. And, I mean, this was not literally the
15 Wolf Creek rate case that I'm referring to. This
16 EO-82-88, it's not literally the Wolf Creek rate case
17 itself, which went on for six weeks of hearings. So I
18 don't know that I would disagree with you when you
19 describe it something as a nightmare.

20 But this case, as you see up at the top
21 where it has a filed stamp on it, it has -- and this is
22 the Motion for an Order Directing a Construction Audit,
23 and it's a motion of the Staff, but the stamp is
24 October 8, 1981. And the rate case itself literally
25 didn't occur until the '85/'86 timeframe. In fact, as I

1 referred to this morning, KCPL actually filed initially a
2 rate case, I believe it was in 1984, and then withdrew and
3 refiled it shortly thereafter.

4 But this was a case started by the Staff
5 for purposes of the Staff filing on a semiannual basis
6 reports on it performing a construction audit of Wolf
7 Creek, and the Staff never filed a single audit. And
8 ultimately the Commission -- it's actually the very last
9 Order in the packet, Order and Notice of Dismissal. It's
10 the last two pages. The Commission dismissed the case in
11 August of 1984, August 21, 1984. And if my memory serves
12 me correctly, in that Order there's reference to Kansas
13 City Power & Light.

14 JUDGE STEARLEY: Excuse me, Mr. Dottheim, I
15 really don't want -- hate to interrupt, but do you have a
16 question for the witness?

17 MR. DOTTHEIM: Yes.

18 BY MR. DOTTHEIM:

19 Q. After having explained this, do you recall?
20 Do you recall this case?

21 A. Well, this particular, not the rate case,
22 but this --

23 Q. This particular case.

24 A. No.

25 Q. Okay.

1 A. No.

2 MR. DOTTHEIM: All right. That's my
3 question.

4 JUDGE STEARLEY: Thank you. Just need to
5 make sure that you weren't going to be doing the
6 testifying.

7 MR. DOTTHEIM: Yes. I've been accused of
8 doing that.

9 BY MR. DOTTHEIM:

10 Q. Mr. Giles, were you in the hearing room
11 earlier today when Mr. Featherstone was on the stand?

12 A. I was, yes.

13 Q. Did you hear him testify in regards to the
14 Hawthorn 5 rebuild after the catastrophic explosion?

15 A. I did.

16 Q. Is it your recollection that Hawthorn 5,
17 after being rebuilt, was placed into rates prior to a
18 Staff construction audit, prudence review?

19 A. I believe that's what he said. I believe
20 that's accurate. May I explain?

21 Q. Yes, please. Go ahead.

22 A. That particular instance was dramatically
23 different circumstance. That Hawthorn rebuild was, we
24 were reimbursed by insurance. So the dollars of rate base
25 associated with that Hawthorn rebuild were minimal.

1 Q. I think you've made reference to decisional
2 prudence. Can you cite me to a prior Commission case
3 where prudence review is defined as or called a decisional
4 prudence audit?

5 A. No.

6 Q. And I -- there's also been discussion about
7 your concern about how Staff would approach Iatan 1
8 becoming fully operational and used for service. Were
9 you -- you were present, were you not, and I think it was
10 April 15th, for an Iatan project quarterly progress
11 meeting here in the Commission's offices?

12 A. Yes, I was. I think you meant Iatan 2.

13 Q. Iatan 2.

14 A. But you're right, I was here.

15 Q. Okay. And do you recall after that meeting
16 on the Iatan 2 quarterly progress meeting whether there
17 was a subsequent meeting between the Staff and
18 representatives of Kansas City Power & Light?

19 A. Yes, I'm aware that there was a meeting, I
20 did not attend, but after the construction meeting
21 regarding potential schedule for filing, true-up dates,
22 that type of meeting.

23 Q. And that meeting talking about scheduling
24 and true-up dates, that was in regards to the
25 soon-to-be-filed Iatan rate case of Kansas City Power &

1 Light?

2 A. Yes.

3 Q. And to your knowledge, there was nothing
4 preventing Kansas City Power & Light from broaching with
5 the Staff how the Staff might approach addressing a
6 prudence review/construction audit of Iatan 2 in that
7 soon-to-be-filed rate case?

8 A. Nothing that would prevent the type of
9 discussion that I'm aware of. I suspect given this
10 hearing that was coming up this week, any discussion along
11 those lines were not probably deemed appropriate until we
12 see where this goes. That's just my speculation.

13 Q. As you said, that's speculation on your
14 part?

15 A. Yes, it is. I didn't attend the meeting,
16 and I've not discussed it with the other regulatory staff.

17 MR. DOTTHEIM: Thank you again, Mr. Giles.

18 THE WITNESS: You're welcome.

19 JUDGE STEARLEY: Yes. Go ahead,
20 Mr. Chairman.

21 CHAIRMAN CLAYTON: Mr. Dottheim, can I ask
22 you a question --

23 MR. DOTTHEIM: Yes.

24 CHAIRMAN CLAYTON: -- regarding the exhibit
25 that you've been discussing?

1 MR. DOTTHEIM: Yes. I didn't offer it as
2 an exhibit. I just distributed it.

3 CHAIRMAN CLAYTON: We took notice this
4 morning. I'm specifically referring to the Motion for an
5 Order Directing a Construction Audit and the subsequent
6 Orders that are attached in this packet. I think you went
7 through those just a minute ago with Mr. Giles.

8 I wanted -- for clarification on timing,
9 from Staff's perspective, Mr. Giles suggested that in Wolf
10 Creek, which went into service in the fall of 1986 --
11 excuse me, the fall of 1985, there was a rate case pending
12 at that time, and then Wolf Creek went into rates roughly
13 May of 1986, and that the audit was concluded by that
14 time, disallowances were made, decisions on prudence were
15 made, and I guess the invoices were approved or disallowed
16 at that point.

17 First of all, I wanted to -- does that meet
18 your recollection? And then the second question is, how
19 does this audit fit in to the timing of the rate case in
20 which rates were affected by Wolf Creek going into
21 service? Does that make -- I kind of rambled there.

22 MR. DOTTHEIM: Well, and I too -- well, I
23 am known for rambling. I'll try not to too much. But I
24 was referring to, for example, that last document that's
25 in the packet, the Order and Notice of Dismissal. That

1 Order and Notice of Dismissal, it's my recollection that
2 there's a case number that's referred to there. It says
3 in the second paragraph about tariffs being filed in Case
4 No. ER-85-43. I think that is the case that I've referred
5 to that KCPL first filed and then after several months
6 withdrew because it became clear that Wolf Creek wasn't
7 going to go commercial within the confines of the 11-month
8 statutory period.

9 And I think it was like within a month KCPL
10 refiled the case, and even under those circumstances, it's
11 my recollection that the case couldn't be tried and the
12 Commission deliberate very easily within the 11-month
13 statutory period, and the company accommodated the
14 Commission by, as the 11-month maximum statutory period
15 approached, refiled the tariffs again and the Commission
16 was able to go beyond the 11-month statutory period.

17 But the Staff did -- did complete its
18 prudence audit/construction audit arguably within that
19 timeframe.

20 CHAIRMAN CLAYTON: Which timeframe?

21 MR. DOTTHEIM: Well, within the timeframe
22 to get it with -- to get it within the third case. There
23 were three rate cases.

24 Now, frankly, what happened was the -- what
25 my recollection is, the Case No. ER-85-43, it was highly

1 contentious, some people might say bitter, because, very
2 frankly, the Staff found itself in a situation where I
3 think, frankly, the Staff couldn't get the construction
4 audit and prudence review done within the timeframe of the
5 ER-85-43 case, and the Staff told the Commission that Wolf
6 Creek would not go commercial within the 11-month
7 statutory period of ER-85-43.

8 CHAIRMAN CLAYTON: And that was the third
9 case.

10 MR. DOTTHEIM: No. That was the first
11 case. That was the first case. And fortunately for the
12 Staff, the Staff was correct. KCPL withdrew its tariffs
13 and refiled them.

14 And EO-82-88, which started here in
15 October 8, 1981, the Staff thought in part that by opening
16 a docket for a construction audit and trying to file
17 reports semiannually, putting itself under the gun, it
18 would force itself under some timeframe to generate
19 temporary preliminary audit reports, and it never
20 happened.

21 And the Staff filed for extensions of time,
22 which were granted, and there's -- there is in here a
23 pleading by KCPL where KCPL sought to have the Commission
24 order the Staff to file an audit report, and the
25 Commission declined to do so.

1 Frankly, I guess maybe I'm -- maybe this
2 might be thought by some maybe unseemly, but maybe under
3 the circumstances to me it seems somewhat appropriate.
4 You're not going to -- well, you won't find these cases in
5 the MoPSC Reports because I don't know that people were
6 proud enough to publish them in the MoPSC Reports.

7 You're also not going to find publicly that
8 the executive director, staff director of the Commission
9 asked on behalf of a Commissioner for affidavits from the
10 General Counsel and the director of the utility division,
11 affidavits saying that there would be construction audits
12 and prudence reviews done for the Wolf Creek and the
13 Callaway cases, there was that much concern.

14 CHAIRMAN CLAYTON: By a certain date, you
15 mean?

16 MR. DOTTHEIM: In time to have them done
17 for the Wolf Creek and Callaway cases themselves. Those
18 affidavits did not materialize, and I will tell you that
19 that Commissioner was not at the Commission for the
20 hearing of the Wolf Creek and the Callaway cases. And
21 that's probably -- maybe I've said too much, but under the
22 circumstances, I frankly think it's appropriate for me to
23 give the Commissioners some more perspective. Not that --
24 not that that justifies or explains anything that happens
25 in 2010. That just is to provide some perspective for

1 whatever it's worth.

2 The construction audits/prudence reviews
3 are arduous efforts to be done properly, and we try to do
4 them properly despite what you've heard today. And there
5 are many things going on, and sometimes we don't do as
6 good a job managing our tasks, and I'm only speaking for
7 myself, not for anyone else. I don't do as good a job
8 managing my tasks as I maybe need to do.

9 And maybe my pointing out to you the
10 history here out of EO-82-88, maybe the Commissioners
11 should have gotten rid of me back in the mid 1980s and
12 none of you folks would be sitting here right now.

13 THE WITNESS: Mr. Chairman?

14 CHAIRMAN CLAYTON: I think we're digressing
15 just a little bit.

16 THE WITNESS: If Mr. Dottheim's through,
17 may I correct a rather large error for the record I made
18 to you in one of my responses?

19 CHAIRMAN CLAYTON: Certainly.

20 THE WITNESS: I believe I stated that the
21 Iatan 2 control budget estimate compared to the current
22 estimate was a \$600 million difference. It's actually
23 300 million. And I just hope the e-mails haven't flown to
24 Mr. Downey and I still have a contract.

25 CHAIRMAN CLAYTON: You're no longer an

1 employee, and that contract is still binding.

2 I just want to finish up with Mr. Dottheim
3 on this one question. Going back with the successive
4 three rate cases that were filed, Wolf Creek was a huge
5 expenditure, I'm assuming larger than this, maybe similar.

6 MR. DOTTHEIM: Larger.

7 CHAIRMAN CLAYTON: Give me an idea when
8 Staff began the Wolf Creek audit, approximate time. How
9 long did it take, and was it ready for the rate case that
10 was filed that included the in-service date? Do you
11 recall that? I mean, did it take three years to audit?
12 Was it an 18-month deal? How much time had passed for the
13 plant to go into service? If you don't know, that's -- no
14 worries.

15 MR. DOTTHEIM: It's -- I'd have to really
16 go back and check calendars and what have you. It -- it
17 was breakneck timing. Frankly, since it's past history,
18 and again I may be digressing much too much, under the
19 circumstances we had to accept the quality that we had,
20 which we weren't happy with. We had no other -- no other
21 choice.

22 So when you ask me what the timing is, I
23 always think about the quality that went along with it,
24 and I always have to qualify that along with it. It's
25 like we can give you an audit, but then it's a question of

1 what is the quality of the audit? You know, what is the
2 scope of the audit? It's just not a matter of can you
3 give us an audit. Yes, we can give you an audit, but then
4 there are questions of quality and scope. And if we have
5 to meet it, we have to meet a deadline, you know, of
6 course we'll meet -- we can meet a deadline, but then
7 again, you know, that doesn't necessarily answer the
8 question of quality and scope.

9 CHAIRMAN CLAYTON: Thank you. I don't have
10 any other questions for Mr. Giles.

11 JUDGE STEARLEY: We're at redirect,
12 Mr. Fischer.

13 MR. FISCHER: Thank you, Judge. Given the
14 late hour and the fact I do need to go down memory lane a
15 little bit, I'm going to come up here if that's all right.

16 We've heard a lot of testimony from
17 counsel table. I don't want to do that too much, but I
18 also was there in a different capacity, and I want to make
19 sure the record is complete, and I'd be happy to answer
20 the Chairman's questions as I understand it.

21 CHAIRMAN CLAYTON: I won't ask about the
22 affidavits.

23 MR. FISCHER: Yeah, okay. I don't know
24 much about that.

25 REDIRECT EXAMINATION BY MR. FISCHER:

1 Q. Mr. Giles, do you recall that in the 1981
2 construction audit that Mr. Dottheim referred to, that
3 that was going on for quite a while before the company
4 ever thought about filing the Wolf Creek nuclear power
5 plant rate case?

6 A. That's my understanding, yes.

7 Q. There was lots of work going on by the
8 engineers and everybody out there before the company ever
9 filed the case?

10 A. Yes. And I just might add that, as
11 Mr. Dottheim and I both agree, that case was a nightmare,
12 and I -- when we set the regulatory plan, my -- it was my
13 suggestion we do quarterly reports and we have quarterly
14 meetings. The whole intent was to have the Staff doing
15 this audit during the time of the construction. And
16 Mr. Elliott and the Services Division have done that.
17 They've been onsite since 2005.

18 Q. I want to go back to that, but I can tell
19 you it was a nightmare for the Commissioners that were up
20 here at the time, too.

21 Do you recall -- there were a couple of
22 cases that the company filed or had to refile because of
23 the 11-month period and the fact the in-service date was
24 slipping. But do you recall that in the final case where
25 the rates were actually set, that all the prudence issues

1 were heard in front of this Commission during that case,
2 the six-week case that Mr. Dottheim referred to?

3 A. Yes.

4 Q. And do you recall that there was a separate
5 set of hearings designed to look at those prudence issues?
6 There was -- is that true?

7 A. That's true. I'm not sure if it was six
8 weeks total or even longer, but --

9 Q. It was broken up, wasn't it?

10 A. Yes, it was broken up. Prudence was a
11 certain period, cost of service was a certain period, rate
12 design was a certain period.

13 Q. And there was an in-service hearing. There
14 were four hearings, weren't there? Is that correct? Does
15 that jog your memory at all?

16 A. I can't remember exactly.

17 Q. Okay. Well, my memory is that we did have
18 four sets of hearings, and the bulk of it was the prudence
19 issues.

20 A. That's correct.

21 Q. And you remember Mr. John Renken spending a
22 lot of time on the stand talking about site work and
23 electrical and all of the things that we had prudence
24 issues about?

25 A. I do, yes.

1 Q. And that all was developed in that
2 construction audit that had preceded and then came up to
3 the rate cases and then was further developed in those
4 rate cases; is that your understanding?

5 A. That's right.

6 Q. And do you recall that as a part of that
7 process, we had all those prudency issues for a couple
8 weeks, we had cost of service, rate of return issues, and
9 I think there was a rate design part of that, and then
10 there was an in-service hearing to make sure it was in
11 service before the rates went into effect. Is that your
12 memory?

13 A. That's -- I recall that.

14 Q. And do you recall that we got to read a
15 thousand-page brief from the general counsel's office? It
16 was that complicated. Do you remember that?

17 A. It was large.

18 Q. And after that, brief page limits started
19 coming into existence.

20 A. I recall that.

21 Q. Okay. That's the way I remember it, too.

22 JUDGE STEARLEY: Thank you for at least
23 phrasing those as questions.

24 (Laughter.)

25 BY MR. FISCHER:

1 Q. If I recall, the overruns in the nuclear
2 units were about \$2 billion. I think the record will
3 reflect and the Orders may reflect that that's how much we
4 were talking about. 1 to 3 billion is where it went.

5 Okay. Well, let me go back to what did we
6 anticipate in the last case. When you saw all of the
7 engineers and all the meetings that we were having, did
8 you assume that it was something like what was going on at
9 Wolf Creek where we were having a construction audit a
10 long time before it ever came into service?

11 A. That's exactly what I thought.

12 Q. Was it a surprise that, unlike Wolf Creek,
13 the prudence issues weren't expected to be tried in the
14 context of the rate case where the company was requesting
15 that the rates go into effect to cover those costs?

16 A. I was totally surprised, as was everyone
17 else in KCPL that was familiar with the case.

18 Q. And were you also concerned when you saw
19 the recommendation to put it in subject to refund?

20 A. I was concerned how the investment
21 community would react, yes.

22 Q. Okay. You also mentioned Iatan 2. Now,
23 what would you anticipate would be the proper way to do
24 that, given the history, other than this last case, given
25 the history of other power plants like Wolf Creek? When

1 would you expect the audit to be going on, and when would
2 you expect the Commission to deal with prudency issues in
3 the context of that project?

4 A. I would expect the prudency and
5 construction audit would have been ongoing since 2006 when
6 Mr. Elliott and his team arrived onsite, and whether --
7 whether they submit testimony or in combination with the
8 Services Division or them alone, that those issues would
9 be in the next rate case that we file here within the next
10 30 days.

11 Q. Now, would you expect that those issues
12 would be -- you'd have to wait until the true-up
13 proceeding to try all those prudency issues if there are
14 any at all?

15 A. No. I would expect the prudency issues to
16 be tried as part of the main hearing in the rate case.

17 Q. Just like Wolf Creek?

18 A. Yes.

19 Q. And then the true-up proceeding, I think
20 Mr. Dottheim's right, that's a more recent development.
21 But we had in Wolf Creek a late hearing to look at the
22 in-service; is that correct?

23 A. Correct.

24 Q. Much like what we would anticipate in this
25 case where you would look at in-service at the end of the

1 Iatan 2 before the rates are adjusted to reflect those
2 costs in rates?

3 A. Yes. In fact, we have exactly that process
4 set up in Kansas.

5 Q. What do you think would be a result if we
6 followed the model that we used last time where there
7 isn't an audit done of Iatan 2 until after, after those in
8 service criteria have been met?

9 A. Well, I think two things. One is, as
10 Michael Cline will testify, it is not going to be well
11 received by the investment community. But more
12 importantly, from the Commission and the company's
13 standpoint, we will be here again with this same
14 proceeding one year after Iatan 2 is in service arguing
15 again.

16 Q. And do you know if there's evidence that
17 there -- when the Staff intends to complete the Iatan 2
18 prudence audit?

19 A. No. I have -- I have my -- I don't know.
20 My presumption is it will be whenever they finish it.

21 Q. Based on the last model, will it be after
22 the Commission issues an Order that tells them to go do an
23 audit?

24 A. That's a real possibility, yes.

25 Q. Okay. Let's go back to the numbers a

1 little bit. I think -- would you agree that Mr. Rush will
2 be a good witness for the Chairman to ask his questions
3 about the numbers to?

4 A. Yes. Yes. Mr. Rush is more familiar,
5 especially since my retirement, than I am.

6 Q. There's a \$733 million number in the last
7 KCPL case and the last GMO case. Is it your understanding
8 that that relates to Iatan 1 plus all common on a total
9 project basis?

10 A. Yes.

11 Q. Okay. And the caps that are included in
12 those stipulations, is it your understanding that those
13 are 30 million on a Missouri jurisdictional basis, that
14 would be KCPL's Missouri jurisdictional share?

15 A. Yes. That's correct.

16 Q. And GMO would be 15 million on a Missouri
17 jurisdictional basis?

18 A. Correct.

19 Q. And I think you mentioned a \$380 million.
20 What is that?

21 A. That is the taking -- and I'm -- what it
22 represents, assuming the number's somewhere close, is
23 KCPL's jurisdictional share of the 733 million. I might
24 also point out, that 733 excludes AFUDC.

25 Q. Is that total company or total project?

1 A. Total project. The 733 million excluding
2 AFUDC is total project, Iatan 1 plus all common for
3 Iatan 1 to operate.

4 Q. Okay. Mr. Rush I'm sure will correct
5 anything on that.

6 A. I believe that's correct, but he may know
7 better.

8 Q. It's late. Let the record reflect it's
9 9:15.

10 Okay. Let's go back to Wolf Creek just a
11 minute. You were there during that period. Do you recall
12 if the Callaway case was tried under the same kind of
13 model where there was a construction audit that had been
14 going on for several years and then there might have been
15 one or two cases, but in the case that the rates actually
16 were adjusted to reflect Callaway, that's when the
17 prudence issues were all looked at?

18 A. Yes. That is true.

19 Q. And then there was a hearing to make sure
20 they were in service and all of that?

21 A. Correct.

22 MR. FISCHER: Judge, that's all I have.
23 I'd be happy to answer any other questions that you might
24 have if I need to clarify what I think happened.

25 JUDGE STEARLEY: This is finishing your

1 redirect?

2 MR. FISCHER: It is. I appreciate your
3 time. Thank you very much.

4 JUDGE STEARLEY: That's no problem.
5 Mr. Hatfield started with this witness. I wanted to be
6 sure.

7 MR. FISCHER: Yeah. I appreciate you
8 letting me -- I didn't know if Mr. Hatfield had the same
9 memory that I had.

10 MR. HATFIELD: I was not here in 1981, just
11 for the record.

12 JUDGE STEARLEY: Mr. Giles, thank you for
13 your testimony. You may step down. As with the other
14 witnesses, I'm not releasing you completely in case the
15 Commissioners would like to recall you for additional
16 questioning.

17 And we will go ahead and recess for
18 tonight. Pick up again tomorrow morning at nine o'clock.

19 WHEREUPON, the hearing of this case was
20 recessed until April 29, 2010.

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