

1 the EOC that was rejected. There was, in the early
2 stages, as we were reporting data, there would be some
3 heated discussions amongst participants. But at the
4 end of the day, whether we're talking about Easley,
5 Price, Churchman, Grimwade, you name it, there was
6 always a very fulsome, open debate as to the data, the
7 options, and appropriate action was taken.

8 COMMISSIONER GUNN: Thank you. I don't
9 think I have anything else, but I want to clarify
10 something with all the counsels, if I may.

11 There was some questions earlier on about
12 some redactions and privileged issues. I just want to
13 understand where we are from that. From what I
14 understand, all those issues were being dealt with and
15 were either under review or had been ruled on by the
16 special master except for the last filed e-mails that
17 are currently under review. Is that -- is that
18 everyone else's understanding as well?

19 MR. STEINER: That's correct, everything
20 except the late-filed e-mails have been reviewed by the
21 special master.

22 JUDGE PRIDGIN: Is that, staff?

23 MS. OTT: Yes.

24 COMMISSIONER GUNN: Now, the second
25 question is: I know that out of those, there were some

1 instances that the special master decided the documents
2 should be provided to Staff.

3 MR. STEINER: That's correct.

4 COMMISSIONER GUNN: Have those been
5 provided?

6 MR. STEINER: Yes, they have.

7 COMMISSIONER GUNN: Have they been
8 provided?

9 MS. OTT: I believe so. I haven't had
10 time to go and verify every single document, but I
11 believe so, but I'm not a hundred percent --

12 COMMISSIONER GUNN: A hundred percent
13 sure. All right. But Mr. Steiner is saying that there
14 have been -- you have no reason to doubt that they have
15 been -- some delivered to you, whether that's a hundred
16 percent accurate or not is yet to be seen.

17 MS. OTT: Yes.

18 MR. SCHWARZ: I have not actively
19 participated in that and I went over with Mr. Roberts a
20 document that was redacted and I don't know if that has
21 been released. I don't know what the decision was on
22 that. I don't know if it was subject to decision. Is
23 that document still redacted?

24 MS. OTT: I believe so.

25 MR. SCHWARZ: Okay.

1 MS. OTT: It's my understanding that
2 Judge Stearley is supposed to be issuing a written
3 order.

4 COMMISSIONER GUNN: Okay.

5 MS. OTT: Analyzing all the documents he
6 has reviewed and what has been released. I'm not a
7 hundred percent sure on that.

8 COMMISSIONER GUNN: But I just want to be
9 clear that instead of having to relitigate some of
10 these issues, that they are being handled -- the
11 privileged issues are being handled in almost a
12 separate proceeding with Judge Stearley.

13 MR. STEINER: That's correct.

14 COMMISSIONER GUNN: That's what
15 everybody's understanding is. Thank you. I don't have
16 anything further. I appreciate you answering
17 questions.

18 JUDGE PRIDGIN: Commissioner Gunn, thank
19 you. Commissioner Kenney.

20 EXAMINATION

21 QUESTIONS BY COMMISSIONER KENNEY:

22 Q. Mr. Roberts, how are you?

23 A. I'm doing as well as an attorney can be
24 on a stand, sir.

25 Q. I understand. Did you want to take a

1 break? I mean, I know it's the judge's purview to call
2 it.

3 COMMISSIONER KENNEY: Does anyone want to
4 take a break, because I have quite a few questions?

5 THE WITNESS: I wouldn't mind taking a
6 quick bathroom break.

7 JUDGE PRIDGIN: Okay. Let's take a quick
8 break. We'll reconvene here at 5:05.

9 (A break was held.)

10 JUDGE PRIDGIN: All right. We are back
11 on the record. Mr. Roberts, you're still on the stand
12 and you're still under oath, sir.

13 THE WITNESS: Yes, sir.

14 JUDGE PRIDGIN: I believe Commissioner
15 Kenney has questions. And whenever you're ready,
16 Commissioner.

17 BY COMMISSIONER KENNEY:

18 Q. My first question is: Did you know that
19 we had some pretty good steaks and beef and bison
20 burgers here in Missouri and you don't have to pay for
21 those Omaha steaks?

22 A. I didn't know you could do mail order,
23 sir.

24 MR. HATFIELD: Burgers Smokehouse will do
25 that.

1 BY COMMISSIONER KENNEY:

2 Q. Can you hear me okay and the volume's
3 okay?

4 A. I can, sir.

5 Q. I just want to ask some questions about
6 the division of your labor and Schiff's labor between
7 expenses associated with the Iatan project and the rate
8 case expense. Because I'm assuming some of the time
9 that you're billing now will be attributable to rate
10 case expense, correct?

11 A. Yes, sir.

12 Q. Okay. Are you able to tell me how much
13 of your time in total is being spent on rate case
14 expense? And I mean from 2005 forward, because I'm
15 assuming you billed time to the Kansas rate case also?

16 A. Yes, sir.

17 Q. And if we start talking about the dollar
18 amount of your legal fees, do we need to go HC?

19 A. I would think so.

20 JUDGE PRIDGIN: If you'll give me just a
21 moment, we'll go in-camera. Just a moment, please.

22 (REPORTER'S NOTE: At this point, an
23 in-camera session was held, which is contained in
24 volume 24, pages 1931 to 1934 of the transcript.)

25

1 JUDGE PRIDGIN: We are in public forum.

2 KENNETH ROBERTS testified as follows:

3 BY COMMISSIONER KENNEY:

4 Q. In your rebuttal testimony, you -- I
5 believe it's your rebuttal testimony, on pages 1 and 2,
6 you talk about the prudence standard. That's not the
7 right page. Well, you discussed -- somewhere in your
8 testimony you discuss the prudence standard and that
9 there's a presumption of prudence and it's incumbent on
10 Staff to raise serious doubt as to that presumption.
11 Is that your understanding?

12 A. Yes, I believe I do that on my direct
13 testimony on pages 4 through 9, sir. I think I do it
14 on --

15 Q. And you discuss it again on your rebuttal
16 on pages 4 through 5, I think.

17 A. Pages 4 through 7, and I think I also
18 discuss it in my supplemental rebuttal on pages 8
19 through 11.

20 Q. What is your understanding of what
21 constitutes "serious doubt" and what is Staff's burden
22 in that regard as you understand it?

23 A. I think serious doubt is when you're
24 reviewing an issue and the decisions that led
25 management to make that -- that decision on that issue

1 under Kris Nielsen's standard, that the data wasn't
2 accurate and was known or should have been known that
3 it was not accurate, that the timing of gathering that
4 data was untimely or should have been known to have
5 been untimely. And that finally that the vetting or
6 decision-making process was not robust, that -- that a
7 serious issue of serious doubt would relate to any of
8 those three, sir.

9 Q. And I don't -- I don't, you know, I'm not
10 trying to be difficult, but you discuss in your direct,
11 your rebuttal and you just pointed out to me your
12 surrebuttal, the legal standards for prudence and you
13 cite case law, at least on pages 4 and 5. And so I'm
14 trying to figure out where I can go to look in some
15 cases or some place that would tell me what serious
16 doubt is. And I ask only because you've opined about
17 it in your testimony.

18 A. Again, I would go to the serious doubt
19 would be based on the criteria of Dr. Nielsen's
20 analysis.

21 Q. Well, let's assume for the sake of
22 argument that Staff raises serious doubt. Does the
23 burden then shift back to the company to prove
24 prudence? And if so, what's the quantum of evidence
25 that they have to put forward?

1 A. I think that if using Dr. Nielsen's
2 analysis, if there was serious doubt raised on an
3 issue, then KCP&L and my understanding of Missouri law
4 would have to present evidence to this Commission that
5 would answer that serious doubt.

6 Q. And is that different from having to
7 prove the prudence of the expenditure in the first
8 instance? Is that a separate burden? They just have
9 to rebut the serious doubt?

10 A. Yes. To answer your question, my
11 understanding of Missouri law on that issue, very
12 similar to other cases, would be on the issue of
13 construction prudence. It's assumed that the decisions
14 that the company made were prudent unless a serious
15 doubt is raised and a serious doubt would be judged by
16 the factors that Dr. Nielsen goes into what is a
17 prudent decision. Once that's raised, then the company
18 would have to answer to the Commission's satisfaction
19 that indeed the -- the serious doubt -- the red flag
20 that was raised was, in fact, addressed properly under
21 Nielsen's analysis and therefore would be deemed
22 prudent.

23 Q. Okay. Let me turn now to the discussion
24 of liquidated damages yet again. And I suspect you're
25 worn out on discussing this issue. But I want to

1 understand, when we're talking about the liquidated
2 damages and -- do we need to go HC in talking about the
3 Alstom settlements?

4 JUDGE PRIDGIN: I was just about to ask.

5 MR. STEINER: We need to go HC.

6 JUDGE PRIDGIN: Just a moment, please.

7 (REPORTER'S NOTE: At this point, an
8 in-camera session was held, which is contained in
9 volume 24, pages 1939 to 1969 of the transcript.)

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1 JUDGE PRIDGIN: All right. Good evening,
2 we are back on the record. Before we went on the
3 record, I had a brief scheduling conference with
4 counsel present. And just to announce my understanding
5 of what we discussed, beginning Thursday, we would need
6 to go out of order on witnesses and take KCP&L witness
7 Hathoway out of order Thursday. And then take MEUA
8 witnesses Gorman and Meyer out of order Friday and
9 KCP&L witness Schneider out of order on Friday. And
10 other than that, at least for time being, we would
11 continue with the list of witnesses as listed on the
12 KCP&L list of witnesses.

13 MR. STEINER: Your Honor.

14 JUDGE PRIDGIN: Mr. Steiner.

15 MR. STEINER: There was -- we moved -- to
16 save time, we moved an issue with Weisensee, which was
17 in the Iatan 1, Iatan 2 and common regulatory asset
18 that was in this initial phase, we just moved that to
19 when he appears on the traditional rate case issues.
20 So he was supposed to come after Henderson on the KCP&L
21 list of witnesses, and so we would -- as we get done
22 with Henderson, then it would go to Staff witnesses.

23 JUDGE PRIDGIN: I'm sorry, what day would
24 that be? I'm not finding that.

25 MR. STEINER: He was initially a witness

1 for prudence on our list of prudence witnesses.

2 JUDGE PRIDGIN: I'm not finding him on my
3 list of prudence witnesses.

4 MR. STEINER: It was a supplemental
5 filing I did that clarified.

6 JUDGE PRIDGIN: Okay.

7 MR. STEINER: And I am just saying that
8 his issue would be done -- it's the regulatory asset
9 issue for Iatan 1 and Iatan 2 in common. When he first
10 appears on other rate case matters, which we don't know
11 what day that will be --

12 JUDGE PRIDGIN: What day is it on the
13 schedule? I realize it might be late.

14 MR. STEINER: It's currently on the, I
15 believe, the 28th.

16 JUDGE PRIDGIN: Okay. I see him. Thank
17 you. All right. So assuming we are on schedule, the
18 first day he would appear would be the 28th.

19 MR. STEINER: That's right.

20 JUDGE PRIDGIN: And I realize we're not
21 on schedule, but I just wanted to make sure I
22 understood what you were saying. Did I correctly state
23 counsel's understanding of how we were going to adjust
24 your schedule on Thursday and Friday?

25 MR. STEINER: Yes.

1 JUDGE PRIDGIN: Okay. Thank you.
2 Anything further from counsel before we resume
3 examination of Mr. Roberts? All right. Mr. Roberts, I
4 would remind you you are still under oath and Mr.
5 Schwarz, any recross?

6 MR. SCHWARZ: No, Judge.

7 JUDGE PRIDGIN: Mr. Mills?

8 MR. MILLS: Just a little bit.

9 JUDGE PRIDGIN: I almost called you Mr.
10 Miles.

11 THE WITNESS: Sorry.

12 MR. MILLS: I've been called worse,
13 there's no doubt about that.

14 KENNETH ROBERTS testified as follows:

15 RECROSS-EXAMINATION

16 QUESTIONS BY MR. MILLS:

17 Q. Mr. Roberts, you had some discussion with
18 I believe it was with Commissioner Kenney, but it may
19 have been earlier with Commissioner Gunn about
20 privilege and the proceedings in Ontario. Do you
21 recall that, with respect to the OPG project?

22 A. Yeah, I believe that was with
23 Commissioner Gunn.

24 Q. Okay. And I believe you said that there
25 was some questions raised about either the amount or

1 the type of information that was considered privilege.
2 was that your testimony?

3 A. I think that the testimony was that the
4 information that we gave to OPG being a Crown company
5 was considered to be a part of the attorney-client and
6 therefore not subject to the freedom of information.

7 Q. Okay. And who raised issues with that
8 approach?

9 A. There was a number of outside groups.

10 Q. Customer groups?

11 A. Yes.

12 Q. And ultimately, how were those issues
13 resolved?

14 A. The information was deemed to be
15 privileged and was not disclosed.

16 Q. Did the fact that the information was not
17 disclosed, did that have any bearing on the rates set
18 in those proceedings?

19 A. It was -- no. To answer your question,
20 no.

21 MR. MILLS: That's all I'm going to ask,
22 thanks.

23 JUDGE PRIDGIN: Mr. Mills, thank you.
24 Ms. Ott?

25 MS. OTT: I just have some clarification

1 questions that related to questions Commissioner Kenney
2 had.

3 (REPORTER'S NOTE: At this point, an
4 in-camera session was held, which is contained in
5 volume 24, pages 1975 to 1977 of the transcript.)

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JUDGE PRIDGIN: We are back in public.

Thank you.

BY MS. OTT:

Q. You were also having some discussion about Schiff providing analysis to senior management in documents. Now, you said you provided that to KCP&L?

A. Yes.

Q. Would you agree with me that Staff's never received that document?

A. Would you repeat the question?

Q. The analysis that you provided to senior management regarding the concessions, Staff never received those documents?

A. I don't want to quibble with you, but I wouldn't call them concessions. There was justifications for the Alstom 1 settlement and justification for the Alstom 2 settlement that we provided on or about the time of the settlements that KCP&L's senior management -- it's my understanding that those documents have, in fact, been provided to you.

Q. Would they be redacted?

A. As I sit here right now, I do not know.

Q. And the same with --

A. I don't believe they were.

1 Q. In going with the Marks facilitation,
2 which you have discussed here today, are you aware that
3 staff has never been provided any documents related to
4 the facilitation?

5 A. I believe the facilitations were
6 identified in the quarterly reports that were provided
7 to staff, and I know that when I appeared in front of
8 staff, I don't remember you being there, Ms. Ott, but I
9 know that I was there and that we discussed that we
10 were doing facilitations with Jonathan Marks as to how
11 we were resolving issues.

12 So I don't -- I mean, I don't know what
13 you mean by "documentation," but I believe that -- that
14 through the quarterly reports, through the Schiff
15 reports that were provided to staff, but more
16 importantly through the actual appearance by KCP&L, it
17 was well known to staff that we were -- that KCP&L was
18 involved in these facilitations with Jonathan Marks in
19 an attempt to resolve issues with the contractors.

20 Q. And I'm not saying staff wasn't aware
21 that you had a facilitation with Jonathan Marks. I'm
22 saying we didn't receive any documentation related to
23 that facilitation with Jonathan Marks, or any -- any
24 opinion.

25 A. I don't understand your question.

1 MR. HATFIELD: She hasn't asked you one,
2 so.

3 BY MS. OTT:

4 Q. I said Staff --

5 A. You want me to answer what you received?
6 I don't know how to answer that.

7 Q. Are you aware that KCP&L objected to the
8 information related to the facilitation?

9 A. I'm not aware of that.

10 Q. I'll hand you a copy of Staff Data
11 Request 652 in which KCP&L objected to any
12 communications related to the facilitation with
13 Jonathan Marks. Can you agree that KCP&L objected to
14 any meetings, notes and correspondence between KCP&L,
15 Schiff Hardin and Jonathan Marks related to this issue?

16 A. I mean, I can read it. The description
17 references Ken Roberts of Schiff Hardin, invoiced work
18 on 7/21/09, "Please provide a copy of the Alstom
19 contract amendment referenced here. Please provide a
20 copy of all meeting notes, correspondence between KCP&L
21 and Schiff and Schiff and Jonathan Marks related to
22 this issue."

23 Response: "Please see the objection,
24 information provided via attorney on 1/15/2011.

25 Objections: KCP&L objects to the provision of 'all

1 meeting notes and correspondence between KCP&L and
2 Schiff and Schiff and Jonathan Marks' on the ground of
3 attorney-client privilege, work product doctrine and
4 mediation privilege. KCP&L also objects on the basis
5 that this data request is unduly burdensome." It's
6 dated 1/14/2011.

7 Q. Thank you. Did Schiff Hardin recommend
8 Alstom to KCP&L?

9 A. No.

10 Q. Did Schiff Hardin recommend that they
11 award the contract for Alstom?

12 A. Alstom participated in a bidding process.

13 Q. So did Schiff recommend? It's yes or no.

14 A. We didn't not -- Alstom and B&W
15 participated in a bidding process. Through the bidding
16 process, Alstom was selected. So Schiff didn't have a
17 role in recommending or Alstom -- Alstom won the award
18 pursuant to KCP&L's procurement process. Does that
19 answer your question?

20 Q. So no, you didn't recommend Alstom to --
21 KCP&L award Alstom the contract?

22 A. They were awarded pursuant to a KCP&L
23 procurement process.

24 MS. OTT: I have nothing further.

25 JUDGE PRIDGIN: Ms. Ott, thank you.

1 Redirect?

2 MR. HATFIELD: Yes, Judge. Just a little
3 bit. And to convince you I'm serious, I won't even get
4 up.

5 REDIRECT EXAMINATION

6 QUESTIONS BY MR. HATFIELD:

7 Q. Let's start where we ended. Just to be
8 clear on this, Ms. Ott was just asking you about Alstom
9 and your role with regard to the hiring of Alstom. And
10 I'll start at the end. Was it imprudent to hire
11 Alstom?

12 A. Absolutely not.

13 Q. Why was it -- I assume the converse would
14 be true, you believe it was prudent to hire Alstom on
15 this contract?

16 A. Absolutely.

17 Q. And can you explain why?

18 A. Number one, it was a great value on the
19 contract. Mr. Drabinski has identified that it was
20 below the budget estimate that had been put into the
21 CBE. And based on our experience, it was a tremendous
22 value just in terms of the dollars that Alstom was
23 willing to sign up for. It was, in fact, a fixed price
24 contract.

25 To the best of my knowledge, there was no

1 contract in the industry similarly signed for -- for
2 that value at a fixed price. We had a number of
3 utilities that contacted us afterwards and said can
4 you, in essence, get us that deal, and we said no, you
5 know, that this was -- it was -- it was a
6 one-of-a-kind.

7 And finally, I think Alstom has a great
8 reputation. They have a great product, and the -- that
9 product is seen today in a working form.

10 Q. I know you talked to Commissioner Kenney
11 about that, so let's stay on that for just a minute.
12 To give us some context, based on your experience in
13 the industry and your years working in the industry,
14 how many options are there in terms of companies that
15 do -- I want to say what Alstom does.

16 A. There are at best a handful, and maybe
17 even less than that in terms of that were actively
18 bidding projects of that size. We had two that were
19 actively engaged and willing to get into a fixed price
20 contract.

21 Q. And in terms of your conversations with
22 Commissioner Kenney about -- how should we say it? --
23 how Alstom behaved, for want of a better term. In your
24 experience, was that behavior significantly out of the
25 norm for the construction industry?

1 A. Not at all. These are big numbers. It's
2 -- these are long, hard-fought negotiations on any type
3 of settlement and any of the -- of the good contractors
4 that know what they're doing in this business, all of
5 those negotiations are extremely hard fought.

6 Q. And then let me just clean something up
7 before we go to some bigger issues. Ms. Ott also
8 showed you a data request, and I think I remember --
9 let me see if I'm right. Have you seen this before?

10 A. I don't believe I've seen it before. I
11 think it was -- if I'm reading the date correctly,
12 1/14/2011 would have been last week.

13 Q. So do you know whether this particular
14 discovery dispute has been submitted to Judge Stearley?

15 A. I have no idea.

16 Q. Do you know whether Judge Stearley has
17 ruled on this particular discovery dispute?

18 A. I have no idea.

19 Q. All right. Thank you. All right. Now,
20 I mentioned the big picture a minute ago. When we
21 started, we put up some sort of -- spread around the
22 room some boards with some timelines on them.

23 A. Yes.

24 Q. Are those things that you have referred
25 to at times during your testimony?

1 A. I have.

2 Q. Why do you need to refer to those?

3 A. It's a five-year project with multiple
4 dates and multiple issues happening at different phases
5 of the job.

6 Q. And is it important to keep in mind when
7 various events are occurring on this five-year-long
8 job?

9 A. I think it's -- I think it's critical in
10 terms of trying to provide helpful useful information
11 to the committee, to the Commission.

12 Q. And let's -- let's, then, talk about an
13 issue that came up with one of the Commissioners, I
14 believe. Maybe even before that. Does the date of
15 Schiff Hardin's hiring appear on the big timeline?

16 MR. HATFIELD: And the Commission has a
17 timeline similar to what's in front of you, I believe
18 it's 74.

19 JUDGE PRIDGIN: I believe it's 74, yes.

20 BY MR. HATFIELD:

21 Q. Exhibit 74. Does the date when Schiff
22 Hardin was hired appear on that timeline?

23 A. It does.

24 Q. And do you have an 8.5 x 11 sheet in
25 front of you?

1 A. I do.

2 Q. And which page does that date appear on?

3 A. Page 1. And if you count the lines that
4 signify information from left to right, I believe it's
5 one, two, three, four, five -- I believe it's the sixth
6 line in, right after -- well, it says 8/17/2005, KCP&L
7 retained Schiff Hardin, LLP.

8 Q. So you were having a bit of a colloquy, I
9 believe, with Commissioner Gunn about when you were
10 brought in and what problems there were, either before
11 or after, depending on your perspective. So I think we
12 can do this quickly, on this timeline, just to make
13 sure we're on the same page. Before Schiff Hardin was
14 retained, there had been Burns & McDonnell, right?

15 A. Yes, on 9/9/2004.

16 Q. There had been a regulatory plan approved
17 by the Kansas City Power & Light board of directors,
18 right?

19 A. Yes, on 2/1/2005.

20 Q. There was a stipulation and agreement
21 submitted to the Missouri Public Service Commission for
22 approval, right?

23 A. Yes, on 7/28/2005.

24 Q. The Missouri Commission approved that
25 submission, right?

1 A. Yes.

2 Q. Down below the line here, right?

3 A. Yes.

4 Q. On July 28, 2005?

5 A. Yes, sorry, yes.

6 Q. There was a purchase order issued to

7 Black & Veatch --

8 A. To prepare boiler specifications on

9 8/5/2005.

10 Q. And then Schiff Hardin was hired?

11 A. That's correct.

12 Q. And Schiff Hardin was involved in the

13 project from that point forward?

14 A. Yes.

15 Q. And so is that -- what are we looking at

16 here, three weeks after the Missouri Commission

17 approved the stipulation, Schiff Hardin is formally

18 attained?

19 A. Approximately.

20 Q. And just to clear up some testimony that

21 you talked about earlier with regard to the CEP,

22 assuming that the CEP includes a target provisional

23 acceptance date of June 1st of 2010, do you believe

24 that it was in any way imprudent for Kansas City Power

25 & Light to enter into a CEP that included a target

1 provisional acceptance with that date?

2 A. Absolutely not. Indeed, as part of
3 Schiff's review of contracting strategy, the time
4 period for construction as of that date fit within the
5 windows of construction that we had seen at other
6 plants. And in studying further plants that were done
7 on or about this time, the time period for
8 construction, as identified, fit within that time
9 period. So there was nothing wrong with the 6/1/10
10 date and indeed appeared to be very reasonable.

11 Q. And are you aware of any significant
12 project decisions that were made by KCP&L before Schiff
13 was retained?

14 A. No.

15 Q. Now, staying on the big picture for just
16 a minute, there's been quite a bit of discussion with
17 counsel and some Commissioners concerning Schiff
18 Hardin's project oversight. And let's just talk about
19 the big picture. In your experience in the industry,
20 when you get ready to -- I think you said that you've
21 done project oversight for other projects other than
22 this one, right?

23 A. Yes.

24 Q. When you're getting ready to bid on one
25 of these projects, do you have sort of a general rule

1 of thumb -- "bid" is a wrong word.

2 A. I don't bid.

3 Q. Commissioner Jarrett asked you about
4 that, I think. When you're preparing a budget, you've
5 done that before?

6 A. Yes.

7 Q. For one of these projects, do you have a
8 general rule of thumb as to percentage of overall
9 project costs that needs to be budgeted for project
10 oversight?

11 A. Yes.

12 Q. And what -- what is that general
13 budgeting percentage?

14 A. For projects of this size for legal
15 contract administration, contract negotiation, dispute
16 resolution during the course of the job, all of those
17 types of services, I think our budget has typically run
18 between one and two percent. Industry-wide looking at
19 projects where we've come in on the tail-end, I think
20 that my number of projects have had that budgeted
21 anywhere from two to five percent.

22 If there is any type of litigation,
23 there's any type of dispute, any problem, the low end
24 of that budget gets blown up. It looks like it's on
25 steroids and that's where you get to the five or six

1 percent. If the project runs smoothly, it's typically
2 I believe in the two to three percent range.

3 Q. All right. And so on this project, I
4 mean, now sitting here in hindsight, Mr. Roberts, looks
5 like a big number, \$20 million. Where do you come in
6 as a percentage on the total project?

7 A. We're below one percent.

8 Q. And is that consistent with what you've
9 seen in your personal experience with other projects?

10 A. That's typical for Schiff's work on
11 projects of this size with this type of magnitude.

12 Q. And I think you've already answered it,
13 but assuming a one percent actual cost to completion,
14 where does that fall on an industry-wide basis?

15 A. I believe -- and Dan Meyer can talk about
16 it -- it's an extremely low percentage and maybe
17 Nielsen can even talk about it. It's an
18 unbelievably -- it's at the low end of the spectrum.

19 Q. Now, continuing to talk about the Schiff
20 Hardin bills, you mentioned, I believe in
21 cross-examination from maybe Ms. Ott, the review that
22 was occurring from Mr. Riggins and Mr. Reynolds. And
23 I'm not sure that you've -- whether you finished. Can
24 you just briefly summarize what that review was?

25 A. Yes, I can. It would start with our

1 roles and responsibilities document that laid out the
2 types of services that we would provide, whether it was
3 the project controls setting up the actual data that
4 would collect data on schedule or budget, to the
5 contract negotiations, to the contract administration
6 that would include change orders, to the negotiations
7 of the issues that would arise on a project of this
8 size, to potentially helping them on the rate case.

9 So that document, that roles and
10 responsibilities, which was generated in early fall of
11 '05, that gets folded into the big picture budget that
12 we've discussed that was presented to -- to KCP&L that
13 really laid out those roles and responsibilities and
14 put dollars associated with those tasks for a five-year
15 project.

16 The key on that document was the idea
17 that there would be no surprises to Reynolds or Riggins
18 during the course of the project as to what type of
19 work would be coming.

20 The third point would be that before we
21 had bodies onsite, people doing work, I would have
22 conversations with Riggins and Reynolds where I would
23 be describing who those people were going to be, their
24 rates, their scope, we'd be talking about their
25 expected hours. And there would be two to three

1 meetings with Riggins and Reynolds on those issues.

2 Number four, there was the vendor
3 liability report. Each month -- that would list that
4 we had to prepare to give to Riggins and Reynolds, it
5 would list their current invoices. But more
6 importantly, it would give a one-month look-ahead as to
7 anything that we were doing again to verify to legal
8 and to Riggins and Reynolds the expected work that we
9 would do.

10 We were -- Number five, there would be a
11 prebill that I would walk -- excuse me, before I get to
12 the prebill, my internal team would do a deep dive on
13 each of the issues. So Carrie Okizaki, others spent
14 many hours reviewing the bills to make sure the entries
15 were correct. And then I would review those bills line
16 by line. Then would I have prebill meetings with
17 either Riggins or Reynolds where I would walk through
18 the bills; and more importantly, what the write-downs
19 would be to Riggins and Reynolds.

20 And just to give you a brief example, for
21 the year 2010, on the January invoice, there were 147
22 entries, eight were written off. On the February 10th,
23 there were 142 entries, two were written off. In
24 March, there was 173 entries, seven were written off.
25 And in April, there were 144 entries, four were written

1 off. On April, there was 136 entries, three were
2 written off; June, there was 127 entries, ten were
3 written off.

4 I can go down through it. Those types of
5 write-offs to make sure they understood how I was
6 adjusting it and why, that type of review would happen
7 in the prebill and they would -- and we would have
8 discussions. Then the bill itself would be sent to
9 Riggins or Reynolds and there would be yet another
10 meeting going through the actual bill they got to make
11 sure that it comported with the discussion and the
12 prebill.

13 And so all in all, I would estimate that
14 on any Schiff invoice submitted to KCP&L, there was a
15 minimum of five meetings, and most likely seven to
16 eight, going over our scopes of services for the --
17 that month before they were incurred, description of
18 the rates, description of who was doing it, and then a
19 detailed explanation when they -- so when they got the
20 bill, they understood exactly what was written off,
21 write-downs.

22 And that's why in response to one of the
23 Commissioner's questions on one of the days, why wasn't
24 there a pushback. There was tremendous effort made. I
25 would say by both KCP&L and Schiff so that when KCP&L

1 got the bill, there were no surprises, they understood
2 exactly what was done, the scope, the size, the effort
3 was all, in essence, thoroughly discussed in multiple
4 meetings.

5 Q. So let me briefly ask you about an
6 invoice. Ms. Ott handed you, Exhibit 227-HC, and you
7 were having a discussion about a particular entry of
8 yours that actually appears on page 16, I believe. Do
9 you still have 272-HC?

10 A. I do, that was the 6/25/09 bill at
11 Medina.

12 Q. And I just want to, by way of example,
13 would you look at page 16, 17, 18, three pages starting
14 with the one Ms. Ott chose. Just to give the
15 Commissioners some perspective on another issue, are
16 there any redactions on any of those three pages
17 starting where Ms. Ott started and going back three
18 pages?

19 A. Yes, there are.

20 Q. And what are those?

21 A. On 6/26?

22 Q. No, no -- sorry.

23 A. Sorry, I thought you meant, no, sorry.

24 It's late. No, there are no redactions.

25 Q. Okay. So -- and there is narrative there

1 that takes, fair to say, almost three full pages,
2 right?

3 A. Yes.

4 Q. Okay. So no redactions. Now, the
5 question I was getting ready to ask you: Do any of
6 those three pages reflect any what I call prebill
7 write-offs? Does that term mean something to you?

8 A. Yes, it was the process I just described
9 on 6/26, Carrie Okizaki discussed strategy for Kiewit
10 and Alstom settlement agreements. That was a zero
11 time. On 6/30/09, review and analyze Alstom's response
12 to KCP&L settlement offer for Unit 2. Mandy Schermer's
13 time.

14 Q. That's a zero entry?

15 A. Zero entry. And that's why in the
16 prebill discussion, I would walk through with Riggins
17 and Reynolds what exact work I was -- what they had
18 shown for time, what I was writing down and why, so
19 that they wouldn't just see a zero and they would have
20 a full understanding. And in each of those cases, I
21 would tell you I think that the time could have been
22 billed but it was an effort to -- to aggressively scrub
23 the numbers and give them a solid bill.

24 Q. So just one more question on the invoice
25 and then we'll move on, but we have several

1 Commissioners who have practiced law and billed people.

2 So on the first page we were looking at, Ms. Okizaki

3 has a zero entry?

4 A. Yes.

5 Q. And I notice that you have an entry,

6 telephone conference with Ms. Carrie Okizaki.

7 A. Yes.

8 Q. And then she has an entry, discussed

9 strategy for Kiewit and Alstom settlement agreements.

10 A. Yes.

11 Q. And is there some reason that her entry

12 is zero or that you reduced that? Is it because she's

13 having a conference with internal people?

14 A. Well, my time was for 6/25.

15 Q. My bad. Never mind.

16 A. It would have been where if I -- when I

17 was looking at the level of effort and what we were

18 doing to the degree I thought we were belt and

19 suspenders trying to hit something hard, I would go

20 through and aggressively in essence try to find areas

21 to give a discount for the bill.

22 Q. And now moving on from the invoices,

23 there was some discussion about your hourly rates and

24 geographic discounts and whether you had more than one

25 rate. I think that was with Commissioner Gunn. Does

1 your testimony -- I can't remember which one it is, so
2 let's just say testimony, did you contain any schedules
3 that look at Schiff's hourly rates compared to other
4 law firms?

5 A. It was part of my testimony, and I'm on
6 the executive committee so I have access to this at
7 Schiff, we showed two studies that are well-renowned
8 within the legal community that in terms of what is the
9 standard rates in your area, geographic locations.
10 Those were both contained in my testimony, yes, sir.

11 Q. And one was a Pricewaterhouse study; is
12 that right?

13 A. One was a Pricewaterhouse and the other I
14 believe was the Citibank.

15 Q. All right. Now, also continuing with the
16 discussion of the big picture, we talked a lot about
17 Alstom and we talked about some different settlements
18 with Alstom and timing. You recall all of that?

19 A. Yes.

20 Q. Can you give the Commission a little
21 perspective on the amount of money that has been spent
22 with Alstom in this project?

23 A. I mean, all in, would have to go to the
24 control budget estimate, but you know, somewhere in the
25 range of I want to say seven to eight hundred million.

1 Q. Okay. And in your testimony, I believe
2 it's in your direct, there's a little fold-out sheet
3 that has a schedule with it. Do you have that there?

4 A. You'd have to direct it to me, Chuck. At
5 this hour of the night.

6 Q. I was afraid you were going to say that.
7 In your direct testimony -- actually, it's a schedule.

8 A. So it's an attachment to the testimony?

9 Q. Yes.

10 A. I don't have that up here with me, Chuck.

11 Q. Okay. I'll tell you what I'm going to
12 do. There's something like this in your testimony.

13 MR. HATFIELD: Judge, can I just approach
14 real quickly?

15 JUDGE PRIDGIN: You may.

16 BY MR. HATFIELD:

17 Q. I believe it's Schedule 5 down at the
18 bottom of that sheet, but can you just -- I don't want
19 you to get into all the detail of what's in it, but can
20 you tell us what that chart depicts?

21 A. This would be what we refer to as a
22 walson chart. That was typically prepared and
23 presented both to the team onsite but to the oversight
24 committee for senior management. And it's showing --
25 it's tracking Alstom's progress on the job. Their

1 monthly plan actual and earned manhours and it's --
2 it's showing what the -- what they planned to do, what
3 they actually earned, and what their actual costs to
4 earn those hours were.

5 Q. Can you give us some general magnitude of
6 what the number of manhours attributable to Alstom have
7 been on this project?

8 A. As of the week ending 12/06/09, Unit 2
9 has actually expended 2,143,317 hours to earn 1,370,759
10 hours.

11 Q. Okay. And did you get an Alstom jacket?

12 A. I did not.

13 Q. All right. So I guess rather than ask
14 you a series of questions, there were a series of
15 questions that were asked by Ms. Ott, I believe, maybe
16 by a Commissioner. And I think I understand the
17 general implication, so let me ask you: Did you
18 roll-over to Alstom in these negotiations with them?

19 A. Absolutely not. They were hard-fought,
20 long negotiations.

21 Q. Did you have any reason to pull any
22 punches in your negotiations with Alstom?

23 A. It was just the opposite. It was -- it
24 was a fulsome discussion where everything was put on
25 the table.

1 Q. And have you had experience with Alstom
2 in the past in your career?

3 A. I have, and the predecessor that did this
4 work, ABB, as well.

5 Q. And have you been adverse to Alstom in
6 the past?

7 A. By "adverse," they've been contractors on
8 projects where we've represented the owner.

9 Q. And I think you may have mentioned this,
10 but just based on your experience, dealing with your
11 experience in the industry, was settling these claims
12 the best thing to do in order to control costs on this
13 project?

14 A. I think using the Nielsen standard of
15 what constitutes prudence, there's no -- no doubt that
16 given the -- the facts and issues and where we were in
17 each of the settlements with Alstom, it was the right
18 thing to do. It was the prudent thing to do and I
19 think that the facts will support that it was always in
20 the favor of KCP&L and that they got their bang for the
21 buck by making the settlements and advancing the
22 project to the dates and costs that it did finish.

23 Q. Now, I think we -- the Commissioners get
24 it from your testimony, but just to be clear, were you
25 personally involved in the discussions with Alstom to

1 settle the claims that have been discussed?

2 A. Yes.

3 Q. And do you have any doubt that if you had
4 told Alstom to go pound sand, you'd end up in
5 litigation?

6 A. There is absolutely no doubt in my mind
7 that we would have had major litigation with Alstom and
8 it would have had a significant impact to both the
9 schedule and the cost of this project.

10 Q. And if you had taken that course of
11 action and ended up in litigation, would the amount of
12 money that -- that ended up being paid to Schiff Hardin
13 have been even higher than what it's projected to be
14 now?

15 A. It would have -- there would have been
16 significant legal fees paid to Schiff or another firm
17 to resolve these controversies in a full-blown
18 arbitration.

19 MR. HATFIELD: Judge, I've saved to the
20 end, I'm almost done with this, I think we need to go
21 into HC just briefly.

22 JUDGE PRIDGIN: All right. Just a
23 moment, we'll go into HC.

24 (REPORTER'S NOTE: At this point, an
25 in-camera session was held, which is contained in

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

3 KENNETH ROBERTS testified as follows:

4 BY MR. HATFIELD:

5 Q. Exhibit 272 was an invoice -- maybe I
6 should have asked you this earlier. Was -- but in
7 reference to that, does Schiff break out on invoices
8 which portions of its bill are attributable to rate
9 cases?

10 A. We do.

11 Q. And Exhibit 272 on the cover there has it
12 broken out Missouri and Kansas, correct?

13 A. It does.

14 Q. And was that done on -- was that done
15 routinely?

16 A. Yes.

17 Q. Commissioner Kenney asked you a question
18 about, and I believe Ms. Ott did as well, about having
19 Schiff Hardin attorneys here who are not witnesses --
20 actually, let me break that into two parts.

21 There was a question about Mr. Meyer, and
22 the Mr. Meyer you identified is the same Mr. Meyer
23 that's providing testimony to this Commission, right?

24 A. And who has not testified yet.

25 Q. And who we expected to testify a little

1 earlier in the proceeding as I recall; is that right?

2 A. I believe so.

3 Q. All right. And then we have some
4 attorneys here who are not listed as witnesses?

5 A. That's correct.

6 Q. And without disclosing what you discussed
7 with Ms. Humphrey, can you tell us why you believe it's
8 valuable to have them here?

9 A. First and foremost, this is a heavily
10 contested hearing with Staff and Drabinski seeking a
11 disallowance that's above and beyond those sought in
12 Wolf Creek or Callaway percentage-wise. So it's a
13 heavily contested matter with huge numbers at stake for
14 KCP&L. Number one.

15 Number two, the attorneys that are
16 present here that -- the Schiff staff that's present
17 here has an intimate knowledge of the facts and issues
18 and documents that pertain to this hearing and lived
19 and breathed this project for the last five years and
20 their value is in that knowledge and assisting KCP&L to
21 get the facts in evidence in front of this Commission
22 so that they can make a reasonable decision.

23 Q. Commissioner Kenney -- or no,
24 Commissioner Gunn, I believe, you had a little
25 discussion about the use of attorney-client privilege

1 and how "using attorney-client privilege" is what I
2 wrote down might make it hard to analyze prudence. Can
3 you explain a little bit just at a high level how the
4 Commission -- what information the Commission has
5 available to analyze prudence even though
6 attorney-client privilege has been invoked in some
7 places?

8 A. I'd start off with I think that I leave
9 this to the attorneys, the amount of time that
10 documents have been redacted, percentage-wise is
11 extremely small, relates to commercial legal issues
12 that have been identified. More importantly, that's a
13 great question for Nielsen because he was able to do
14 his prudence analysis, what were the facts available,
15 what information was given to senior management, were
16 those reasonable and sound decisions given the facts
17 and circumstances, that analysis that Kris Nielsen did.

18 And then the second part, obviously, of
19 that analysis is that if it is anything, that it have
20 an impact. Dr. Nielsen's analysis, which I think is
21 pretty much standard in the industry, he was able to do
22 that and making his determination on prudence. And so
23 I think the facts and information from reports and
24 documents that were not redacted was sufficient for Dr.
25 Nielsen, one of the heavyweights of the business, to

1 make that decision. It can be done.

2 Q. Thank you. And I -- oh, Commissioner
3 Jarrett asked you about quarterly meetings with Staff
4 and whether you had been in some of those meetings.

5 A. I have.

6 Q. Can you share with the Commission the
7 questions Mr. Hyneman had for you during those
8 meetings?

9 A. I can't recall Mr. Hyneman ever asking a
10 single question.

11 MR. HATFIELD: Thank you. I don't have
12 any further questions, Judge.

13 JUDGE PRIDGIN: Mr. Hatfield, thank you.
14 Mr. Roberts, I believe you may step down.

15 THE WITNESS: Thank you.

16 JUDGE PRIDGIN: Thank you very much. Is
17 -- is it Mr. Nielsen or Dr. Nielsen?

18 MR. SCHWARZ: Judge, I would move to
19 strike all testimony asserting or referring to Schiff
20 Hardin services or costs as being in any way reflected
21 in the control budget estimate. And I do so on the
22 basis of foundation.

23 I asked Mr. Downey to identify the Schiff
24 Hardin costs in the CBE and he indicated that he could
25 not do so. I asked Mr. Roberts about budget matters