

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 25, 2011

Jefferson City, Missouri

Volume 23

In the Matter Of the Application)
of Kansas City Power and Light)
Company for Approval to Make)
Certain Changes in Its Charges) File No.
For Electric Service to Continue) ER-2010-0355
Implementation of Its Regulatory)
Plan)

In the Matter of the Application)
of KCP&L Greater Missouri)
Operations Company for Approval) File No.
To Make Certain Changes in Its) ER-2010-0356
Changes for Electric Service.)

RONALD D. PRIDGIN, Presiding
SENIOR REGULATORY LAW JUDGE
TERRY M. JARRETT,
KEVIN GUNN,
ROBERT S. KENNEY,
COMMISSIONERS

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Jennifer Leibach, CCR No. 1780
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1 JUDGE PRIDGIN: Good morning. We are on
2 the record. Mr. Drabinski is back on the stand, and I
3 remind you, sir, you're still under oath.

4 Is there anything from counsel before
5 KCP&L resumes cross-examination? All right.

6 Ms. Cafer, when you're ready.

7 MS. CAFER: Thank you.

8 CROSS-EXAMINATION (continued)

9 QUESTIONS BY MS. CAFER:

10 Q. The good news is by taking a break, I was
11 able to organize and I think I've compressed this down
12 to a much shorter time period to finish. I did want to
13 ask you, though, about a couple of times yesterday you
14 said that when I was asking you about the support for
15 the disallowances and the support that we needed for
16 the explanation of what you saw in the supporting
17 documentation that indicated that a certain expense was
18 imprudent. A couple of times when I asked about that
19 supporting information, you said that you were only
20 allowed to view those documents onsite and not take
21 them with you or have copies. So you didn't include a
22 lot of that in your testimony. Do you remember?

23 A. That's correct.

24 Q. And isn't it true that the KCC Staff
25 issued data requests to KCP&L during the Kansas cases

1 asking for all the supporting documentation on Iatan
2 projects from September 2004 forward that included cost
3 portfolio, cost summaries, change orders, purchase
4 orders, the logs, the voucher detail, all that
5 information, they requested that in a data request and
6 it was given to the Staff?

7 A. I think what you're referring to are just
8 that, logs and lists. I don't think it was the
9 voluminous background for every purchase order and
10 change order.

11 MS. CAFER: I need to mark an exhibit,
12 and it's not confidential.

13 (Exhibit No. 77 was marked for
14 identification by the Court Reporter.)

15 JUDGE PRIDGIN: Commissioner Kenney, can
16 you hear us all right, sir?

17 COMMISSIONER KENNEY: Yeah, I can hear
18 you now. Thank you.

19 JUDGE PRIDGIN: Very good, sir. Thank
20 you.

21 (Exhibit No. 78 was marked for
22 identification by the Court Reporter.)

23 BY MS. CAFER:

24 Q. Mr. Drabinski, I've just handed you two
25 documents that are KCP&L Exhibits 77 and 78. Exhibit

1 77, isn't that a data request from KCC Staff member
2 Laura Bowman that's identified as Question Number 54?

3 A. Yes.

4 Q. And in there, hasn't she asked for all
5 the supporting documentation back to 2004, and she
6 lists what all that is included -- is to have included
7 with it, correct?

8 A. Correct.

9 Q. And it should include the things she
10 listed, but not be limited to that, right? It should
11 be all supporting documentation?

12 A. That's correct.

13 Q. And the company provided all of that
14 information. If you look on page 2 of 3, it shows all
15 the attachments that were included.

16 So the Staff had access to all of those
17 documents, the supporting information and -- correct?

18 A. They had access to this information,
19 which looks like it's Excel spreadsheets, which means
20 that it's a spreadsheet, which implies that it's the
21 summary of the vouchers -- I believe I looked at this.
22 These are summaries of vouchers. This isn't the actual
23 backup data. For every purchase order, for every
24 change order, there's correspondence, letters, approval
25 documents. Those aren't spreadsheets. Those are

1 voluminous, sometimes two, three, four-inch thick
2 documents which are the documents that we looked at
3 onsite.

4 I received lists of purchase orders and
5 lists of vouchers and lists of change orders. That's
6 not the detail that we were talking about that provides
7 the in-depth analysis and support as to exactly why
8 something changed. Those are letters, those are
9 inspection reports. Sometimes there were drawings
10 attached to them. That's nothing that you'd find in a
11 spreadsheet. So this would not have given me any more.

12 Q. This would have given you all the change
13 orders and the purchase orders and the logs and -- I
14 mean, can you tell me a little more specifically what
15 you're saying?

16 A. I have the logs of change orders. I have
17 the logs of purchase orders. Those logs are included
18 as Exhibit 36 in my testimony. This is no different
19 than that.

20 what we looked at onsite were the actual
21 files for an individual change order or purchase order,
22 which included the letters and correspondence
23 requesting it, the justification, the analysis, the
24 approval process.

25 Q. And you're saying that that information

1 you were not allowed to have copies of, it wasn't
2 provided to the Staff?

3 A. I don't know if it was provided to Staff.
4 Laura Bowman worked with me on this project for months.
5 She came to the site and inspected them and at no point
6 in time did she ever suggest that she had this
7 information back in Topeka. We don't need to be in
8 Weston, Kansas -- or Missouri. And what I'm seeing
9 here are a list of Excel spreadsheets.

10 Q. So you don't know if it was given to
11 Staff and available to you?

12 A. Well, you just told me all the backup was
13 given. What I'm looking at here are a set of
14 spreadsheets. What you're telling me is these are the
15 lists and summaries of purchase orders, change orders,
16 cost summary queries, common -- these are queries.
17 This isn't the backup.

18 The backup would be letters, drawings,
19 handwritten notes from the field, inspection reports by
20 the field engineers.

21 Q. So when you asked for the supporting
22 documentation, or when Ms. Bowman did, the supporting
23 documentation necessary to conduct the cost audit,
24 you're saying this was not responsive to that?

25 A. I can't tell you what Ms. Bowman was

1 asking for or whether she felt it was non-responsive.
2 It had nothing to do with the work we were doing. This
3 was done -- I don't want to read, but there's a
4 discussion of the curb and the Staff are going to
5 conduct this audit and the fashion it's done for Unit
6 1, and it discusses what their approach is.

7 Ms. Bowman did her own analysis. It was
8 independent of ours. And while we used data requests
9 that had been previously requested in order to minimize
10 having to request new stuff, I don't believe this goes
11 to the issue that we discussed last night.

12 Q. And you were given -- KCP&L gave you
13 access to data and the information that you're talking
14 about whenever you asked for it, didn't they?

15 A. well, just --

16 Q. I mean, they set up a trailer for you
17 onsite --

18 A. That's correct.

19 Q. -- that you could go work at and have all
20 this information whenever you wanted it?

21 A. That's correct.

22 Q. And the second exhibit that I've had
23 marked 78, that was a follow-up to 54 where Ms. Bowman
24 asked just that this initial information that we had
25 given her just be updated; she didn't indicate that it

1 was insufficient in any way, did she?

2 A. I don't know what Ms. Bowman was doing.

3 Q. well, you worked with the Staff, isn't
4 that who you were working for?

5 A. I didn't work for Ms. Bowman.

6 Q. well, she's part of the Staff.

7 A. She's a technical personnel who works for
8 the Staff, but, you know, I worked for the legal side.
9 I worked with some of the accounting people, and Ms.
10 Bowman was available to us when we were doing analysis
11 onsite. We didn't work together. I didn't review her
12 testimony, I didn't review her work product, nor did
13 she review mine.

14 Q. And you didn't know what information she
15 had?

16 A. well, I had access to all of the
17 information that had been requested by any party in
18 Kansas.

19 MS. CAFER: One more exhibit that will
20 be, I believe, 79.

21 (Exhibit No. 79 was marked for
22 identification by the Court Reporter.)

23 BY MS. CAFER:

24 Q. Can you identify for me what I have
25 marked as KCP&L Exhibit 79?

1 A. It's an e-mail I sent to Brad Lutz
2 regarding a visit indicating that Justin Grady and
3 Laura Bowman, who are KCC Staff accountants, would be
4 working with me at the Iatan site and requesting the
5 following change order to review onsite.

6 Q. And that's the same Laura Bowman who
7 issued data requests in Exhibits 77 and 78?

8 A. That's correct.

9 Q. And you requested that Mr. Lutz -- who
10 works for KCP&L, correct?

11 A. Correct.

12 Q. You requested that he have available to
13 you all the supporting documentation on these change
14 orders?

15 A. That's correct.

16 Q. And was it available?

17 A. I believe it was, yes.

18 MS. CAFER: Thank you, Mr. Drabinski.

19 That's all I have.

20 JUDGE PRIDGIN: Ms. Cafer, thank you.

21 MS. CAFER: I'm sorry, I need to move for
22 admission of KCP&L Exhibits 77, 78, and 79, please.

23 JUDGE PRIDGIN: KCP&L 77, 78, and 79 are
24 offered. Any objections? Hearing none, KCP&L 77,
25 KCP&L 78, and KCP&L 79 are admitted.

1 (Exhibits Nos. 77, 78, and 79-HC were
2 received into evidence.)

3 JUDGE PRIDGIN: Let me see if we have
4 bench questions. Commissioner Jarrett?

5 EXAMINATION

6 QUESTIONS BY COMMISSIONER JARRETT:

7 Q. Good morning, Mr. Drabinski. How are you
8 doing this morning?

9 A. I'm doing fine.

10 Q. Good. Now, I think you discussed you
11 performed an audit for the Kansas Corporation
12 Commission, a prudence audit for them in their case,
13 correct?

14 A. Well, I want to -- I'm trying to be very
15 careful about using the term audit because it has
16 certain technical ramifications that can require
17 certain -- what I did was an analysis of prudence for
18 Iatan 1 and 2 and then provided testimony utilizing
19 that analysis. And I only -- audits have different
20 definitions to accountants, and I just don't want to
21 have someone come back and say did you do a financial
22 audit or a performance audit. But if you want to use
23 the general term audit, I would accept that.

24 Q. Okay. And I don't mean to be indelicate,
25 but I take it from the Kansas Commission's order, they

1 didn't find your report persuasive?

2 A. well, the Kansas Commission started off
3 by saying in order to have the burden of proof go to
4 the company, you have to be 200 percent over cost, and
5 that cost being the CBE, so, therefore, since we
6 weren't over \$3 billion, the burden of proof is then on
7 the company -- or on the Staff.

8 It then went on to say that, because the
9 Staff didn't address all -- that there was no prudence
10 standard in Kansas but, rather, 12 point factors that
11 needed to be addressed. Since all the factors weren't
12 addressed, they were uncomfortable ruling. And that --
13 on top of that, they didn't accept some of my -- or my
14 testimony as being -- meeting the burden that was
15 necessary in Kansas to reach a conclusion of
16 imprudence.

17 Q. well, they had -- I think they indicated
18 four findings in their report, and I want to give you a
19 chance to respond and defend your analysis.

20 A. Sure.

21 Q. They said in their report that Mr.
22 Drabinski applied an erroneous standard for prudence
23 review in part because of the holistic approach he
24 used. What does that mean, "holistic approach?"

25 A. well, I think they're actually quoting

1 Mr. Nielsen because I never suggested I used a holistic
2 approach. I've scoured my testimony, rebuttal
3 testimony, my entire cross, and I never said that. The
4 four items being -- those four A, B, C, and D items are
5 actually items out of Mr. Nielsen's testimony that
6 they're stating in here.

7 If you read the beginning paragraph, it
8 says, "Dr. Nielsen made adequately established flaws.
9 This factor, therefore, we find," and those are the
10 flaws that Mr. Nielsen identified in his analysis.

11 Q. Okay. So if you didn't use the holistic
12 approach, what kind of approach did you use?

13 A. I looked at the specific functions of
14 management that are required. My first step was to
15 identify whether mismanagement and imprudence took
16 place. So I looked at the responsibilities and actions
17 of management once they had decided to go with a
18 multiprime. I never in my testimony suggested that
19 multiprime was imprudent. A lot of people suggested it
20 was. I suggested it was dumb under the circumstances,
21 but not necessarily imprudent.

22 However, when management accepted the
23 multiprime approach, they then accepted the
24 responsibility for properly managing the project and
25 having the staffing, quality personnel numbers,

1 systems, policies, procedures in place on a timely
2 basis. So I addressed each of those things, staffing,
3 quality of personnel, decision-making, the utilization
4 of experts, the way they addressed and the timeliness
5 of addressing problems. So the first part of my
6 testimony was that.

7 I then went in and, as part of the 12
8 factors, looked at the comparison of other plants,
9 comparison of Iatan to the Trimble County plant, which
10 is a very similar plant under the exact same time
11 frame, the development of the schedule, and I came up
12 with three sets of analysis for each those. But I
13 didn't believe any of those three could, by themselves,
14 provide an adequate quantification.

15 So the fourth methodology I used was
16 actually going through all of the major issues, Alstom,
17 Kiewit, Burns & McDonnell, Kissick, the support, and a
18 number of the other smaller contractors, reviewing each
19 of those and -- from a functional standpoint to see how
20 well -- we looked at the performance of the major
21 contractors, the additional manhours that they had to
22 work, the resulting compression, congestion, schedule,
23 reforecasting that was required. And then, in order to
24 come up with quantified amount for a disallowance, we
25 began looking at purchase orders. The problem you have

1 in looking at purchase orders or change orders is they
2 don't say, you know, change order of X amount of
3 dollars due to imprudent management action. If you
4 read them on the surface, they all look perfectly
5 normal.

6 That's why we started looking primarily
7 in Kiewit and Alstom at some of the settlements. The
8 settlements were done largely, we felt, because the
9 contracts were loosely written and didn't give the
10 company the strength they needed, and even though they
11 probably had a position that was strong, they settled
12 in order to keep the project going because that was the
13 better of two bad alternatives. My view, if it's the
14 better of two bad alternatives, the ratepayers
15 shouldn't necessarily be the ones to have to pay for
16 putting yourself in that position.

17 what we've been quibbling about last
18 night and this morning is the depth and the level of
19 detail I need to provide when I identify a purchase
20 order or change order or settlement as imprudent. In
21 my opinion, the 200-plus pages, I think in total, the
22 amount of detail I provided in both Exhibit 36 and in
23 response to some data requests amounted to a couple
24 hundred pages of analysis that we did. I felt that was
25 adequate for the needs of any Commission.

1 And so I don't think that's holistic. I
2 think it was structured, it was procedural. I started
3 with identifying the issues. I put in support for the
4 issues and then did the quantification. So I don't
5 know how the term holistic could be applied there.

6 Q. Now, you mentioned a couple of things in
7 your answer that I want to explore further.

8 First of all, you talked about comparing
9 the Iatan project to other projects. How important was
10 that in your analysis?

11 A. Well, it was a requirement in Kansas. It
12 became important not so much for the actual numbers
13 because Mr. Roberts and I -- and we're both, I think,
14 respect each other as professionals, have come up with
15 different assumptions, different categories, but what
16 it did is it told you a little bit about how
17 construction projects were being approached. For
18 example, of the 15 plants I picked that I believe are a
19 reasonable body, 13 or 14 of them used an EPC contract,
20 which I think goes away from the idea that nobody was
21 going with an EPC. Seven of the plants that went with
22 EPC started construction after Iatan.

23 So the suggestion that you just couldn't
24 find anybody, I think, is a bit fragile. So there was
25 some value in that. The Iatan to Trimble County

1 comparison, I think, was very telling because two
2 plants facing -- in January of 2005, both waiting for a
3 decision from their respective Commissions for
4 approval, Trimble County decided to sit down with an
5 EPC contractor to -- side by side, begin to develop
6 specs, agreeing that there's no way an EPC contractor
7 would take the risk on the cost. But they sat down
8 together, developed the specs, came up with all of the
9 hard contracts for the boiler turbine, major
10 components. When they had all of that procured, wrote
11 the contract. That plant came in 11 percent above the
12 original contract.

13 Iatan chose a different route. They
14 decided not to do -- take any steps until the decision
15 was made, and then at that point in time felt it was
16 too late to go with EPC. Again, I think they could
17 have still gone with EPC, and it would have been less
18 expensive in the end. That's my opinion, and I'm not
19 going to inject that hindsight into that. But once
20 they made the decision, then the onus was on them. And
21 in my comparison, which I think is valid, they end up
22 as being one of the higher cost plants in the U.S. for
23 the time frame that they were building.

24 Q. And how far were they over the original
25 budget estimate?

1 A. I spent a lot of time trying to
2 understand the progression of project costs. If you'll
3 give me one or two minutes.

4 The original 2004 project definition
5 report was prepared by Burns & McDonnell and utilized
6 their experience. It was a top-down, bottoms-up.
7 Bottoms-up in the sense that they said we need a boiler
8 item, this -- they went out to contractors and
9 suppliers and said what is this going to cost.
10 Top-down in the sense that they looked at what other
11 plants cost, and they said, okay, this is reasonable.
12 They gave a 95 percent probability that you could build
13 that plant within 90 percent of the costs and an 8
14 percent contingency, suggesting that they may need to
15 go up a couple percent because of the market
16 uncertainties. That was '04.

17 The end of '05, when the project was
18 completed, they increased the size, they went from
19 subcritical to super critical at some point. They
20 increased in temperature, added the aerators and feed
21 water heaters, boiler feed pumps, a number of
22 improvements in the plant. So naturally, those costs
23 had to be developed, and they did that in January '06.
24 And that was the scale up.

25 And to me at that point in time -- and

1 they add for -- Burns & McDonnell added for additional
2 amount of money for contingency. They did add an
3 additional amount of money for market fluctuations and
4 increased costs. So those things were, at that point
5 in time, foreseen, and they again came back. The price
6 then was about 1.35 billion.

7 And they said we -- in January of 2006,
8 they said with 95 percent probability, we can build
9 this plant as it's currently designed within 10
10 percent. They then went through, over the next couple
11 months, and kept seeing costs change, and this is
12 during the period of time when there was great turmoil
13 on the project site. Mr. Murphy was hired and then
14 left. There was clearly conflict that can be seen in
15 many of the reports between the project management
16 team. The procurement -- and we spent time on that
17 last night -- went well. They got a great deal from
18 Alstom on the boiler item, they got a good deal on the
19 turbine, they got a good deal on a lot of the other
20 capital equipment. That's not where the cost went up.
21 The costs didn't go up because of what they spent,
22 because of the commodities. The cost went up because
23 of the cost of construction, the labor or lack of
24 productivity.

25 Anyways, in my mind, the 1.35 billion --

1 I think it was 1.341 billion -- was the real starting
2 point because that was a point where, if they had
3 locked the design in there and said we're not going to
4 change/add anymore, we're going to go ahead with our
5 fast track design, we're going to procure as quickly as
6 possible, we're going to get a competent management
7 team, construction management policies and procedures,
8 this is what we can build it for.

9 From there, of course, they were supposed
10 to come up with the -- what they called the budget
11 estimate in August. By August, they realized that
12 things were sideways on the project. They didn't know
13 what things were going to cost. They were getting
14 ideas that quantities had grown, their expected
15 performance was going to be less. So instead of the
16 definitive budget estimate coming out in August, it was
17 delayed until December. In the meantime, they learned
18 that they didn't even have a handle on how big the
19 turbine building was going to be until they went out
20 for bid and the bids came back and showed that it was
21 twice the steel that they anticipated.

22 So through all of 2006, they were just
23 flying blind. You can go through the Schiff Hardin
24 reports where they're literally warning and saying
25 every month, every two weeks they come out with a new

1 estimate and the prices were going up and nobody quite
2 knew why. So they ultimately got to the definitive
3 budget estimate, which was the 1.465, plus 220 million
4 in contingency. The 220 million, I think about 75
5 million was reserved by the board for low
6 probability/high cost items. If there was a coup in
7 Thailand and a piece of equipment didn't get built, or
8 if a ship sank, if there was a work stoppage of three
9 or four months, if there was a flooding and they
10 couldn't get stuff in, those were these high cost/low
11 probability things. None of them came through.

12 But not only did they go through that 220
13 million, but they went through -- up to another budget
14 estimate and ended up at, instead of 1.465 billion, you
15 end up at 9.5 billion. Their contingency -- if they
16 had done it correctly, the contingency probably would
17 have been 700 or \$800 million at a point in time when
18 they had already purchased a billion dollars worth of
19 product.

20 And that's where -- that's the crux and
21 the difficulty you as Commissioners have. You have a
22 project that has clear indications that it was
23 mismanaged, clearly went up in costs way beyond what
24 their own internal experts said it would go up. The
25 question is, how do you identify those costs? There

1 aren't purchase orders that said this purchase order is
2 due to imprudence. What you have is renegotiations
3 with Alstom and Kiewit. You have the support group
4 costs going up by three or four hundred percent. All
5 of these were due and can be linked pretty directly to
6 the improper management, and that's what I'm suggesting
7 and that's why, when we went through, we -- some cases
8 took portions of those amounts.

9 There's no exact science in how you do
10 this. I mean, there are -- you know, if there's a
11 simple system like the WSI or the auxiliary boiler,
12 those are easy. They should have been handled
13 differently, and you can take those and write up a page
14 about them. But when you're looking at the entire
15 project, there's no easy way. That's why some people
16 use excess manhours, some people use cost for schedule
17 delays. But I chose to look at the settlements,
18 purchase orders and groupings, and addressed them the
19 way I did.

20 Q. Now, you mentioned something about a
21 building requiring double the amount of steel that was
22 originally contemplated?

23 A. Yes.

24 Q. Is that an example of mismanagement?

25 A. Well --

1 Q. I mean, I guess the question is, somebody
2 else did the engineering, and wouldn't the engineering
3 have said how much steel you need in this building?

4 A. Here's what occurred. Call it mission
5 creep, if you want. Somebody decided between 2004 and
6 2006 that they were going to add some additional feed
7 water heaters, a de-aerator, they were going to
8 increase the size of the turbine by 50 megawatts, they
9 were going to increase the temperatures, a number of
10 things. By going with the super critical unit instead
11 of subcritical, there is some changes.

12 So when Toshiba received their contract
13 and when Burns & Mc said okay, we now have to have the
14 boiler island, we have to put all this other equipment
15 in there, the box that it all fit in got bigger. The
16 people who were doing the budget planning -- and this
17 is -- you know, you got Burns & McDonnell doing the
18 engineering and Burns & McDonnell doing the budget. So
19 it's two hands on the same body not knowing what the
20 other's doing.

21 Management and their experts never
22 stepped back and asked the question, what are the
23 unintended consequences of all these design changes we
24 made? What is the real cost of all these things we
25 did? And, lo and behold, they get to October 2006,

1 bids are coming in with twice the quantities that they
2 had thought. Schiff Hardin says hold it, let's look at
3 this whole thing again and go through everything
4 because we clearly don't have a handle on how big this
5 unit is, how much materials we need, and what it's
6 going to look like.

7 That, to me, just goes to the heart of a
8 project management team that had lost control. And
9 when they accepted the multiprime and they planned to
10 be their own construction managers, they accepted the
11 responsibility of maintaining control and knowing what
12 this project was going to look like as it moved
13 forward. And for that year and the first year and a
14 half, they were running blind.

15 Q. One of the other things you mentioned was
16 that the contracts were loose.

17 who evaluated the contracts -- the terms
18 of the contract to determine whether or not they were
19 loose?

20 A. For the work we did?

21 Q. Yes.

22 A. I used some of the staff legal personnel
23 at the KCC, and some of the terms I reviewed myself. I
24 mean, the Alstom contract's a good example. The base
25 contract is 53 pages long. There's 1700 pages of

1 addendums, which are all the technical specifications.
2 The section -- Section 16 on disputes is three-quarters
3 of a page long. It basically says we'll try to settle
4 the disputes amicably and then we'll go to mediation
5 and then we'll go arbitration and, oh, by the way, if
6 we're still in mediation, you can't stop work on the
7 project. I'm paraphrasing the four paragraphs that
8 constitute that entire dispute portion of the contract.

9 It was supposed to be an EPC complete
10 contract, 1700 pages of specifications. Within the
11 first year, Alstom would come in with dozens and dozens
12 of change orders for things such as railings and
13 platforms, change orders to do -- get rid of the acid
14 wash residue after the acid washes. These are all
15 things, when you buy a plant, you expect it to have.
16 It would be like buying a car and not having door
17 handles and having Ford motor come back and say, oh,
18 you want door handles too? You have to pay extra for
19 that.

20 My view is you took the low bidder, you
21 got a great deal. You need to read the details to make
22 sure you're getting what you thought you were getting.
23 And now all of a sudden they're coming back with tens
24 of millions of dollars of extras for what we believe
25 should have been there in the contract to begin with,

1 and that's what we disallowed.

2 Q. Do you know who -- it was put up for bid.
3 who designed the RFP? Who wrote the RFP?

4 A. Black & Veatch.

5 Q. Black & Veatch. Are they a
6 well-recognized player in this field?

7 A. Black & Veatch wrote the specs for
8 bidders to respond to. My recollection is there were
9 two finalists, Babcock & Wilcox, who was the provider
10 of the boiler in Iatan 1, and Alstom. They both
11 submitted bids. They spent a fair amount of time.
12 They were both paid to continue and negotiate and
13 develop the bids and go through some analysis, and they
14 ultimately selected Alstom as the low bidder. I don't
15 recall what the differential in price was but their
16 expectation -- and at this point in time, Black &
17 Veatch is no longer -- I don't believe Black & Veatch
18 was part of the decision process. At that point in
19 time, Burns & Mc had taken over as owner engineer.

20 Q. But if I'm understanding what you're
21 saying is Black & Veatch wrote a bad RFP?

22 A. I don't know that the RFP was bad. I
23 think the evaluation of what was included in the bid
24 was not thoroughly evaluated. So I can't tell which of
25 -- you know, where -- someplace in the process, whether

1 it was the RFP, the bid, the analysis of the bid, they
2 accepted a product that was not giving them everything
3 they thought they were getting, and, consequently, they
4 ended up paying extras.

5 And the question that begs is, would they
6 have gone with Babcock & Wilcox if both bids were
7 evaluated appropriately? I don't know that. What I do
8 know is that they didn't get everything they paid for.

9 Q. Okay. One of the other findings that the
10 Kansas Commission made was Mr. Drabinski finds
11 imprudence as a consequence of the results attained
12 rather than evaluating decisions in the decision-making
13 process, connecting the allegations and then
14 quantifying the impact.

15 what's your response to that?

16 A. That was a quote from Mr. Nielsen that
17 they put in here. And I'm not quite sure what that
18 means because they don't identify where I looked at the
19 consequence of the results attained. Clearly, if a
20 project is done on time, on budget, the results
21 obtained are such that the question of prudence is not
22 likely to be asked.

23 So I don't quite understand what this
24 statement really makes. You know, our entire analysis
25 -- and we spent some time on this -- was based upon the

1 decisions, the statements, and the issues identified at
2 the time in 2004, '05, '06, '07, '08, and so on.
3 That's why we used the company's own reports. We
4 didn't try to interpret those reports. We used exactly
5 what they said in the reports, so I'm not sure how to
6 interpret what was intended here.

7 Q. well, did -- they say -- reading this,
8 they say you should have evaluated decisions in the
9 decision-making process, connect the allegations, and
10 then quantify the impact. Are you saying you did that?

11 A. well, my testimony has 140 or 50 pages of
12 analysis where we evaluated decisions in the
13 decision-making process. We go on for a good deal of
14 time. We have a table both in my original testimony,
15 and I've got another table that's even clearer in the
16 surrebuttal, how those decisions and our analysis of
17 those results led to cost overruns, and then from there
18 we show how those cost overruns, you know, can be
19 identified as imprudent.

20 Perhaps I didn't do -- provide the detail
21 in the exact link they were looking for in Kansas. And
22 keep in mind, Kansas requires a -- get the exact term
23 that they use, but it's a preponderance of evidence on
24 the part of the Staff. So at some point in time, given
25 that we weren't 200 percent over budget, I guess that

1 the level of evidence they expected went beyond what my
2 testimony in that jurisdiction provided.

3 Q. Now, another one of their findings of the
4 Kansas Commission was that Mr. Drabinski improperly
5 employed hindsight rather than evaluating management
6 decisions at the time. How do you respond to that?

7 A. Well, in my deposition yesterday, we
8 spent quite a bit of time, and there were two sentences
9 that the staff or the company attorneys defined that
10 implied they were hindsight. My attorney didn't think
11 they were.

12 other than that, I purposely used the
13 decisions from management at the time so that somebody
14 could not suggest it was hindsight. This is the only
15 statement in the entire decision that suggests I used
16 hindsight. There's no examples. So I'm not sure --
17 and they define hindsight very clearly in their order
18 as that requisite level of proof to satisfy the burden
19 of proof -- no, I'm sorry. That's not the -- I thought
20 I had it marked. There's -- they have a definition of
21 hindsight, and I'm at a loss as to exactly where, with
22 the exception of two sentences, one would argue that
23 what I did was hindsight. Here it is. They define
24 hindsight as the perception of the nature and important
25 events after they have occurred.

1 Q. Okay. Let's take your contract example.
2 Black & Veatch negotiated -- or writes the RFP. I
3 suppose at the time everyone thought it was a good
4 contract, and then you say bad things occurred as a
5 result of that.

6 You know, isn't that hindsight -- when
7 something bad happens that you don't anticipate at the
8 time, isn't that hindsight?

9 A. I don't think so. I mean --

10 Q. Okay.

11 A. I'm not saying that -- what I'm saying is
12 that this was their decision to go with this contract
13 at the time. And that contract, as it was written,
14 ended up in the unintended negative results. I'm not
15 rewriting the contract. What I'm saying is that the
16 contract as it's worded -- my analysis of the contract
17 and that wording ended up in a position that was
18 difficult.

19 Q. But I mean, if that is a standard sort of
20 contract written by a company experienced in writing
21 these contracts, what did KCP&L do that was imprudent
22 --

23 A. Well --

24 Q. -- at the time?

25 A. -- what happened is when they were -- the

1 -- we're talking about the contract wording or the
2 specifications within the contract?

3 Q. Both.

4 A. Well, if they put out a contract that
5 didn't have all the specifications in it or they
6 allowed a bidder to be awarded the job in which the
7 bidder then came back and claimed that they needed more
8 money because they didn't plan on doing certain things
9 that one would have anticipated was in the contract, at
10 some point in time the company has to be responsible
11 for that. It was their decision, poor decision, their
12 -- in this case, I would argue mismanagement of the
13 project because, rather than hold Alstom to what the
14 expectations in the contract were, they chose to settle
15 and pay them millions of dollars.

16 Q. Okay. And then the final finding here in
17 their -- in the Kansas order, "Mr. Drabinski's use of
18 internal audits to criticize KCP&L's decisions ignore
19 the fact that the process of conducting ongoing
20 internal audits during a complex construction project
21 is considered part of the prudent management
22 decision-making process."

23 How do you respond to that?

24 A. Well, I disagree with that. They brought
25 in -- did some internal audits, they brought in outside

1 specialists to do specialty audits. The original
2 internal audit budget was relatively small. It
3 expanded by a factor of three or four once the number
4 of problems were identified. I think it's entirely
5 prudent for a company to try to identify the problems
6 that were occurring. But the fact that the problems
7 had occurred in the past and had cost and resulted in
8 additional costs to the ratepayers doesn't forgive them
9 for having made the bad decisions in -- mismanaged in
10 the first place.

11 Under this scenario, as long as I hire an
12 internal auditor to go through and identify my mistakes
13 is like going to confession. I'm forgiving them my
14 sins and I don't have to pay. I think the fact that
15 they identified them and corrected them -- and I admit
16 that by the middle of 2008 they did a good job of
17 correcting, but I don't believe it forgives them for
18 the mistakes they made prior to that.

19 MR. SCHWARZ: Judge, may I make an
20 inquiry at this stage?

21 JUDGE PRIDGIN: You may.

22 MR. SCHWARZ: Does the Commission have
23 the Kansas testimony in front of them?

24 JUDGE PRIDGIN: I do not know.

25 MR. SCHWARZ: Is the Commission intending

1 on applying Kansas statutory law for resolution of this
2 case?

3 JUDGE PRIDGIN: I can't speak for the
4 Commission. I would think not, but --

5 MR. SCHWARZ: Okay. Thank you.

6 COMMISSIONER JARRETT: I don't have any
7 more questions, Mr. Drabinski. Thank you very much. I
8 appreciate it.

9 JUDGE PRIDGIN: Commissioner Gunn?

10 COMMISSIONER GUNN: I just have a couple
11 of questions.

12 CROSS-EXAMINATION

13 QUESTIONS BY COMMISSIONER GUNN:

14 Q. So just to kind of be clear, so from 2004
15 to 2006, you're saying that the company made a series
16 of mistakes which led to the increased costs of the
17 plant?

18 A. Yes.

19 Q. And that by mid-2008, they've essentially
20 corrected those mistakes, and from mid-2008 to the
21 completion, they seemed to have gotten things under
22 control?

23 A. They managed the project appropriately
24 from that point on.

25 Q. Okay. Now, was that as a direct result

1 of the hiring of Schiff Hardin, do you think?

2 A. Well, I think Schiff Hardin was always a
3 positive factor in the sense that they provided some
4 adult supervision when everybody was quibbling. They
5 provided advice oftentimes not taken. I think if you
6 look at -- we mentioned the audit -- all of the
7 internal audits. Those audits didn't start until the
8 STS audit was done in early 2007. Most of the other
9 internal audits took place in '07, '08, and '09. Many
10 of them were directed by Mr. Churchman when he came on.

11 The -- probably the biggest change in the
12 project was the hiring of Mr. Carl Churchman as the
13 vice-president. He came on, and within a matter of
14 weeks, he had fired a number of his construction
15 management people. He sat down with Alstom and Kiewit.
16 I was there onsite one day when he brought every Alstom
17 supervisor -- it seemed like every employee -- into
18 this huge lunchroom and basically read the riot act to
19 them. And it didn't matter to him that Alstom was
20 their boss. He was telling them how it was going to
21 be.

22 And he just -- his will forced the project in the right
23 direction at that point.

24 Q. Did you -- so you've reviewed all the --
25 all the documents from 2004 until completion for your

1 analysis?

2 A. Yes.

3 Q. Did that include -- and I'll get back to
4 the main cost of the plant, but did that include Schiff
5 Hardin invoices?

6 A. I looked at a number of their invoices,
7 yes, but I looked mostly at the total of what they
8 spent.

9 Q. And do you think that the company
10 received value for those services, the value that
11 they're claiming?

12 A. Well, this is an interesting point. I
13 think if Schiff Hardin had come in and done what was
14 expected, which was to provide some oversight and
15 direction and monitoring, I would have had no problem
16 with the value and the cost. They're a professional
17 firm. I wouldn't even argue about their fee structure.

18 But what occurred at some point in time
19 in 2007, they recognized that they were going to be hit
20 with severe cost overruns and perhaps imprudent
21 expenditures. At that point in time, consultants,
22 specialists, and Schiff Hardin started doing all kinds
23 of write-ups, analysis, reports to be able to, I guess,
24 prepare for this hearing. And, you know, it added,
25 what did we say, as of last December, the support

1 services costs were up at \$23 million? You know,
2 that's --

3 Q. So even though -- and I just want to be
4 clear. Even though they were trying to get costs under
5 control, fix the problems, because they were fixing
6 those problems that were originally done through 2004
7 through 2006, those costs should be disallowed because,
8 again, of the original sins that took place from 2004
9 to 2006?

10 A. Well, what --

11 Q. Their costs were increased because of the
12 original mistakes?

13 A. I think that's where the link is. The
14 reason for going from, let's just say, 10 million to 20
15 million was because of the poor management decisions
16 made earlier. So at what point in time do the
17 ratepayers continue to pay for the mistakes of
18 management in the past? How do you -- how do you
19 decide what the ratepayers would pay?

20 I mean, if you want to take the project
21 and say, what would this project have cost had there
22 been no mistakes made by management, you come up with a
23 number here, and what did it actually cost, is that the
24 difference? It's -- this is a complex project.
25 Problems do occur.

1 Keep in mind, I'm recommending only about
2 ten percent of the project costs were imprudent. I'm
3 recommending only 200 of what I considered the \$600
4 million increases to be imprudent. So it's not like
5 I'm saying this entire project was screwed up and
6 everything you did was wrong. They did build it, it is
7 operating, and it's probably going to operate well for
8 30 or 40 years. I don't take exception to that. I'm
9 trying to be very reasonable, but at what point in time
10 do the ratepayers stop being held responsible for the
11 excess costs? And how do you quantify what those costs
12 are? I used my approach, and I just ask the Commission
13 to consider whether it's a reasonable approach.

14 Q. And the approach you took was that this
15 was not a -- from what you said to Commissioner
16 Jarrett, this is an approach where you said I am going
17 to assume that I know only the facts that were known at
18 the time --

19 A. That's correct.

20 Q. -- and determine whether those judgments
21 were correct? It is not a -- it is not an analysis of
22 perfect knowledge, as it is an analysis of what the
23 management team knew at the time that they made the
24 decisions?

25 A. Yes.

1 Q. So if there were -- there were changes in
2 scope because of changed circumstances, so they've
3 decided that, hey, we need to -- we had designed this
4 plant to meet a certain load, we now have -- and this
5 is a hypothetical -- we now have more folks coming in
6 that are going to buy power from this plant because
7 they have decided they want to retire another coal
8 plant or something. So we're going to have to make
9 this plant bigger, so that's going to increase the
10 costs, which is going to be over our original budget
11 estimate. And the engineering seemed to be prudent on
12 that.

13 That would not be a cost that you would
14 disallow because it was a change made on newly
15 discovered information?

16 A. That's correct.

17 Q. Okay.

18 A. That's why -- and I'm -- I don't -- for
19 example, the turbine island bust, I think it's an
20 example of how disconnected management was from reality
21 in the sense that they didn't even know that the size
22 of the boiler -- or turbine room doubled.

23 Q. But they didn't have a finalized
24 engineering study until 2006, right?

25 A. Engineers designed it, sent the bids out

1 in the summer of 2006. Toshiba provided their
2 specifications on their boiler -- or on the turbine in
3 April 2006. If I buy a car -- if my original car was
4 14-foot long and I buy a car that's 18-foot long and it
5 says right on there 18-foot long, I should know pretty
6 quick that I need a bigger garage. They didn't realize
7 they needed a bigger garage until the architect showed
8 them what the bill was going to be for the bigger
9 garage, and they said how come it's so much more
10 expensive? He said, well, you bought a bigger car. I
11 mean, that's simply an example of them being out of
12 touch with what they should have known.

13 I mean, you have Burns & McDonnell people
14 using the Toshiba design to design the building, you
15 have the Burns & McDonnell people doing the budget
16 estimates throughout 2006. It's like the two of them
17 are in the same room and they never talked to each
18 other about what's taking place.

19 Q. Now, that's an interesting point because
20 there's a similar question about whether the Staff's
21 auditors and engineers were talking to each other when
22 they made some of these disallowances.

23 So were some of the change orders that
24 you reviewed, were they the same change orders that Mr.
25 Elliott of our Staff reviewed?

1 A. I suspect they were, yes.

2 Q. But you don't know?

3 A. I didn't review the details of his work,
4 no.

5 Q. Because you didn't -- all of your
6 analysis was for the Kansas case, not -- and we're just
7 basically transferring it over to the Missouri case?

8 A. That's correct.

9 Q. So you didn't interact with our Staff as
10 much as you did with the Kansas Staff?

11 A. Prior to this week, I had a -- I only met
12 some of the Staff when they attended the Kansas
13 hearings and I had a chance to talk with them casually.

14 Q. All right. The -- there was some
15 questions this morning about -- about the backup
16 between -- so you were provided with the logs to take
17 back to wherever you wanted to take them, and review
18 them and then the backup documentation was provided
19 onsite?

20 A. Yes.

21 Q. And you said -- and if I mischaracterize
22 this, I apologize. But you said that -- feel free to
23 correct me -- that part of the reason why some of those
24 were not included in your testimony was because that
25 you only had an opportunity to have them -- to see them

1 onsite?

2 A. Yes.

3 Q. And that limited your ability to go
4 through them?

5 A. Well, we didn't live at the site. We
6 would go in once a month for a few days. I think the
7 last document that was provided was when I sent Mr.
8 Lutz a list of the change orders we wanted to look at.
9 I gave it to him maybe a week or ten days before we
10 showed up. We show up and there's this long conference
11 table filled with boxes of paperwork. Four of us sit
12 down and we divvy it up and we start going through --
13 you're looking at -- that was two pages. There was
14 probably a hundred different change orders. So we
15 divvied them all up, we go through the whatever, for
16 instance, the junior people, highly competent. They
17 would go through and if they saw something suspect,
18 they'd hand it over to me and I'd go through and I'd
19 make up a list.

20 And when I got back, I then sat down and
21 say, okay, which of these things really need to be, you
22 know, removed. And at that point, you know, I didn't
23 write my testimony in -- at the Iatan site. You know,
24 in fact, I probably wasn't at the site for a month or
25 two before testimony was completed.

1 Q. Did the company provide everything that
2 you asked for in that conference room as far as you
3 know?

4 A. As far as I know.

5 Q. Now, were you -- who -- and I apologize
6 for this. Who was your client for the Kansas case?
7 Who hired you?

8 A. The Staff.

9 Q. The Staff. Okay. So were there any
10 limits to the amount of time that you could -- that you
11 could go back? Let me put it to you this way: Did the
12 company put limits on the amount of time that you could
13 spend looking at those documents, or were the limits
14 only cost time?

15 A. It was budgetary to a certain degree. I
16 mean --

17 Q. Right, expensive.

18 A. Yeah. I mean, I couldn't sit in Westin
19 for a month, and that's why we -- the Staff was great.
20 They provided me with a couple of their accountants in
21 order to try to mitigate the amount of time I had to
22 spend there.

23 Q. But it was other -- it was external
24 limiting factors; it wasn't the company that said you
25 can only spend two hours in this room, we're only going

1 to give you so many documents?

2 A. No. I think if I said I was going to be
3 there for a week, they'd say fine.

4 Q. They'd say fine, go through it?

5 A. Yeah.

6 COMMISSIONER GUNN: Okay. I think that's
7 all I have. Thank you, Mr. Drabinski.

8 THE WITNESS: Thank you.

9 JUDGE PRIDGIN: Commissioner Gunn, thank
10 you. Commissioner Kenney?

11 CROSS-EXAMINATION

12 QUESTIONS BY COMMISSIONER KENNEY:

13 Q. Good morning, Mr. Drabinski. Can you
14 hear me okay?

15 A. I can hear you just fine, and I can see
16 you, too.

17 Q. I can see you as well. Good to see you
18 again. I don't have too many additional questions.

19 why did the Kansas Corporation Commission
20 staff hire you in the first place?

21 A. I believe it was the spring of 2008 when
22 KCP&L came in with a cost and schedule reforecast, and
23 they were a bit surprised that after the definitive
24 budget estimate that the costs of the project, I think,
25 went from the total of 1.685 to 1.9, so it was a \$200

1 million increase, if I recall correctly.

2 And they were a little bit concerned, and
3 there had been some public concerns, some letters to
4 the Commissioners regarding problems at the site, and
5 they decided they wanted an independent look at what
6 was occurring.

7 Q. So it wasn't because of any lack of
8 internal resources; they wanted specifically an outside
9 person to come in and do the analysis?

10 A. No, they did not believe they had the
11 resources with people who had worked and built power
12 plants and new construction management adequately to do
13 this type of an investigation.

14 Q. Okay. And you had a discussion with
15 Commissioner Jarrett about the four factors that were
16 contained in Kansas's report. Now, Kansas applies 12
17 factors, right?

18 A. That's correct.

19 Q. And in their report, I think they
20 analyzed ten of the 11 factors, and then the 12th
21 factor is kind of a catchall factor; is that right?

22 A. Yes. One factor applies specifically to
23 nuclear --

24 Q. Nuclear waste. So that one's not
25 applicable. So they applied the other ten and the 12th

1 is like a catchall.

2 Is it your understanding that the
3 Missouri's prudence standard is different from
4 Kansas's?

5 A. Yes. In fact, I think Kansas basically
6 said we don't have a prudence standard, we have these
7 12 factors, and unless you're 200 percent over budget,
8 the preponderance of evidence has to be -- that burden
9 has to be on the Staff.

10 Q. And I'm assuming you modified -- or did
11 you modify your testimony for purposes of presenting it
12 to the Missouri Commission?

13 A. I made significant changes to my
14 testimony, both as far as the prudence standard, and I
15 also added a significant amount of analysis and detail
16 based on what I learned from the time that my testimony
17 in Kansas was produced in the spring of 2010 until
18 November 2010 when it was due here. You don't sit
19 through weeks of hearings and go through thousands of
20 data requests without learning a little bit more.

21 Q. Okay. So you didn't just transfer your
22 testimony from the Kansas case over to our case?

23 A. No, I did not.

24 Q. Okay. Now, I want to talk a little bit
25 about the third and the fourth points in Kansas's order

1 that Commissioner Jarrett discussed with you. And I
2 want to understand, the third point was that you
3 improperly employed hindsight rather than evaluating
4 management decisions at the time. And I want to ask
5 about that particular point.

6 when you determined that a particular
7 expenditure was imprudent, are you determining that it
8 was imprudent because the outcome was a negative
9 outcome, or is there some other basis upon which you
10 determined that it was imprudent?

11 A. No, I determined it was imprudent based
12 upon the decisions and the results that occurred at the
13 time that they occurred. I didn't simply say, oh, this
14 went up, therefore, it must be imprudent.

15 Q. Okay. And is it -- are you using the
16 analysis of what management should have known at the
17 time the decision was made?

18 A. Yes. That's why I use -- that's why I
19 did not try to interpret the information that was
20 provided in the various reports and studies and audits,
21 but I rather accepted it as it was written at that
22 time. So that I thought by doing that, the potential
23 for an accusation of hindsight would have been
24 mitigated.

25 Q. Now, the fourth point criticizes your

1 testimony for failing to take into account that
2 conducting internal audits is, in and of itself, a
3 prudent management decision.

4 Do you take exception with the fact that
5 conducting internal audits is, in and of itself, a
6 prudent management decision?

7 A. I agree it's prudent to do internal
8 audits and studies and self-assessments.

9 Q. Okay. So I'm not -- so then, what is
10 your analysis of the Kansas Corporation Commission's
11 criticism with respect to your using internal audits?

12 A. Well, these four factors were criticisms
13 that Mr. Nielsen made in my testimony. I didn't agree
14 with Mr. Nielsen's assertions. The Kansas Commission
15 took those four assertions he made and put them in as
16 part of their order.

17 I don't believe there's anyplace in my
18 testimony that I say the use of these internal audits
19 was somehow unreasonable. What I suggest is that, if
20 an internal audit identifies a problem or a poor
21 decision or a lack of systems management control, that
22 that information is fair game for me to use. The fact
23 that it's discovered through an internal audit does not
24 take it off the table as far as being an indication of
25 poor management activities.

1 Q. I see. Now, you discussed the difference
2 between a financial or performance audit and what you
3 did. Can you explain that to me a little further?

4 what's the difference between a financial
5 or performance audit and the analysis that you
6 performed?

7 A. Yeah, let me -- I've been very touchy on
8 this subject because we do -- I've done 150 audits. I
9 use the term audits. We typically work under the
10 generally accepted government auditing standards. This
11 is what's been accepted by the National Association of
12 Regulatory Commissioners as the proper approach within
13 the utility industry.

14 within -- it's called GAGAS, G-A-G-A-S,
15 there are three types of audits: There are financial
16 audits, which are done by accounting firms; there's
17 attestation exams, which is essentially a limited
18 financial audit that are done by accounting firms; and
19 then there are performance audits. Performance audits
20 can be done by consultants, engineers, accountants, a
21 broad range.

22 we only do performance audits. Within
23 performance audits, there's a lot of latitude as to
24 what the topic is and how it applies; however, there's
25 also certain requirements. If you're doing a

1 performance audit under GAGAS, for example, there are
2 certain things that you have to include in your report.
3 You have to go through all of the findings and
4 conclusions. You actually technically have to go back
5 to whoever you're doing, give them your results, and
6 let them review it before you submit them. That's why
7 it's an audit report. And you'll see draft reports
8 that then go back to the body.

9 we were first brought in to do an audit
10 of kind of management on the site. We did that audit,
11 reviewed it with -- I sat down with Mr. Churchman,
12 talked to him about some of the findings. We then
13 submitted it as an attachment to our Unit 1 testimony.
14 what we did for Unit 2 is we were asked to then
15 evaluate the prudence decisions and calculate the
16 imprudent costs and include it in our testimony.
17 That's different than a performance audit. It doesn't
18 comport with all the requirements.

19 And to be honest with you, I don't
20 believe I've ever seen a prudence testimony that could
21 be construed as a performance audit because they're
22 just not structured that way. Had it been structured
23 that way, Mr. Nielsen, for example, would have had to
24 have provided all of his testimony to the Commission
25 Staff for them to review it and decide whether they

1 like it. That's not the way a regulatory hearing takes
2 place and that's not what occurs. So that, I guess, is
3 different.

4 But what we did and the work we do, we do
5 under the methodology that would be done -- used in a
6 performance audit. We collect data, we analyze the
7 data, we develop our findings and conclusions. We
8 summarize those, and then from there, develop
9 recommendations, in this case, disallowances.

10 Q. So for Unit 1, you did conduct a
11 performance audit of management onsite?

12 A. That's correct.

13 Q. And then for Unit 2, it was a prudence
14 analysis?

15 A. And what we did in Unit 1 is we actually
16 took the report and attached it to our actual
17 testimony. So we provided testimony, and the report
18 was the body of analysis that supported that testimony
19 on the Unit 1 proceeding.

20 Q. Okay. Gotcha. Now, you talked a little
21 bit about the 2006 control budget estimate and we've
22 had discussions with other folks.

23 what -- can you tell me, as you
24 understand it, what is the significance of establishing
25 the 2006 control budget estimate as the definitive

1 estimate?

2 A. when I -- let me just back up. I don't
3 really know, other than for regulatory purposes, what
4 any of the budget estimates have to do with prudence.
5 You're not prudent whether you're above or below a
6 budget or cost estimate. You're prudent whether you do
7 something that causes costs to rise due to imprudent or
8 unreasonable management.

9 I don't believe that the control budget
10 or definitive estimate should be a starting point.
11 what if the very first dollar on a project was spent
12 imprudently? Are you not able to go back and identify
13 it and deduct it because it's below the CBE? what if
14 they waited until the project was complete to come up
15 with a definitive estimate at a hundred percent and
16 say, well, it's 1.95 billion? Does that mean that you
17 can't go back?

18 so I don't believe there's a real
19 relationship between cost estimates or budgets with the
20 question before this Commission with what was the
21 reasonable or imprudent cost of the project. And
22 that's -- and that's my opinion as an engineer, not as
23 a regulatory lawyer.

24 COMMISSIONER KENNEY: Okay. well, I
25 appreciate that. Mr. Drabinski, I don't have any

1 further questions. Thank you.

2 JUDGE PRIDGIN: Commissioner Kenney,
3 thank you. Recross, Mr. Mills?

4 MR. MILLS: Just a couple.

5 RECROSS-EXAMINATION

6 QUESTIONS BY MR. MILLS:

7 Q. First of all, Mr. Drabinski, you were
8 asked some questions by Commissioner Gunn about the
9 level of expense due to Schiff and some of the other
10 outside support. Do you recall that?

11 A. That's correct.

12 Q. And I think -- and correct me if I'm
13 wrong -- was it your testimony that costs were
14 increased to the \$23 million level, not because those
15 groups were trying to fix mistakes, but partly because
16 they were trying to position for the prudence hearings?

17 A. That's a good part of what their
18 responsibility was.

19 Q. Okay. And were you able to quantify how
20 much of that was sort of the typical kind of internal
21 audit that any reasonable business should do and how
22 much of that was due to getting ready for prudence
23 challenges?

24 A. It's almost impossible looking at an
25 invoice or time sheet, you know, to make that kind of

1 determination, which is why we used an estimate based
2 on -- basically said that we took the original budget,
3 assumed that that doubled, it was reasonable, and that
4 above that, which again doubled, was unreasonable.
5 There's no science to it.

6 Q. And isn't it even harder if the -- if the
7 invoice looks like, for example, Exhibit KCP&L 260, in
8 which the entire thing is blacked out?

9 A. That's correct.

10 Q. Now, I think in response to one of the
11 questions from --

12 MR. HATFIELD: That's not an invoice.

13 BY MR. MILLS:

14 Q. Okay. I've been informed that Exhibit
15 260 is not an invoice, but nonetheless, you have looked
16 at invoices that were largely blacked out, have you
17 not?

18 A. Yes, some of the invoices did not have
19 all of the information, but largely what we looked at
20 was the change -- we actually looked at the purchase
21 orders and change orders for the total amounts versus
22 the original budgeted amounts.

23 Q. Okay. Now, with respect to questions
24 from Commissioner Kenney about the use of hindsight, I
25 believe you said in response to one of his questions

1 about hindsight that one of the things that you looked
2 at in determining prudence was results.

3 How is it not hindsight if one of the
4 factors in evaluating a decision is the results of that
5 decision?

6 A. well, you could have a bad decision and
7 the results don't cause any additional costs, in which
8 case even though there was mismanagement, there
9 wouldn't be a finding of suggesting costs be reduced.
10 So the two have to be linked. The imprudent or
11 mismanagement actions have to have cost results.

12 Q. Okay. So if there's a decision that's
13 clearly imprudent but the company, for whatever reason,
14 got lucky and there are no negative results, it's your
15 testimony that there wouldn't be any disallowance for
16 that, correct?

17 A. That's correct.

18 Q. So the reason you look at results is to
19 be able to quantify the effect of the imprudence?

20 A. That's correct.

21 MR. MILLS: That's all I have. Thank
22 you.

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

25 MS. MCCLOWRY: I have no questions.

1 JUDGE PRIDGIN: Thank you. Ms. Cafer?

2 MS. CAFER: Thank you.

3 RECROSS-EXAMINATION

4 QUESTIONS BY MS. CAFER:

5 Q. You've never negotiated a larger
6 construction contract for construction of a power
7 plant, have you?

8 A. No.

9 Q. And I think we established last night
10 that you don't cite a single contract provision in your
11 testimony that you believe is weak?

12 A. Today I talked about the dispute section
13 16 of the Alstom project which I thought was relatively
14 weak.

15 Q. And I asked about your testimony. I
16 heard you today, but where do you analyze the weak
17 contract language in your testimony that you filed?

18 A. I summarized my analysis. I did not
19 provide any analysis in the testimony itself.

20 Q. Did you -- did you go in and read the
21 Alstom contract?

22 A. Yes, I have.

23 Q. And you analyzed the Alstom contract to
24 determine if it was complete and the terms were
25 individually -- they were each what you would expect to

1 see or not see and they were strong enough?

2 A. I'm not sure which terms. You're talking
3 about all 1800 pages or the first 53?

4 Q. I'm talking about the ones you found were
5 weak.

6 A. Yes, I read them.

7 Q. But you haven't told us which terms those
8 are?

9 A. I said it was part of those 16.

10 Q. And what is that?

11 A. That's the section on disputes.

12 Q. And that's the only weak term you found
13 in the 1700 pages in the Alstom contract?

14 A. The contract boilerplate is only 53
15 pages. The other 1700 pages are technical
16 specifications.

17 Q. And -- but the rest of the contract is
18 going to tell you what the company's rights are and
19 what they can expect from Alstom and what's included,
20 right? You have to know what the rest says to analyze
21 what you can do under the dispute section?

22 A. I read the 53 pages. My response was,
23 when you asked if I had read the entire contract, all
24 1800 pages, I said I looked at the appendices but I
25 read the 53-page base contract. I did the same thing

1 for Kiewit, for Kissick, from Burns & Mc.

2 Q. Did you evaluate the Alstom contract to
3 try and determine if it was enforceable in the areas
4 that went to settlement negotiations and resolution?

5 A. I'm not an attorney, so I wouldn't have
6 the capability of doing that.

7 Q. When I asked you in your deposition about
8 this contract, you said we -- what we looked at is the
9 contract language on what was promised, guarantees. We
10 looked at how resolution on conflicts would arise. We
11 looked at what the expectation was and what was being
12 purchased.

13 And then you told me, your question
14 really gets to, did I re-engineer the boiler and
15 determine that these 1700 pages accurately and
16 completely portrayed what was being purchased by KCP&L.
17 That wasn't my responsibility. That was KCP&L's
18 responsibility.

19 So you don't -- you don't know?

20 A. I did not try to re-engineer the boiler
21 to determine whether the 1700 pages of specification
22 accurately reflected what KCP&L, through the Black &
23 Veatch specifications, were looking for.

24 Q. And it's those 1700 pages that specify
25 what KCP&L was buying from Alstom?

1 A. Those 1700 pages specified what Alstom
2 intended to provide to KCP&L.

3 Q. It specifically outlined it, right?

4 A. That's correct.

5 Q. And it doesn't say it's the boiler and
6 all expected parts? It specifically says what was
7 included in that initial bid?

8 A. The expectations, since you were getting
9 an all-in bid from multiple suppliers --

10 Q. That were specifically outlined?

11 A. I don't know --

12 Q. I mean, it didn't say this is an all-in
13 bid, the end?

14 A. The RFP did not have 1700 pages of
15 specifications. The 1700 pages are Alstom's response
16 as to what they will provide. You can put out an RFP
17 that says, you know, I want a boiler that provides the
18 following steam flow, pressures, temperatures, fuel
19 type. The respondent then comes back and says we're
20 going to give you an Alstom boiler with the following
21 things, and they provide 1700 pages of specifications.

22 Your expectation is that those 1700 pages
23 are going to, in fact, meet what you were looking for,
24 and if you're comparing multiple bids, you need to be
25 assured that you're getting, in fact, what you're

1 paying for.

2 Q. And so if a disagreement between parties
3 would arise under a 1700-page contract, you're saying
4 that shows the contract was imprudent or weak?

5 A. Well, what occurred was the -- there were
6 a number of things that one would have simply expected
7 to be in a contract. Railings, platforms, acid
8 cleaning, these aren't things that are some exotic
9 unanticipated activity. These are things that anybody
10 buying a boiler would expect that they would receive as
11 part of the boiler.

12 And when Alstom put in -- I recall doing
13 some of the initial, and there were dozens and dozens
14 of change order requests for things that they were
15 claiming were not in the contract.

16 Q. Well, you're aware that the specs were
17 provided by Black & Veatch, and they were included in
18 the bid documents?

19 A. That's correct.

20 Q. When a dispute on a complex project,
21 construction project arises, those can take a long time
22 to resolve, can they not?

23 A. Depends on how -- what kind of resolution
24 is provided in the contract.

25 Q. So you resort to the contractual

1 remedies?

2 A. Ideally, yes.

3 Q. You resort to arbitration to get it
4 resolved to keep the project on track?

5 A. well, in this case, there was no
6 requirement that the project stay on track through
7 arbitration. In fact, one of the deficiencies as a
8 layperson, I thought, is that while Alstom was required
9 to continue working while they were in mediation, there
10 was no requirement that they continue working on the
11 project if they went to arbitration.

12 I'm just a layperson, but that seems like
13 I don't want the project to stop just because we're in
14 arbitration over some small portion of it.

15 Q. well, as the owner, don't you have to
16 look -- when disagreements arise, don't you have to
17 look at that point in time and say, what is the best
18 path for me to take now for this project?

19 A. That's correct, but the question here is
20 whether the owner or the ratepayer should be liable for
21 the costs that the owner put themselves in position.

22 Q. And if the owner wasn't imprudent, then
23 the costs should go into the rates?

24 A. That's what this hearing is about.

25 Q. And so just because you ended up with a

1 contractor who had a dispute with you and you ended up
2 needing to take some action to get it resolved in the
3 way that was best for the project, that doesn't mean
4 that any of that action was imprudent?

5 A. what it means is the fact that they had
6 to pay tens of millions of dollars, many of them for
7 items that should rightfully have been included in a
8 contract that was competitively bid means that, A, the
9 contract was poorly written or was poorly enforced. In
10 either of those cases, we don't know whether there was
11 a cheaper alternative and the ratepayer shouldn't be
12 held responsible for those incremental costs that were
13 due to decisions of management.

14 Q. Okay. And I think we've come full circle
15 then, and it illustrates what the Kansas Commission
16 found is that the results that were obtained, the fact
17 that they ended up with a dispute, you're saying,
18 indicates the contract was weak?

19 A. I didn't see any place in the Kansas
20 decision where they addressed that issue specifically.

21 Q. well, let's talk about what the
22 Commission did.

23 It said that your claim of the \$231
24 million disallowance hinges on a hindsight analysis,
25 which was prohibited, right? And that was on page 15

1 of the order.

2 MR. SCHWARZ: I'm going to object as to
3 materiality and relevance. The Kansas Corporation
4 Commission decision -- and we've had lots of discussion
5 -- and I'll add cumulative because we have gone over
6 this particular aspect of the Kansas Corporation
7 decision earlier.

8 It is not binding on this Commission, it
9 is not based on the same evidence as this Commission is
10 going to consider. To the extent that it is the
11 observations of the Kansas Corporation Commission, Mr.
12 Drabinski's analysis of the KCC thought process would
13 be the -- be speculation at best. You know, it's
14 simply not relevant or material to the processes that
15 this Commission has to engage in, and it puts Mr.
16 Drabinski in the position of speculating about the
17 KCC's basis and thought processes in -- in penning its
18 decision. Its decision is there. Clearly, the
19 Commission can look at it, and I don't have any problem
20 with that.

21 But to ask Mr. Drabinski what the KCC
22 meant is -- is, I think, beyond the scope of this
23 proceeding.

24 JUDGE PRIDGIN: I'm going to overrule
25 because the bench did go in some detail and ask

1 questions about the Kansas order. But I will keep in
2 mind that if Mr. Drabinski is asked to speculate, that
3 he's free to say that he doesn't know and counsel's
4 free to object that the question calls for speculation.

5 BY MS. CAFER:

6 Q. You said that Kansas prudence standard
7 was different than Missouri; is that correct?

8 A. Yes.

9 Q. And you talked about the factors that
10 Kansas looks at, and Missouri didn't have that,
11 correct?

12 A. That's one of the differences.

13 Q. The factors are just items to be
14 considered by the Commission when they are analyzing
15 prudence?

16 MR. SCHWARZ: Objection. Calls for a
17 legal conclusion.

18 MS. CAFER: I'm looking at the statute
19 and the Commission's order on page 12 where the
20 Commission says that the statute, which is the factors,
21 is devoted to a recitation of the factors to be
22 considered in making the determination of prudence.

23 MR. SCHWARZ: Well, that's a question
24 that can be addressed in briefs. It's not a question
25 to be addressed to a lay witness.

1 MS. CAFER: However, these questions have
2 been asked of Mr. Drabinski, and he has already said
3 what he thinks this order or what the standard was and
4 that his Missouri testimony would not be objectionable
5 for the same reasons as his Kansas testimony was
6 because the standards are different. So I'm clarifying
7 and addressing the fact that -- or testimony that he's
8 already presented on the record that I believe is
9 incorrect.

10 JUDGE PRIDGIN: I'll overrule and let him
11 answer the question that needs to be answered.

12 MR. SCHWARZ: I'll change my objection to
13 asked and answered. If all of what counsel has recited
14 is already in the record, it's been asked and answered.

15 MS. CAFER: No, I'm asking now -- I'm
16 pointing out, I'm asking questions to show why what was
17 asked and answered in the record was incorrect. That's
18 not in the record yet.

19 JUDGE PRIDGIN: I'll overrule.

20 BY MS. CAFER:

21 Q. And those factors under the statute are
22 not exclusive; they're just to be considered, among
23 other things?

24 A. It's -- whatever the statute says it
25 says. The sections of it in here, my recollection is

1 that the hearings and the discussion about this went on
2 for pages and pages of legal discussion that I don't
3 fully understand.

4 Q. And ultimately, the Commission had
5 determined -- had to determine the prudence of KCP&L's
6 management of Iatan project?

7 A. In Kansas, yes.

8 Q. One more question about the Alstom
9 contract. The 1700 pages that determined the scope of
10 what Alstom would provide for KCP&L for the price -- or
11 the 1700 pages -- excuse me, strike that.

12 The 1700 pages that we were talking about
13 is what determines the scope of what Alstom was to
14 provide for the price that they bid on the project,
15 right?

16 A. I don't recall what the legal aspects of
17 the contract were or whether it was strictly we're
18 going to give you these things or whether we're going
19 to give you a boiler that is expected to operate
20 appropriately and safely. So there may have been
21 specifications that identify technically what they're
22 going to provide, but also specifications that provide
23 the guarantee of what the performance and capability
24 is.

25 Q. And if you were going to take a position

1 that a change order from Alstom issued later on was
2 inappropriate because it should have been included
3 under the initial contract bid, you'd need to know what
4 was included under the initial contract bid, wouldn't
5 you?

6 A. I think I would turn that question
7 around. I'll use a simple example. If the boiler was
8 built to the specifications --

9 MS. CAFER: Your Honor, that really was a
10 yes or no question.

11 JUDGE PRIDGIN: If you can -- can you
12 answer the question, if you know the answer.

13 THE WITNESS: I don't think I can answer
14 that question because it's asked in a manner that
15 supposes that the contract specifications were
16 all-inclusive.

17 BY MS. CAFER:

18 Q. So you're thinking that there were some
19 things that Alstom was supposed to do that were not
20 included in the specifications?

21 A. Let's take railings and platforms. If
22 the plant was built and it didn't have railings and
23 platforms, I don't know that Alstom and the insurance
24 company would permit it to go into service. So I think
25 there's an expectation that when you buy a boiler

1 island that it's going to be able to be licensed. And
2 that was one of the change orders that the company was
3 asked to pay for.

4 Q. So the bid reflected the RFP that Black &
5 Veatch put out, and you're saying it didn't
6 specifically say railings and platforms, but everyone
7 should have assumed that was included?

8 A. I don't know on the stand whether the
9 Black & Veatch RFP said railings are required, but
10 there's certainly expectation that when you buy the
11 boiler, it's going to be able to be licensed and
12 insured afterwards.

13 Q. So if those specifications did not say
14 railings, and as the project went along, they needed to
15 put the railings on, would that be a legitimate change
16 order when you ask Alstom, then, to do that additional
17 thing?

18 A. I think you would require Alstom to do
19 it. The question is whether you pay them for something
20 that you would have expected to have been included in
21 the original scope.

22 Q. So that's what it comes down to is what
23 you would have expected in the original scope, whether
24 it was listed in the specifications or not?

25 A. I think what any reasonable plant owner

1 would have expected.

2 Q. You've placed importance on the January
3 2006 estimate that KCP&L had at that point in time,
4 right?

5 A. I believe that was the first time that
6 the size, engineering, detail was locked in and an
7 estimate was provided that took into account the actual
8 market conditions at the time.

9 Q. And as of January 2006, do you know how
10 much of the design was complete?

11 A. Which part of the design are you
12 referring to? The balance of plant design or the
13 overall?

14 Q. The balance of plant design, yeah.

15 A. Perhaps none. That has very little to do
16 with estimating the cost of a power plant.

17 Q. Well, as the design matures, does the
18 estimated cost of a power plant tend to change?

19 A. Well, we keep using this term design.
20 When you buy a power plant, you're buying individual
21 components. The boiler island, that entire boiler
22 island that you paid \$500 million for, that's already
23 been designed by Alstom. There's some small changes
24 that they have to make in order to fit it into the
25 site, but you're not designing a brand new boiler,

1 tubes. That's done. The transformers, the generators,
2 steam turbine, those are all pre-engineered items.

3 what -- when we talk about design, we're
4 talking about the need to connect those items together,
5 to put in cables, footings, foundations, roadways, air
6 conditioning, lighting. That's the design we're
7 talking about. So the reason Burns & McDonnell can
8 come up with an estimate in 2004, 2006 is they can --
9 they can go out to the market and get estimates on what
10 a boiler turbine, bills, all these various components
11 cost. So that the only part that's being estimated and
12 that hasn't been designed is how you link all these
13 pieces together.

14 So to suggest that there's no design is
15 not really accurate when you look at the ability to
16 estimate costs on a power plant.

17 (Exhibit No. 80 was marked for
18 identification by the Court Reporter.)

19 BY MS. CAFER:

20 Q. Can you identify for me what I've handed
21 you and had marked as KCP&L Exhibit 80?

22 A. Yes. It's page 13 of my Kansas
23 testimony.

24 Q. And do you remember, is that filed in
25 about June of last year?

1 A. That's correct.

2 Q. Will you turn to page 13, the second page
3 of the exhibit, and this is where you have in your
4 Kansas testimony identified the various estimates,
5 correct? It's one page.

6 A. These were the estimates and the
7 definition of the estimates that KCP&L provided to me.

8 Q. Okay. And the first one, December 2006
9 CBE, you say, "This budget was prepared by Burns &
10 Mc in conjunction with KCP&L."

11 would you go also, then, to your direct
12 testimony in this case, page 20? Are you there?

13 A. That's correct.

14 Q. Okay. In the Kansas exhibit, the second
15 line here says this -- this is the 2006 CBE -- "This
16 was the official budget that KCP&L would use to track
17 costs until the engineering reached 60 to 70 percent
18 when a reforecast of the CBE would occur."

19 Now, that is specifically omitted from
20 your testimony, this paragraph of your testimony on
21 page 20 of the Missouri testimony. Why did you decide
22 to take that out in Missouri?

23 A. Because I learned a great deal during
24 that period of time. What I learned was that the
25 original CBE was supposed to be issued in August, that,

1 in fact, it was delayed to December due to the
2 inability to accurately forecast costs. And I felt
3 that was the accurate statement to be included in
4 there, so I modified the testimony appropriately.

5 MS. CAFER: I'd like to move for
6 admission of Exhibit 80.

7 JUDGE PRIDGIN: KCP&L 80 has been
8 offered. Any objections? Hearing none, KCP&L 80 has
9 been admitted.

10 (Exhibit No. 80 was received into
11 evidence.)

12 BY MS. CAFER:

13 Q. would you agree that it would have been
14 imprudent for KCP&L to manage this project to an
15 unrealistic budget?

16 A. They've been managing the project to an
17 estimate from August 2005 when the project started.
18 The fact that in December you called it a budget didn't
19 change the fact that they had been doing procurement
20 for that whole period of time. And the fact is that
21 the December 2008 budget was just as unrealistic as all
22 the others by virtue of the fact that it had to be
23 changed a couple more times, so --

24 Q. So in Kansas, you acknowledge that
25 reforecasts were going to occur as engineering

1 progressed, but now you're saying that that is
2 imprudent when you have to reforecast?

3 A. I don't think you see that anywhere.

4 Q. You don't say which one?

5 A. I don't say it's imprudent to have to
6 reforecast.

7 Q. It's prudent to reforecast, isn't it, as
8 things change?

9 A. I think reasonable management is going to
10 reforecast as circumstances require that they become
11 transparent and provide information to the regulators.
12 So whether it's reasonable, and reasonable is also
13 prudent, I would agree.

14 Q. Last night when you were testifying, we
15 established that in 2006 the critical path activities
16 were engineering for procurement of engineered
17 equipment?

18 MR. SCHWARZ: I'd object. Last night's
19 testimony, of course, is not involved with Commissioner
20 questions.

21 MS. CAFER: Well, it was a foundational
22 question to lead him to where I was going, which was in
23 response to the Commissioner's questions about the
24 early management of the project and what happened.

25 JUDGE PRIDGIN: All right. If it's

1 foundational, I'll overrule.

2 BY MS. CAFER:

3 Q. Do you need me to repeat my question?

4 A. Please.

5 Q. You'd agree that during 2006, the
6 critical path activities were engineering for
7 procurement of engineered equipment?

8 A. One of the critical path activities was
9 procurement of engineered items.

10 Q. What are you saying for other -- I mean,
11 did -- never mind.

12 And KCP&L was able to purchase all the
13 equipment during that time and it was delivered on
14 time, right?

15 A. That's correct, and I think the cost
16 profiles reflect that.

17 Q. On page 119 of your direct testimony in
18 this case -- are you there?

19 A. Yes.

20 Q. You have a chart there where you've tried
21 to illustrate the timing of the internal audits that
22 were done; is that right?

23 A. Well, they're not all internal audits.
24 They're studies, outside consultant projects, and some
25 audits done by GPE's -- or GPE's internal audits in

1 conjunction with Ernst & Young.

2 Q. Okay. So they were audits? I mean, I'm
3 looking at line 13. You say, "The table below provides
4 a view of when audits were completed."

5 A. Okay.

6 Q. Now, these -- if an audit is completed at
7 a certain time, doesn't that indicate that it's being
8 conducted prior to that time?

9 A. That's correct.

10 Q. And so here, you show the audits start
11 pretty steadily in early 2007; do I read that correct?

12 A. You have the original Schumacher study
13 followed by the STS study, which was issued in, I
14 think, May of 2007, which it started, I believe, around
15 January.

16 Q. And the -- we established yesterday that
17 the construction at the project site didn't even begin
18 until late 2006, and that was very minimal, right?

19 A. That's correct.

20 Q. And the real activity began around
21 mid-2007?

22 A. Well, I would argue that some of the most
23 important activity that the company committed to was
24 the development of a construction management team that
25 was cohesive and worked together. The reason for the

1 STS study was because, as we learned through some of
2 the previous testimony, there was disharmony, a lack of
3 cohesiveness, argument over appropriate direction.

4 Q. And that --

5 A. And that took place in 2006 and into
6 2007.

7 Q. So that -- if that was issued -- it's
8 really little. If that was issued in May of 2007, then
9 that means that it was earlier that they discovered --
10 it had to be pretty quick, they discovered we've got
11 some personality problems here. They brought somebody
12 in to audit, and then quickly, by May of 2007, they had
13 an audit report, and they could address the -- those
14 initial problems that were starting to crop up?

15 A. Well, we had the case with Mr. Murphy and
16 Mr. Grimwade who clearly did not get along together.

17 Q. That's not my question.

18 A. Well, it's the answer to your question.
19 You're talking about the timing. Mr. Murphy left in
20 June of 2006. The STS audit did not take place and was
21 not issued until almost a year later, addressing many
22 of the problems that became obvious during his tenure
23 and his leaving.

24 Q. Is it important to have construction
25 management expertise to properly evaluate the prudence

1 decisions made in the construction for the plant like
2 Iatan?

3 A. I'm hesitating because it depends on what
4 aspect of the prudence you're responsible for. I think
5 there's certain things accountants or economists can
6 do. But if you're looking at the onsite construction
7 work, having construction management experience is
8 useful.

9 Q. And the onsite construction work includes
10 the change orders for activities and things -- you need
11 to have some experience to look at those and understand
12 what they're saying to identify whether they were
13 prudent or not?

14 A. Yeah, that's a mix of accounting
15 expertise, engineering expertise.

16 Q. So would you agree it's important to have
17 construction management expertise in order to
18 understand the reasons the cost increased on power
19 plant project?

20 A. It's not absolutely necessary. It
21 depends more on your overall understanding of cost
22 management. But having construction management
23 expertise allows you to better understand the thought
24 process of the people providing the documentation for
25 the change orders and other support data.

1 Q. Okay. Because those -- that
2 documentation can get pretty technical, can it not?

3 A. Some of it can, yes.

4 Q. You were asked a couple questions about
5 the comparisons, the plant comparisons and the
6 comparison with Trimble County 2. Do you remember
7 those?

8 A. Yes.

9 Q. On a page 165 of your direct testimony on
10 line 15, you point out that Trimble County increased in
11 costs by nine percent over a six-year period, which
12 compares with Iatan 2's 50 percent over the same
13 period.

14 Did I summarize that correctly?

15 A. That's correct.

16 MR. SCHWARZ: I'm sorry, where are we?

17 MS. CAFER: Page 165 of his direct, line
18 15.

19 MR. SCHWARZ: Thank you.

20 BY MS. CAFER:

21 Q. Now, that 50 percent for Iatan 2, you're
22 going back to the 2004 PDR, right?

23 A. Trying to be consistent with the way all
24 of the power plant comparisons are done by the
25 Department of Energy. They use the initial estimate at

1 the time the project is announced or about the time
2 construction starts, not some budget that was set two
3 years after the project started.

4 Q. Well, I thought what you were trying to
5 do is do a comparison with Iatan 2 to show that Iatan 2
6 was not constructed as prudently as Trimble County 2.
7 Was that not the point of this?

8 A. The point here was to answer one of the
9 factors which asked for direct comparisons between
10 plants built during the same period.

11 Q. The Kansas factor?

12 A. That's correct.

13 Q. That's not a factor in Missouri, is it?

14 A. No. But it's a good illustration of two
15 plants being built in the same time with two different
16 management methodologies and significantly different
17 results.

18 Q. Do you know what percentage of
19 engineering was done at the time on this Trimble County
20 2 initial estimate?

21 A. I wasn't part of the Trimble County 2
22 project.

23 Q. So you can't do a comparison as to what
24 level of engineering would have been done on the two
25 projects that might explain the difference?

1 A. I read all of the testimony, I
2 interviewed, I believe it was, Mr. Thompson, who was
3 the responsible witness, and talked with him about how
4 they approached the project.

5 Q. You don't -- you don't know what the
6 percentage of engineering that was done at the time the
7 Trimble County 2 estimate --

8 A. I'm trying to think about why it would
9 have been significantly different.

10 Q. I'm not asking you to speculate.

11 A. As I said, I wasn't an engineer on that
12 project, so I don't have knowledge of that. It wasn't
13 included in any of the testimony or in the Department
14 of Energy database which we utilized.

15 Q. Do you have any idea what dollar amount
16 contracts had been let at Trimble County at the time of
17 the estimate that you used here?

18 A. What date are you referring to?

19 Q. I'm referring to the date that you used
20 to come up with your nine percent increase, the initial
21 date for Trimble County 2, that you started with to
22 make your nine percent increase over six years.

23 A. Give me a second to look at the previous
24 table. This shows the construction duration as July
25 2006 to mid-2010, which is the same construction

1 duration for Iatan. So if you were to assume that
2 since the construction durations were the same, they
3 were both fast track plants, I wouldn't expect
4 engineering completion to be substantially different
5 between the two units.

6 Q. You wouldn't expect, but you don't know?

7 A. I wasn't an engineer on the plant. I
8 didn't see any data in the testimony that suggested
9 what percent engineering was complete.

10 Q. In your deposition I asked you if you
11 thought that you could come up with a complete and
12 reliable disallowance if you didn't have your
13 engineering background as -- and you said --

14 MR. SCHWARZ: To what Commissioner
15 question is this addressed? I think it's a C-scope.

16 MS. CAFER: I believe Mr. Kenney asked
17 about the -- or someone asked about the accounting and
18 engineering, they all needed to coordinate.

19 JUDGE PRIDGIN: I will overrule it if
20 it's to a Commissioner question.

21 MR. SCHWARZ: That's -- I'd like someone
22 to point that out.

23 COMMISSIONER KENNEY: It wasn't me.

24 MS. CAFER: I believe it was Commissioner
25 Gunn. I'll do it quickly.

1 BY MS. CAFER:

2 Q. Your answer was, "Without your
3 engineering background, you wouldn't have had this
4 experience and wouldn't have even been considered for
5 this assignment."

6 Is that an accurate answer to the
7 question I asked?

8 A. It's the answer I gave you, correct.

9 Q. From your -- you were asked by the Office
10 of Public Counsel about the \$23 million disallowance
11 for professional services. Do you remember those
12 questions?

13 A. Yes.

14 MR. SCHWARZ: Objection. This is to be
15 based on questions from the bench.

16 MS. CAFER: Oh, is that what I'm limited
17 to? Okay. My apologies. That's all I have. Thank
18 you.

19 JUDGE PRIDGIN: All right. Before we go
20 to redirect, we've been going for a couple hours. I'd
21 like to give Mr. Drabinski and the rest of us a break.
22 Let me just verify, when Mr. Drabinski is finished,
23 we'll be going on to Mr. Roberts; is that correct?

24 MR. FISCHER: Yes.

25 JUDGE PRIDGIN: Okay. Thank you.

1 Anything further from counsel before we go off the
2 record?

3 MR. STEINER: Yes, Your Honor. Ms. Cafer
4 had an Exhibit 79, and I'd like to ask that that be
5 marked HC. It has information, some of the contracts
6 haven't been closed out yet, the attachment, I'd like
7 to have that marked HC. I don't believe anything was
8 referred to in the transcript.

9 JUDGE PRIDGIN: Okay. Any objection to
10 changing the designation on KCP&L 79 to HC?

11 MR. SCHWARZ: None.

12 JUDGE PRIDGIN: All right. 79 will now
13 be designated as HC. Mr. Steiner, thank you. Anything
14 further before we take a break? All right. Let's
15 stand in recess until 10:45, please. We're off the
16 record.

17 (A break was held.)

18 JUDGE PRIDGIN: We are back on the
19 record. I believe it is time for Mr. Schwarz to
20 redirect Mr. Drabinski. Anything from counsel before
21 he begins? Okay. Mr. Schwarz, when you're ready, sir.

22 MR. SCHWARZ: Thank you, Judge.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MR. SCHWARZ:

25 Q. Mr. Drabinski, during your

1 cross-examination, you were given what has been marked
2 as KCP&L Exhibit 75-HC, which is the KCP&L executive
3 presentation concerning Kiewit, and KCP&L 76-HC, which
4 is a letter from Kiewit to Mr. Dave Price.

5 Do you recall those documents?

6 A. Yes, I do.

7 Q. Had those been provided to you in
8 discovery?

9 A. No.

10 Q. Had you propounded data requests that
11 should have elicited materials such as this?

12 A. We put in two separate data requests that
13 requested copies of all Kiewit contracts, negotiations,
14 renegotiations. And I thought that I had received all
15 of the correspondence, but obviously, those two were
16 not included.

17 Q. Thank you. And turning to what is
18 Exhibit 75, the executive presentation of April 16th,
19 2007, do you have that with you? If not, I'll --

20 A. No, I don't.

21 Q. Are you with me now?

22 A. Yes, I am.

23 Q. Do you recall Ms. Cafer -- there are two
24 boxes on that page, each of which has cumulative
25 numbers at the bottom. Without revealing those,

1 because I can't remember what's HC and what's not
2 anymore, there are two numbers. If you subtract --

3 A. You're referring to page 13?

4 Q. Page 13. And, fortunately, the numbers
5 I'm referring to, there are two totals on that page,
6 one in each box. There's a -- are you with me?

7 A. Yes.

8 Q. If you subtract the smaller one from the
9 larger one, what do you get? And just use the first
10 three digits for convenience.

11 A. About 295 million.

12 Q. Okay. And it was suggested that the
13 adjusted Kiewit bid was the result of that subtraction
14 product; is that correct?

15 A. That's what I recall.

16 Q. And would that be the case?

17 A. No, because the adjusted bid was 398
18 million.

19 Q. Okay. Do you have a copy of the CBE with
20 you?

21 A. Yes, I do.

22 Q. And you had extensive questions both in
23 cross-examination and from the bench on budget matters,
24 did you not?

25 A. Yes.

1 Q. I'd like you to explain, if you would,
2 the growth in -- in the January '06 scale-up budget of
3 a billion 145 million to the total project costs in the
4 December 6th CBE.

5 what -- what line items account for the
6 bulk of that growth?

7 A. Thank you. Yes. I think it's important
8 -- let's -- if you start with the very top line item,
9 which is the boiler and APC EPC contract, and we see
10 that the projected price in January, which is before
11 the bids were received, was 555 million. I assume this
12 is public? It was public in Kansas.

13 COMMISSIONER DAVIS: We're not in Kansas
14 anymore. I was waiting to say that the whole time.

15 MS. CAFER: I was, too, but I resisted,
16 if we used it openly there.

17 THE WITNESS: The estimated costs for the
18 boiler and APC contract was 555 million. The actual
19 December estimate after the bid was received was 408
20 million.

21 So it goes to the point that we were
22 talking about is that the procurement was very
23 effective, and they received a very good. So that
24 price actually went down some \$65 million.

25 The steam turbine and boiler feed pumps

1 were estimated in January of 58 million, came in at 56
2 million. So, again, another procurement done in 2006
3 that actually came in below what was expected.

4 If you look at the -- under point 3 in
5 mechanical construction, below that, equipment and
6 piping actually went from 35 million to 78 million.
7 This is the balance of plant, and that's reflected by
8 the increased size of the turbine room and a lot of
9 other increases in balance of plant. But the big thing
10 that occurred there is construction also went up by 30,
11 122.6 to 155.6. So the construction costs went up.

12 Water treatment equipment went from 12
13 million to 13 million. Again, the equipment costs came
14 in pretty close to what was estimated in January.
15 Civil instructional equipment and construction, that
16 went up from 94 million to 216, a pretty significant
17 increase over ten or 11 months. However, of that, the
18 construction costs, which was 64.7, went up to 185
19 million. So construction costs alone for civil
20 structural equipment went up by almost \$120 million in
21 that eight- or ten-month period.

22 Construction indirects went from 142 to
23 137, so that actually went down for that period of
24 time. However, owner indirects went from 80 million to
25 115 million, fairly significant. And then other costs

1 went from 19 -- so when I go through this -- and I
2 think what's important is that the procurement of
3 equipment itself came in very close to some of the
4 original estimates. What cost more was the actual
5 installation, the construction of the balance of plant,
6 the construction of the civil. Those prices went up,
7 and as I think my surrebuttal testimony shows in the
8 chart, the balance of plant costs went up by -- from
9 300 million to almost a billion on the project.

10 BY MR. SCHWARZ:

11 Q. Thank you. And throughout 2006, and in
12 early December of 2006, it was KCP&L -- strike that.

13 The construction aspect of things was
14 KCP&L was proposing to manage that themselves?

15 A. KCP&L had selected, through the multiplan
16 process, to be the construction manager for all of the
17 balance of plant activities. So the answer is yes.

18 Q. And so the growth from January to
19 December was significantly in the areas that KCP&L
20 itself was going to manage?

21 A. Yes.

22 Q. And -- strike that.

23 You saw KCP&L Exhibit 74, which was
24 Mr. Downey's timeline, did you not?

25 A. Yes.

1 Q. I'd like you to, with reference to this
2 timeline, indicate to the Commission where personnel
3 changes in project management occurred. I noticed that
4 there are no references whatsoever to the management
5 status of the project on this timeline. So when, for
6 instance, was Mr. Price --

7 A. Well, if I can start on the first page,
8 maybe we start with Mr. Murphy since he was the first
9 --

10 Q. Start with Mr. Murphy.

11 A. -- professional manager hired. And if
12 you were to modify this, in February 2006, Mr. Murphy
13 started and he left in June 2006. So he was there for
14 approximately five months.

15 Q. Okay. And that was through the period
16 when the Alstom and Toshiba contracts were negotiated?

17 A. That's correct.

18 Q. Okay. And so who would the next person
19 be?

20 A. I think the next key person would be
21 Mr. Price.

22 Q. Uh-huh.

23 A. You have to go to the next page. He did
24 not start work until May 2007, 11 months after Mr.
25 Murphy left. And then he left in February 2008.

1 Q. So -- okay. And then when did his
2 replacement arrive? That would be Mr. Churchman?

3 A. Well, Mr. Easley filled in for three
4 months, so in February, March 2008, Mr. Easley started
5 for three months. And then in May 2008, Mr. Churchman
6 came on board from May 2008 and I think until
7 approximately May 2010, after the project went into
8 startup.

9 Q. And -- okay. So, then we have the --
10 where would the STS report fit on this timeline?

11 A. The STS report was issued in May 2007.

12 Q. Okay. So that would be during Mr.
13 Price's?

14 A. Just about the time he started.

15 Q. Okay.

16 A. So it really addressed a time prior to
17 him being on board.

18 Q. So at least -- and I want to take a
19 diversion here for a minute from the timeline because
20 we had quite a bit of discussion about hindsight and --
21 and so forth. And I know that in your rebuttal
22 testimony, you have a substantial list of -- of
23 materials that you thought were significant in -- well,
24 significant enough to be put into your surrebuttal
25 testimony. You agree to that?

1 A. That's correct.

2 Q. And each of those entries has a source
3 date with it; is that correct?

4 A. Yes.

5 Q. And all of those items, those reports,
6 those summaries, those meeting minutes, all of those
7 reflect what was going on contemporaneously with those
8 reports?

9 A. Yes.

10 Q. Has anyone -- has anyone from the company
11 ever challenged the accuracy of those reports?

12 A. No.

13 Q. Well, there was one exception, the
14 185-day -- let me take you to the page. There was one
15 where someone reported Number 48, project is 185 days
16 behind schedule?

17 A. Yeah. That was erroneously included in a
18 report, and I corrected it in my Kansas and forgot to
19 correct it here.

20 Q. I understand. But other than that, the
21 company hasn't pointed out any -- I mean, they quibbled
22 with four or five, but otherwise, what we've heard in
23 the courtroom, no one has said either that your
24 citation is incorrect or that the materials recited was
25 incorrect; would you agree?

1 A. That's correct. The only other
2 correction was Item Number 43 which was January 14th,
3 and the report should have been January 4th.

4 Q. Okay. So these are all contemporaneous
5 observations by the participants?

6 A. That's correct.

7 Q. would it be safe to say that your
8 understanding is that adjustments are appropriate when
9 -- adjustments are appropriate when an imprudent action
10 has a -- or causes costs to be higher than they
11 otherwise would be?

12 A. Yes.

13 Q. Do the effects ever precede the cause in
14 order of time? Have you ever seen an effect before you
15 observed the cause?

16 A. No.

17 Q. So that from the perspective of gauging
18 the impact of a particular action, the effect always
19 follows the action, does it not?

20 A. That's correct.

21 Q. And in -- are you aware of anyone who --
22 who would consider that phenomenon to be the use of
23 hindsight?

24 A. No.

25 Q. The -- the list -- and it's not a

1 complete list, is it, that's contained in your
2 surrebuttal testimony? I mean, that's not all the
3 documents you looked at, is it?

4 A. Heavens, no.

5 Q. Those are the kinds of things you used to
6 judge what the company knew at the time it was managing
7 the project?

8 A. what the company knew, what problems had
9 been identified, so yes, that is exactly what that list
10 does.

11 Q. At the -- you're familiar with the
12 Schumacher reports?

13 A. Yes, I am.

14 Q. Did it provide some -- what information
15 did it provide to KCP&L?

16 A. There were two reports, both of which are
17 attachments or schedules in my testimony. The first
18 one talked about -- it was done -- that's the very
19 first study that was done, and that was done, I
20 believe, in early 2006. It talked about labor
21 conditions, expectations. It also went into potential
22 impacts of loss of productivity due to different type
23 of overtime, formats.

24 Q. And did it also contain a warning in one
25 of its lists about problems with congestion?

1 A. Yes.

2 Q. So at the point in time when the company
3 was -- and had they gotten similar advice from, say,
4 Schiff Hardin and other sources?

5 A. I think the advice from more than
6 knowledgeable experts were that the costs of congestion
7 and other production roadblocks can be significant.

8 Q. So that at the time that the company was
9 managing the project themselves, they were aware of all
10 of these possible issues?

11 A. Yes.

12 Q. And those were things that they knew and
13 should have had in mind as they managed the project
14 day-to-day?

15 A. Yes.

16 Q. There was a series of questions in your
17 cross-examination and questions from the bench about
18 where you identify specific problems. Do you recall
19 those questions?

20 A. Yes.

21 Q. Would you turn to page 2 of your direct
22 testimony. And what is that?

23 A. That's the table of contents for my
24 testimony.

25 Q. And it -- will it identify for the

1 Commissioners where they can find the aspects of your
2 analysis?

3 A. Yes. Section F, analysis of the project,
4 lists an entire series of separate analysis we
5 conducted to support our conclusions.

6 Q. Okay. Have you seen -- and I can't
7 remember. There was a letter from Mr. Davis to Burns &
8 McDonnell concerning the production of -- I think it
9 was lists of drawings. Are you familiar with that?

10 A. Yes, I am.

11 Q. And do you recall the date of that
12 letter? If I suggest July of '07 --

13 A. I was just going to say July of '07.

14 Q. Given the -- explain to the Commission
15 what might be the significance of the time and the
16 content -- contents of that letter.

17 MS. CAFER: Objection. That was an
18 exhibit that Mr. Schwarz presented in his
19 cross-examination of Steve Jones. I don't see how this
20 goes to the cross-examination of Commissioner questions
21 that were asked. That letter was not raised.

22 MR. SCHWARZ: Well, the -- I'm not asking
23 him about the basis or foundation of the exhibit.
24 Rather, we're discussing the fact that during the
25 project, there were problems between KCP&L and its

1 contractors. This letter is a contemporaneous example
2 of a problem between KCP&L and Burns & McDonnell which,
3 as far as I can tell, no company witness says that any
4 of these problems adjusting the contract -- dealing
5 with contractors had any impact on the project or its
6 costs.

7 And I think that I'm allowed to, given
8 the extended nature of the cross-examination on this
9 subject and particularly the time sequences relatively
10 early in the project, that, A, I'm entitled to the
11 latitude to inquire into it, and B, I think it will
12 help the Commission in its understanding.

13 JUDGE PRIDGIN: I'll overrule. You may
14 inquire.

15 BY MR. SCHWARZ:

16 Q. well, let's talk about the timing first.
17 Mid-July 2007, what's the contract status on the
18 project?

19 A. I think that while -- referring to the
20 Burns --

21 Q. well, let's start off. They've got
22 Alstom under contract, correct?

23 A. That's correct.

24 Q. And they've got Toshiba under contract,
25 correct?

1 A. Correct.

2 Q. They have other mechanical components
3 under contract, correct?

4 A. Yes.

5 Q. They've got over -- over a billion --
6 they have over a billion dollars under contract at that
7 stage, did they not?

8 A. That's correct.

9 Q. Did they have their contract with Burns &
10 -- the owners engineer contract with Burns & Mc at that
11 time?

12 A. Burns & Mc was selected in November 2005,
13 and I believe the contract was actually signed -- may
14 have been July of 2007 or in that -- middle of 2007.

15 Q. Okay. So they had been operating, at
16 least through all of 2006, without a contract with
17 Burns & McDonnell, is that correct, as owner engineer?

18 A. They were working on an old 1989 --

19 Q. Okay.

20 A. -- standard engineering contract.

21 Q. Okay. So -- now, do you have a copy of
22 that in front of you?

23 A. The letter?

24 Q. Yeah.

25 A. No, I don't.

1 Q. I don't know -- excuse me a moment. And
2 that's been marked as KCP&L 2603 for reference.

3 what's the disagreement that that letter
4 reflects?

5 A. Well, the subject of it is engineering
6 deliverables. And Mr. Davis indicates that he's
7 disappointed to learn that Burns & McDonnell will be
8 unable to provide KCP&L with a complete list of
9 drawings by the end of today, July 18, 2007. Frankly,
10 KCP&L's surprised to learn Burns & McDonnell does not
11 already have such a list and, moreover, does not
12 consider such a list essential, much less helpful in
13 planning and executing work. In our experience, the
14 creation of such a list is standard industry practice.

15 Q. Okay. And in your experience, is such a
16 list typically provided by an owner's engineer?

17 A. In the large projects I worked on and I
18 had responsibility for coordinating documents, we
19 always had a list of drawings.

20 Q. Is that a yes?

21 A. That's a yes.

22 Q. Thank you. And like Mr. Davis, would you
23 consider that an important item?

24 A. Yes.

25 Q. Can you tell if that is a reflection of

1 some omission in the Burns & McDonnell contract with
2 KCP&L or whether it is simply a failure on Burns &
3 McDonnell's part?

4 MS. CAFER: I'm going to object. He's
5 asking him to speculate about a letter. The letter was
6 written by someone who was a witness in this case, Mr.
7 Davis. It was not introduced with Mr. Davis. He was
8 not asked about what it meant, and what Mr. Drabinski's
9 speculation about what Mr. Davis meant by it, I think,
10 at this point is objectionable and inappropriate.

11 MR. SCHWARZ: I don't care what Mr. Davis
12 thought about it. I care what Mr. Drabinski thinks
13 about it. The question specifically is, does the -- do
14 the facts outlined in the letter, which I take it are
15 not in dispute -- it's a company letter and they didn't
16 object at the time -- do the facts in the letter
17 reflect either a deficiency in the Burns & McDonnell
18 contract or a deficiency in the Burns & McDonnell
19 performance.

20 JUDGE PRIDGIN: I'll overrule.

21 THE WITNESS: I would say yes, it's
22 either a deficiency in the contract or of the
23 performance.

24 BY MR. SCHWARZ:

25 Q. And at that stage, KCP&L is responsible

1 for managing whichever deficiency it is; is that
2 correct?

3 A. Yes.

4 Q. Were you here when Mr. Downey was sitting
5 in the chair you occupy now?

6 A. I was here yesterday for that portion of
7 his testimony.

8 Q. Okay. And I can't remember, were you
9 here when he testified that the Alstom contract may be
10 the last fixed price EPC contract for boilers for the
11 -- that we're likely to see for awhile?

12 A. I recall that statement.

13 Q. Okay. So is that an indication to you --
14 strike that.

15 So it's your -- strike that again.

16 If -- if there is an -- if a utility
17 performs an action imprudently and there is no adverse
18 cost impact, is an adjustment appropriate?

19 A. No.

20 Q. If the company -- if the utility performs
21 an act that is prudent and there is no adverse impact,
22 would you make a prudence adjustment?

23 A. No.

24 Q. If the company performs an act that is
25 prudent and there are adverse cost consequences, would

1 you make a prudence adjustment?

2 A. No.

3 Q. It is -- you would agree, then, that the
4 only time you make an adjustment is when there's an
5 imprudent action followed by increased costs?

6 A. Correct.

7 Q. You talked about the Alstom contract at
8 some length, both on cross-examination and from the
9 bench, did you not?

10 A. Yes.

11 Q. And there was some questioning about
12 whether there was -- whether you could point to any
13 particular specification, for instance, of a hand
14 railing being in the contract or not being in the
15 contract. Do you recall?

16 A. Yes.

17 Q. And I think you were asked a question,
18 well, if you can't point to something in the
19 specifications, how can you make an adjustment; do you
20 recall that question?

21 A. Yes.

22 Q. Let's -- let's take it from a different
23 approach. If the company is required to settle or to
24 make a settlement in order to get handrails, would that
25 be either a deficiency in the contract or a deficiency

1 in the contractor's performance?

2 A. Yes.

3 Q. would it -- and as long as the company is
4 responsible for both of those items, that is, either
5 entering a contract, which is sufficiently definite to
6 be enforceable and is responsible for the enforcement
7 of the contract, is it safe to say that, whether it's
8 one reason or the other, that you get two years into a
9 project and discover you have no handrails, the company
10 is responsible for that, are they not?

11 A. Correct.

12 Q. And in making those settlement
13 discussions, it would be incumbent on the company to be
14 familiar with the contract and know its terms, would it
15 not?

16 A. Yes.

17 Q. From your review of documents provided,
18 were you able to determine the dollar amounts that
19 Schiff Hardin charged as services as attorneys as
20 opposed to services for management consultant --
21 project management consultant?

22 A. No.

23 Q. I just -- I believe that at one point in
24 your cross-examination, you were responding that the
25 budget went from 1.465 billion to 9.5 billion. I

1 believe that's a misstatement.

2 A. 1.95 billion.

3 Q. Thank you. I'm not sure where that is,
4 but we might as well correct it now.

5 A substantial portion of your testimony
6 is devoted to citations to or quotations from documents
7 that were generated by the company and its consultants;
8 is that correct?

9 A. Yes.

10 Q. And those documents, created
11 contemporaneously with the management and conduct of
12 the project, are the basis of your adjustments?

13 A. That's correct.

14 MR. SCHWARZ: I think that's all I have.
15 Thank you.

16 JUDGE PRIDGIN: Mr. Schwarz, thank you.
17 Mr. Drabinski, thank you very much, sir. You can step
18 down.

19 THE WITNESS: Thank you.

20 JUDGE PRIDGIN: We're ready to proceed
21 with Mr. Roberts?

22 MR. FISCHER: Yes, Judge.

23 (The witness was sworn.)

24 JUDGE PRIDGIN: Thank you very much, sir.
25 Mr. Hatfield, Mr. Fischer, anything before he stands

1 cross?

2 MR. HATFIELD: A little direct.

3 JUDGE PRIDGIN: Yes, sir, when you're
4 ready.

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. HATFIELD:

7 Q. Mr. Roberts, would you state your name
8 and business address for the record, please.

9 A. Kenneth M. Roberts. What was formerly
10 known as the Sears Tower in Chicago, Illinois, now
11 known as the Willis Tower.

12 Q. And are you the same Ken Roberts who
13 filed testimony in this case?

14 A. I am.

15 Q. And did you file direct testimony?

16 A. I did.

17 Q. Did you file rebuttal testimony?

18 A. I did.

19 Q. Did you file supplemental rebuttal
20 testimony?

21 A. I did.

22 Q. And could you just explain very briefly
23 why you filed supplemental rebuttal testimony? Was
24 that after Mr. Drabinski's testimony?

25 A. Yes. It addresses points raised in

1 Mr. Drabinski's testimony.

2 MR. HATFIELD: And, Judge, just for the
3 record, the reason we have supplemental rebuttal here
4 is that Mr. Drabinski's testimony was filed a little
5 later, with the agreement of all the parties. And so
6 there was supplemental rebuttal filed as a result of
7 that filing. I just wanted to make sure we were clear
8 on that.

9 BY MR. HATFIELD:

10 Q. And then, Mr. Roberts, did you also file
11 surrebuttal testimony?

12 A. I did.

13 Q. And does some of your testimony contain
14 exhibits as well?

15 A. It does.

16 Q. We've marked your direct testimony as
17 Exhibit 50-HC and public. We've marked rebuttal as
18 Exhibit 51-HC and public. We've marked supplemental
19 rebuttal as Exhibit 52-HC and public. We've marked
20 surrebuttal as Exhibit 53-HC and public.

21 Now, Mr. Roberts, I know it's a lot of
22 paper. Do you have anything in any of that testimony
23 that needs to be corrected?

24 A. No, I do not.

25 Q. If we ask you those same questions here

1 today, would your answers be the same?

2 A. They would.

3 Q. All of the schedules that you submitted
4 remain true and accurate today?

5 A. To the best of my knowledge, yes.

6 MR. HATFIELD: Judge, we'd move the
7 introduction of Exhibits 50, 51, 52, 53, HC and NP
8 versions.

9 MS. OTT: Judge, Staff objects to
10 Schedules 3, 4 and 5 in his direct testimony. Schedule
11 3 is direct testimony of Charles J. Hookum and the --
12 or Wisconsin Power & Light. Mr. Hookum is not here to
13 stand cross-examination, as well as he only
14 specifically cites to page 14, 20, and 21; however, the
15 document is 43 pages of this man's testimony. As well
16 as Schedules 4 and 5 are verified petitions in the
17 Indiana Utility Regulatory Commission. Mr. Stanley is
18 not here, who verified those petitions to stand
19 cross-examination.

20 JUDGE PRIDGIN: Mr. Hatfield?

21 MR. HATFIELD: Yes, Judge. Yeah, I'm
22 sure you've addressed this before. It's actually a
23 very interesting issue. When a witness files an
24 affidavit in advance under the statutes, parties have
25 seven days, I think, to challenge hearsay. And if they

1 don't, it's deemed admitted without a hearsay
2 objection.

3 But that aside for a moment, I believe
4 Ms. Ott is welcome to cross-examine Mr. Roberts on
5 this. But I don't believe those exhibits are being
6 offered for the truth of the matter asserted. But
7 rather, they're offered as foundation for his opinions
8 on the cost of the project as it compares to other
9 projects.

10 These are documents normally relied upon
11 by experts in reaching conclusions such as he's reached
12 in this case, and as such, as long as this Commission
13 finds that they have independent credibility, they are
14 not -- and they're not being offered for the truth of
15 the matter asserted, they may be considered as evidence
16 to support his opinions.

17 MS. OTT: well, if they're not being
18 offered for the truth of the matter asserted, I don't
19 think 43 pages worth of testimony, when he's only
20 specifically referencing three pages within Mr.
21 Hookum's direct testimony filed on behalf of another
22 state in front of another Commission, is relevant to --
23 to this matter.

24 MR. HATFIELD: Certainly the Commission
25 may consider the credibility of the testimony, Judge,

1 but it doesn't go to whether that evidence may be
2 considered.

3 JUDGE PRIDGIN: Okay. The objections are
4 noted and overruled. Exhibits 50, 51, 52, and 53 NP
5 and HC are admitted.

6 (Exhibit Nos. 50-HC, 50-NP, 51-HC, 51-NP,
7 52-HC, 52-NP, 53-HC, and 53-NP and HC were received
8 into evidence.)

9 JUDGE PRIDGIN: Anything further before
10 he stands cross?

11 MR. HATFIELD: No, sir.

12 JUDGE PRIDGIN: Okay. Thank you.
13 Cross-examination, Mr. Schwarz?

14 CROSS-EXAMINATION

15 QUESTIONS BY MR. SCHWARZ:

16 Q. Good morning, Mr. Roberts.

17 A. Good morning.

18 Q. Schiff Hardin's a law firm?

19 A. It is.

20 Q. Does Schiff Hardin provide legal advice
21 by invoice?

22 A. Yes.

23 Q. So if -- let me ask you this: Has Schiff
24 Hardin ever provided legal advice to KCP&L and done so
25 by saying, please see our invoice of December 12th,

1 2008?

2 A. I don't understand your question.

3 Q. Have you ever told KCP&L that to receive
4 your legal advice, they had to look at an invoice?

5 A. The bill would describe the legal advice
6 or strategy that was, in part, given to KCP&L, that's
7 correct.

8 Q. would it describe it or would it
9 reference it?

10 A. In some cases, it would describe it.

11 Q. But not in all cases?

12 A. It would certainly give the nature of the
13 advice that was given, yes.

14 Q. Okay. Have you had an opportunity to see
15 what was marked as KCP&L 270, one of the Staff?

16 A. I don't have that in front of me, sir,
17 no.

18 MR. SCHWARZ: May I approach?

19 JUDGE PRIDGIN: You may.

20 THE WITNESS: I have looked at the
21 document, sir.

22 BY MR. SCHWARZ:

23 Q. All right. I think it's the second page
24 of the exhibit is, like, the cover page of -- of the
25 memo; is that correct?

1 A. Yeah, dated December 7th, 2005, budget
2 proposal for comprehensive energy plan project?

3 Q. Uh-huh. And it says that it's for
4 William Downey's eyes only; is that correct?

5 A. Yes.

6 Q. Why is that?

7 A. It was a highly confidential document
8 that was laying out both not only what we would
9 perceive as the budget over a five-year plan, but
10 laying out what we thought would be the commercial
11 legal strategy that a utility embarking in this plan
12 would have to engage in. It was -- it was also -- it
13 was directed to Bill Downey, but I worked extensively
14 off this document with Bill Riggins.

15 Q. So -- but why does it -- I guess I get
16 back to my question, why does it say eyes only as
17 opposed to highly confidential or --

18 MR. HATFIELD: Judge, I just want to
19 object. I think if we get any further than that, we
20 may be calling for attorney-client privilege. Why did
21 this attorney choose to give that particular advice,
22 it's for your eyes only, to Mr. Downey.

23 JUDGE PRIDGIN: Mr. Schwarz?

24 MR. SCHWARZ: I hardly think at this
25 stage that that is the situation. If it is, of course,

1 he's perfectly entitled to say that the CEO could look
2 at it, but not the general counsel. It's -- it's eyes
3 only. It's not classified as highly confidential, it's
4 not -- it doesn't say share it with your VP of
5 construction, it doesn't say share with your general
6 counsel. It says eyes only. It certainly goes to the
7 issues -- well --

8 JUDGE PRIDGIN: All right. I'll
9 overrule. On the eyes only issue, I'll overrule on
10 that.

11 THE WITNESS: I need some help. What was
12 the question again?

13 BY MR. SCHWARZ:

14 Q. Why is it designated eyes only?

15 A. Well, it's designated a confidential
16 memorandum for Bill Downey's eyes only. At the bottom,
17 it says highly confidential, do not disseminate.

18 Q. That says what it says, but it doesn't
19 answer why. Why eyes only as opposed to confidential
20 or internal distribution only or, you know, CEO and
21 general counsel? I mean, eyes only, that sounds like a
22 James Bond movie.

23 A. This was deemed a very sensitive document
24 laying out commercial contract strategy for a five-year
25 time period. Mr. Downey initially wanted it for his

1 eyes only. That's why it's designated that way.

2 Q. Thank you. Mr. Downey requested it that
3 way?

4 A. And Mr. Riggins did as well.

5 Q. Okay. Is Jim Wilson's company referenced
6 in that memo?

7 A. The document I have in front of me is --
8 is redacted.

9 Q. In the part that's not redacted.

10 A. Right. The budgetary analysis, the first
11 paragraph, references our fees plus those of
12 consultants J. Wilson & Associates.

13 Q. Is Mr. Wilson an attorney?

14 A. No, he's not.

15 Q. Does he practice law?

16 A. No, he does not.

17 Q. Does he provide legal advice?

18 A. He provides advice to Schiff upon which
19 we give legal advice.

20 Q. Does Mr. Wilson provide legal advice?

21 A. He does not directly provide legal
22 advice.

23 Q. Thank you. What about Mr. Meyer, does he
24 provide legal advice?

25 A. He does not directly provide legal

1 advice.

2 Q. There's a reference to Ticktacks. That's
3 who Steve Jones was working for?

4 A. That's entirely incorrect.

5 Q. Fine. What personnel who were actually
6 used on the project worked for Ticktacks?

7 A. Volkar Ruminaf is an expert on back-end
8 work, and he was used as it related to Alstom.

9 Q. And is he an attorney?

10 A. No, he's not.

11 Q. Did he provide legal advice?

12 A. He directly did not, no, sir.

13 Q. Tom Maiman, is he an attorney?

14 A. No.

15 Q. Did he provide legal advice to KCP&L?

16 A. No, he did not.

17 Q. What legal strategies would have been
18 revealed had you identified your expected costs for Tom
19 Maiman's advice?

20 A. It's been redacted. I can't -- there was
21 legal strategy for the five-year plan that gave KCP&L
22 from what would be expected -- I'm trying to answer
23 your question.

24 Q. I understand. I'll withdraw the
25 question. I'll withdraw the question.

1 was there a line item for Tom -- the
2 costs -- the expected costs of Tom Maiman's services in
3 that document?

4 A. As I sit here right now, I can't recall.
5 I think in general, the types of services in areas that
6 it would be expected and how those would be used in
7 legal strategy were, indeed, identified.

8 Q. So in a relatively comprehensive
9 document, outlining expected costs over a project five
10 years forward, it's your recollection now that there is
11 no simple reference in there to the expected costs for
12 the individual consulting services?

13 A. As I sit here right now, I couldn't tell
14 you. I think there was groupings in general, yes.

15 Q. Thank you.

16 MR. SCHWARZ: I think that's all I have.

17 JUDGE PRIDGIN: Mr. Schwarz, thank you.
18 Mr. Mills?

19 MR. MILLS: No questions.

20 JUDGE PRIDGIN: Ms. Ott?

21 CROSS-EXAMINATION

22 QUESTIONS BY MS. OTT:

23 Q. Mr. Roberts, the purpose of your
24 testimony is given as an attorney; is that correct?

25 A. As an attorney and as a fact witness to

1 the process, yes.

2 Q. So are you -- so what part of your
3 testimony, then, is given as a fact witness and what
4 part of your testimony is provided as an attorney for
5 KCP&L?

6 A. I'm always an attorney. Anything that
7 I'm giving is as an attorney, as a partner of Schiff
8 Hardin. I would say that well over 90 -- maybe 95
9 percent of my testimony is as a fact witness as to the
10 data and issues that were given to KCP&L's senior
11 management upon which and how they made decisions.

12 Q. So is any of your testimony based upon
13 redacted information that was provided to Staff? So
14 any of the documents in which you provided to KCP&L in
15 which they deemed to be attorney-client privilege that
16 they redacted, is any of your testimony related to any
17 of those documents?

18 A. I would assume that part of my testimony
19 does, in fact, relate to documents that potentially
20 have been redacted. Unless you can identify which
21 document and put a specific question in front of me,
22 it's very broad. But I would assume in general, there
23 must be some aspect of my testimony that would touch
24 upon a redacted document.

25 Q. So do you know if KCP&L is, then, waiving

1 their attorney-client privilege with regards to your
2 testimony for information coming from those redacted
3 documents?

4 MR. HATFIELD: Judge, for the record, the
5 company waives no privilege.

6 MS. OTT: I think I will state that he
7 does believe some of his testimony is relied upon
8 privileged documents, so the record needs to reflect
9 that.

10 JUDGE PRIDGIN: I don't hear an
11 objection, so he can answer the question.

12 THE WITNESS: You'd have to repeat the
13 question again.

14 BY MS. OTT:

15 Q. I was asking whether or not the company
16 was waiving their attorney-client privilege for the
17 documents in which you provided -- that you relied on
18 in your testimony which has been provided to Staff in
19 redacted format based on the attorney-client privilege.

20 A. If I understand the question correctly,
21 the company has not waived the attorney-client
22 privilege. They're the only ones that can waive it.

23 But the question you asked me, is there
24 any aspect of my testimony that could touch upon a
25 document that has been redacted. I said I don't know

1 as I sit here, I'd need to see the document, but I
2 would imagine it's possible.

3 Q. So did you ever provide any legal --
4 non-legal services to KCP&L on the Iatan construction
5 projects?

6 A. I would say the only non-legal services
7 that we provided would have been in the initial setting
8 up of the project controls using Wilson and Meyer, and
9 we used the data from that project controls to give
10 legal commercial advice to KCP&L.

11 So my answer would be, on a technical
12 basis, the only thing I could identify would be the
13 services of someone like Meyer or Wilson, but the
14 byproduct of their work was certainly incorporated into
15 the legal commercial advice we gave KCP&L.

16 Q. Are you familiar with Dr. Nielsen?

17 A. Yes. He's sitting in the courtroom --
18 the Commission room.

19 Q. And he's the president and chairman of
20 Pegasus Holding; is that correct?

21 A. I don't know that.

22 Q. Then how do you know Mr. -- or Dr.
23 Nielsen?

24 A. I know him that he's associated with
25 Pegasus. I don't know if he's the president and

1 chairman of Pegasus.

2 Q. Did you read Dr. Nielsen's testimony?

3 A. In this case and in the Kansas case, yes.

4 Q. So did you read his credentials in that
5 case in his testimony?

6 A. They're lengthy. I did in both cases.

7 Q. Were you ever interviewed by Dr. Nielsen
8 in regards to the Iatan project?

9 A. I was never interviewed by Dr. Nielsen.

10 Q. Do you know if any other members of the
11 Schiff Hardin team were interviewed by Dr. Nielsen?

12 A. As I stated in my deposition, I believe
13 that there was an associate of Dr. Nielsen that came on
14 the site that had a meeting with myself and members of
15 my team. As I said in my deposition, I don't have any
16 independent recall of that meeting, but I've been
17 informed by my Staff that we did, in fact, have a
18 meeting with an associate of Dr. Nielsen once on the
19 Iatan project.

20 Q. And who were your associates that were
21 present with you in that meeting?

22 A. I believe -- so, I don't remember the
23 meeting, I don't remember having it, but I've been told
24 by Eric Gould and Carrie Okizaki that they were present
25 at that meeting with me that I don't remember.

1 Q. Do you know, other than that meeting that
2 you don't remember, if any member of Schiff Hardin was
3 interviewed by Dr. Nielsen or anyone from Pegasus
4 Holding for purposes of his rebuttal testimony?

5 A. The only meeting that I or my team can
6 recall with Pegasus was that one meeting.

7 Q. And did your -- did Mr. Gould or Ms.
8 Okizaki tell you when that meeting took place?

9 A. If they did, I don't recall.

10 Q. Now, do you know who Mr. Steve Jones is?

11 A. I do.

12 Q. And how is he related to the Iatan
13 construction project?

14 A. I would describe Steve as brought on to
15 handle procurement issues in the Iatan project.

16 Q. Okay. And he was originally the director
17 of the comprehensive energy plan procurement for KCP&L
18 as an independent contractor; is that accurate?

19 A. I believe that's correct. I'm taking
20 your word that that was his title. He was in charge of
21 the procurement for Iatan.

22 Q. And at some point, he left his role as an
23 independent contractor with KCP&L and he became an
24 independent contractor with Schiff Hardin; is that
25 correct?

1 A. That's correct.

2 Q. Do you know why he left KCP&L as an
3 independent contractor?

4 A. I do not.

5 Q. How is it that Schiff Hardin hired Mr.
6 Jones as an independent contractor to work on the Iatan
7 project?

8 A. We were asked to do so by Lora Cheatum,
9 the head of procurement at that time for KCP&L.

10 Q. And why would Ms. Cheatum ask you to hire
11 Mr. Jones as an independent contractor when he was
12 currently an independent contractor directly with
13 KCP&L?

14 MR. HATFIELD: Object that that specific
15 question calls for speculation.

16 BY MS. OTT:

17 Q. In your opinion, why did -- or your
18 understanding of the situation, why did Ms. Cheatum ask
19 Schiff Hardin to hire Mr. Jones as an independent
20 contractor?

21 A. I'm speculating, but my understanding was
22 that they were going with a procurement model more in
23 line with an operating plant. Steve Jones is known for
24 his expertise in big construction projects. We were
25 specifically asked to embed Steve Jones into our team

1 because Lora Cheatum, KCP&L, felt that there would be
2 extensive work on the rate case and thought that it was
3 beneficial to have Steve embedded in the Schiff team.

4 Q. So because there was going to be
5 extensive work on the rate case -- I'm just trying to
6 follow what you were saying -- it was better to be
7 embedded in your team than directly with KCP&L?

8 A. My understanding -- and it's strictly my
9 understanding -- was that the vast majority of Steve
10 Jones' work onsite was done. They were going in a
11 different direction, i.e., more of an operating model
12 for their procurement team, and we were asked to embed
13 Steve Jones in our team in preparation for the rate
14 case with his extensive knowledge on the procurement
15 strategy background and facts.

16 Q. How did Ms. Cheatum contact you? Was it
17 through a letter, e-mail, phone call?

18 A. It would have been either through a phone
19 call or in-person meetings.

20 Q. So there's no documentation of her
21 requesting?

22 A. I believe there's an e-mail confirming
23 his rate and Schiff's rates for the cost of embedding
24 Steve Jones in our team.

25 Q. Now, did Schiff Hardin want to hire Mr.

1 Jones?

2 A. I don't understand that question.

3 Q. Did Schiff Hardin have a desire to hire
4 Mr. Jones or was it upon just Ms. Cheatum's request
5 that you decided that you would hire Mr. Jones as an
6 independent contractor?

7 A. We did not, prior to Ms. Cheatum asking
8 us to hire Mr. Jones and embed him in the Schiff Hardin
9 team, we did not request to hire Steve Jones to use him
10 in that capacity.

11 Q. So the only reason that you hired Mr.
12 Jones is because KCP&L requested it?

13 A. The reason we hired Steve Jones to assist
14 is at the direction of KCP&L.

15 Q. So that's a yes?

16 A. I don't -- to say is that the only
17 reason, that is the reason we hired him.

18 Q. Okay. Do you know how much Mr. Jones was
19 being compensated when he was an independent contractor
20 directly for KCP&L?

21 A. As I sit here right now, I don't.
22 Guessing, I think it was in the 125 to 150 range.

23 Q. And how much was Mr. Jones being
24 compensated when he became a Schiff independent
25 contractor?

1 A. Steve Jones, per an agreement with Lora
2 Cheatum, was paid \$200 from KCP&L with a \$75, I
3 believe, markup for the cost of embedding him at our
4 offices at Schiff Hardin.

5 Q. So it was 200 total, it wasn't 200 plus
6 the 75 that would go to Schiff Hardin?

7 A. I don't understand your question.

8 Q. So did KCP&L pay \$200 an hour?

9 A. They paid \$275 for Steve Jones.

10 Q. And then Schiff Hardin, for having him as
11 an independent contractor, retained the \$75?

12 A. There was a \$75 markup for having Steve
13 Jones embedded in Schiff's offices, providing an
14 office, secretarial support, et cetera, yes.

15 Q. So what was the basis of that markup for
16 Mr. Jones?

17 A. I went to my executive committee, I went
18 to our administrators and said that we had a request
19 from a client to have an independent contractor office
20 at Schiff Hardin and to have full support of our
21 services, secretarial, et cetera, and asked what would
22 be the markup for such services, and I was provided the
23 number of \$75 that I passed on to Lora Cheatum.

24 Q. Now, does that \$75 contain any profit?

25 A. As I sit here right now, I would not

1 know.

2 Q. Now, do you know whether KCP&L hired a
3 replacement for Mr. Jones?

4 A. I believe at some point in time David
5 McDonald took over procurement responsibilities. I'm
6 not sure if I'd describe that as a replacement, but
7 David McDonald does procurement for KCP&L.

8 Q. Do you know if Mr. McDonald is an
9 independent contractor or is he an employee?

10 A. As I sit here, I do not know.

11 Q. Now, do you know who Mr. Thomas Maiman
12 is?

13 A. I do.

14 Q. And he was once a senior executive at
15 Commonwealth Edison; does that sound correct?

16 A. That is correct.

17 Q. How did you -- or how did Schiff Hardin
18 first become acquainted with Mr. Maiman?

19 A. We performed work at ComEd.

20 Q. Now, was Mr. Maiman a part of the Schiff
21 team prior to the fall of 2005?

22 A. No.

23 Q. Did Mr. Maiman come on to the Schiff team
24 only in relationship to the Iatan construction
25 projects?

1 A. Yeah. Mr. Maiman has previously not been
2 paid as an independent contractor to Schiff Hardin
3 prior to the work he performed on the Iatan project.

4 Q. Other than working with Mr. Maiman at
5 Commonwealth Edison, had you had any relationship with
6 Mr. Maiman on other projects?

7 A. Yes.

8 Q. And what were those projects?

9 A. We performed -- we did work with Tom
10 Maiman on the -- what's referred to as the OPG, which
11 is the Ontario Power Generation project, which was
12 bringing back their moth-balled fleet. We also
13 performed work that Mr. Maiman was on the project as it
14 related to a large East Coast utility in their steam
15 generator replacement.

16 Q. And when you were working with Mr. Maiman
17 on other projects, was he working under -- as an
18 independent contractor himself, or was he under a
19 different group, do you know?

20 A. As I sit here, I don't know. He was not
21 working through Schiff on those two projects.

22 JUDGE PRIDGIN: And, Ms. Ott, could you
23 verify, is your mic on?

24 MS. OTT: No, it's not. Sorry.

25 MR. HATFIELD: Thank you, Judge.

1 JUDGE PRIDGIN: Thank you.

2 BY MS. OTT:

3 Q. Do you know who Dan Meyer is?

4 A. I do. He's in the courtroom today.

5 Q. And who is Mr. Meyer?

6 A. He's a cost professional that we have
7 used in the past.

8 Q. And is he also an independent contractor
9 for Schiff?

10 A. He's an independent contractor providing
11 services for Schiff Hardin on this project, that's
12 correct.

13 Q. And how much is Mr. Meyer -- how much is
14 KCP&L paying Schiff Hardin for Mr. Meyer?

15 A. Boy, as I sit here right now, I don't
16 know his exact fee.

17 Q. Do you know what his markup --

18 A. I'm sorry, is there a question?

19 Q. Do you know what the markup between his
20 -- what KCP&L is charging and then what actually Schiff
21 pays out to Mr. Meyer is?

22 A. At some point in the project, I couldn't
23 tell you exactly when, because of the administrative
24 costs of responding to DRs and other things, I think
25 there was a \$25 markup put on Mr. Meyer's fee.

1 Q. Have you located how much Mr. Meyer is
2 paid?

3 MR. HATFIELD: Judge, in case he does,
4 Mr. Meyer's specific fee is, I think, proprietary to
5 Schiff, but it's marked HC in these proceedings, and we
6 consider it HC.

7 JUDGE PRIDGIN: All right. Thank you.

8 THE WITNESS: Right now, I don't have it,
9 no.

10 MS. OTT: If we want to go in-camera, I
11 have a copy of an invoice I can show him to refresh his
12 memory.

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

15 (REPORTER'S NOTE: At this point, an
16 in-camera session was held, which is contained in
17 volume 24, pages 1789 to 1790 of the transcript.)

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1 JUDGE PRIDGIN: We're back in public
2 forum. Thank you.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. And referring to the markup for Mr.
6 Meyer, what is that for?

7 A. Again, it was at some point in time
8 during this project, the extensiveness of the inquires
9 from Staff and the amount of work that it was taxing
10 the administrative support at KCP&L, we needed to mark
11 up the bills to reflect the additional services that
12 Schiff was providing in responding to the numerous data
13 requests that were coming in.

14 Q. So Mr. Meyer's markup is related to data
15 requests KCP&L was receiving, not data requests Schiff
16 Hardin was receiving?

17 A. Data requests that KCP&L was receiving
18 that we were being asked to help respond to, that's
19 correct.

20 Q. And why -- what is your understanding of
21 why Schiff Hardin needed to respond to data requests
22 and not KCP&L?

23 A. We were being asked by the general
24 counsel -- by the associate general counsel to assist
25 KCP&L in responding to those requests.

1 Q. Do you know why -- what's your
2 understanding of why they wanted you to assist in
3 responding to data requests?

4 A. I'm not sure how I answer that question.
5 We were requested to assist them. I would assume
6 because we had easier access to data and knowledge and
7 it would be faster in responding by using us.

8 Q. So was Schiff Hardin responding to the
9 data requests, or was Mr. Meyer responding to the data
10 requests?

11 A. There were a number of questions where
12 Schiff Hardin had to go back through documents in part
13 that Meyer had produced to respond to questions that
14 were being addressed.

15 Q. Now, included in Mr. Meyer's rate, was
16 there always a markup for the charges that Schiff was
17 submitting to KCP&L?

18 A. No. I think I previously answered at
19 some point in the project, there was a surcharge that
20 was put on Wilson and Meyer's rates that was identified
21 and discussed extensively with Riggins and Cheatum and
22 Reynolds prior to that surcharge being attached and the
23 reasons for the surcharge.

24 Q. So you talked about Mr. Wilson. Who is
25 Mr. Wilson?

1 A. He is a well-known forensic scheduler.

2 Q. And is he also -- he's an independent
3 contractor?

4 A. Yes, he is, to Schiff Hardin.

5 Q. And what is his rate in which he bills
6 Schiff Hardin?

7 MR. HATFIELD: Judge, I think that's HC
8 as well, the specific number.

9 JUDGE PRIDGIN: All right. So it's not
10 such an objection. We just need to go HC?

11 MR. HATFIELD: That's correct, it's not
12 an objection.

13 JUDGE PRIDGIN: Just a moment. We'll go
14 HC.

15 (REPORTER'S NOTE: At this point, an
16 in-camera session was held, which is contained in
17 volume 24, pages 1794 to 1794 of the transcript.)

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1 JUDGE PRIDGIN: We are back in public
2 forum. Thank you.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. Do you know where Mr. Jim Wilson &
6 Associates is located?

7 A. Nevada, Missouri.

8 Q. Now, does Schiff Hardin have a contract
9 with Mr. Meyer related to the Iatan project?

10 A. No.

11 Q. Does Schiff Hardin have a contract with
12 Jim Wilson related to the Iatan project?

13 A. Not to the best of my knowledge, no.

14 Q. Do you know if there's any reason why
15 KCP&L couldn't directly hire Jim Wilson to work on the
16 Iatan project?

17 A. Mr. Wilson predominantly works through
18 Schiff Hardin and is considered part of our team. I
19 know when he's been requested by others to work
20 independently, he has chosen not to.

21 Q. But he doesn't have a contract with you?

22 A. No, he does not.

23 Q. Do you know if KCP&L requested that Mr.
24 Wilson work directly with them and not through Schiff?

25 A. In the initial phases of this job in

1 2005, when we were explaining the services that we
2 provided and, in part, in reference to the December
3 2005 budgetary estimate that Mr. Schwarz presented to
4 me, we walked through who we would use, how we would
5 use them, and why those individuals have chosen to
6 provide these services through Schiff Hardin.

7 Q. Now, you're aware of the contract between
8 Schiff Hardin and KCP&L?

9 A. Yes.

10 Q. And are you aware of the terms and
11 conditions?

12 A. You know, I reviewed it in detail on or
13 about January 2007. I haven't looked at it, nor
14 studied it recently.

15 Q. Now, you came on to the project, though,
16 in 2005; is that correct?

17 A. Yes. I believe the first contact I had
18 with KCP&L would have been approximately August of
19 2005.

20 Q. How come there was at least a year and a
21 half delay before your relationship was memorialized
22 into a contract?

23 MR. HATFIELD: Object that it assumes
24 facts not in evidence.

25 JUDGE PRIDGIN: Overruled.

1 THE WITNESS: I believe that in
2 approximately October of 2005, we sent to Bill Riggins,
3 Bill Downey our letter of engagement, laid out our
4 client and scope of representation. It was very
5 similar to a document that we had presented to them in
6 August of 2005, and prior to a formal contract being
7 entered into, we worked off of our letter of
8 engagement.

9 BY MS. OTT:

10 Q. Do you believe it's prudent for KCP&L to
11 enforce the terms and conditions in its contract with
12 Schiff?

13 A. I would -- I would answer I think it's
14 prudent to follow your contract, yes.

15 Q. Now, do you know in the contract if
16 Schiff is required to seek approval of a rate change?

17 A. We're -- it was referenced in our
18 engagement letter and it was referenced in the
19 contract, that I believe 30 days before any rate
20 increase in both documents reference that there's going
21 to be regular rate increases, we need approval, that's
22 correct.

23 Q. And who would you make those requests to?

24 A. In each case, there was thorough
25 discussions of any rate increase with both Bill Riggins

1 and Jerry Reynolds.

2 MS. OTT: I think we need to go HC
3 because I'm going to hand him his contract, which I
4 believe has been attached to Mr. Hyneman's rebuttal.

5 JUDGE PRIDGIN: Okay. Just a moment,
6 please.

7 COMMISSIONER KENNEY: which contract?

8 MS. OTT: Schiff Hardin's contract for
9 legal services.

10 JUDGE PRIDGIN: Let's go in-camera, and
11 Commissioner Kenney can still hear.

12 (REPORTER'S NOTE: At this point, an
13 in-camera session was held, which is contained in
14 volume 24, pages 1799 to 1801 of the transcript.)

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1 JUDGE PRIDGIN: We are back in public
2 forum. Thank you.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. Is it prudent to not have documentation
6 to reflect those changes in rates?

7 A. I don't think it's imprudent in the sense
8 that Mr. Nielsen would use that word as it relates to
9 this case that that was not documented in writing, no.

10 Q. Now, you've worked in regulatory settings
11 before, have you not?

12 A. I have.

13 Q. And are you familiar with -- with having
14 -- auditors having to see documentation of changes in
15 rates, they review invoices?

16 A. As a catch and sink answer, yes.

17 Q. So why would you not think it's necessary
18 to document changes in rates?

19 A. Because the contract and the engagement
20 letter reflected that those would be 30 days in
21 advance, but more to answer your direct question, the
22 invoices that we provided to KCP&L did, in fact,
23 document those changes in rates.

24 And just to be clear, I believe the
25 contract that you're referring to did say that all fees

1 and costs are subject to annual adjustments which need
2 to be supplied and approved by KCP&L's general counsel
3 at least 30 days prior to the effective date. It
4 specifically didn't require those to be in writing.

5 Q. Now, Mr. Riggins was the general counsel
6 when you entered into that contract?

7 A. Yes, I believe that is correct.

8 Q. And he's not here today to testify? He's
9 no longer an employee?

10 A. That's my understanding.

11 Q. Now, Mr. Roberts, you testified that
12 Schiff employees did not charge hourly rates when
13 traveling back and forth from Chicago to Kansas City;
14 is that correct?

15 A. That's right. Our in travel time was a
16 write-off to these contracts.

17 Q. Now, is that the same for your
18 subcontractors, Mr. Meyer, Mr. Jones, Mr. Maiman, did
19 they charge -- and Mr. Wilson, did they charge travel
20 to the project?

21 A. As I sit here right now, I can't answer
22 that. I know for sure that that was specifically in
23 regards to Schiff direct employees.

24 Q. But I'm asking about their independent
25 contractors now. So you don't know?

1 A. As I sit here right now, I couldn't tell
2 you definitively.

3 Q. If I hand you that invoice for Mr. Meyer
4 again, can you review the itemized numbers, would it
5 help you answer?

6 JUDGE PRIDGIN: We can stay public?

7 MR. HATFIELD: As long as we don't talk
8 about the numbers, which I don't think we're doing.

9 THE WITNESS: I believe it shows that as
10 of August 3rd, '09, that part of a description on
11 August 3rd includes a description of travel to KCI, but
12 there's also three or four other description of
13 services.

14 BY MS. OTT:

15 Q. So Mr. Meyer would bill some portion for
16 his travel?

17 A. As I sit here right now, what I can only
18 definitively tell you is that Schiff Hardin employees
19 did not bill -- that bills associated, invoices
20 associated with our travel time were explicitly written
21 off. I cannot recall whether that was imposed on our
22 independent contractors.

23 Q. Do you review the invoices for Mr. Meyer?

24 A. I do.

25 Q. So as someone who has reviewed those

1 invoice, when you read that line item, what does that
2 mean to you?

3 A. He's listing that part of his description
4 was travel to KCI, file review for various cost issues,
5 and prep for an MPSC meeting.

6 Q. So would that mean to you that he did
7 bill for some travel?

8 A. I don't -- you know what, I can't answer
9 that because he's giving a listing of various services
10 that he rendered on that day.

11 Q. So do you verify that the line items in
12 which Mr. Wilson --

13 A. This is Mr. Meyer.

14 Q. -- Mr. Meyer -- sorry-- puts on a line
15 item on an invoice that those events actually occurred?

16 A. I did.

17 Q. So did you verify whether or not he
18 traveled to KC on that day?

19 A. He did.

20 Q. So he is billing for travel?

21 A. Boy, I am not trying to -- he's listing
22 as part of an item of description travel to KCI. As I
23 sit here right now, I don't believe that our
24 independent contractors were writing off their time for
25 travel. But as I sit here right now, the only thing I

1 definitively know is that Schiff Hardin did. I'm not
2 trying to be argumentative. I can't, as I sit here,
3 remember.

4 Q. well, I think you've stated he traveled
5 and you verified it on that day, so --

6 A. He did.

7 Q. So I think that answers my question.

8 JUDGE PRIDGIN: Ms. Ott, I'm trying to
9 get an idea of when to break for lunch. Do you know
10 roughly how much more cross you'll have?

11 MS. OTT: I have awhile.

12 JUDGE PRIDGIN: Okay. I hate to
13 interrupt in the middle, but it is about 12:30. I'd
14 like to break for lunch until roughly 1:30. Is there
15 anything further from counsel?

16 MS. OTT: Can I just ask before break,
17 there's one question that follows up with this?

18 JUDGE PRIDGIN: Sure. Absolutely.

19 BY MS. OTT:

20 Q. So are you aware if subcontractors
21 provided receipts for their travel to Schiff Hardin?

22 A. I believe that Schiff Hardin did receive
23 actual receipts from its independent contractors. I
24 don't believe, per our agreement with Mr. Riggins and
25 Reynolds, that those were provided to KCP&L. They told

1 us that the line items and descriptions in the invoices
2 were sufficient and that at any time that they wanted
3 see the actual backup of the invoices, that they would
4 notify us.

5 But to answer your question, yes, Schiff
6 Hardin would get invoices, backup material from our
7 independent contractors.

8 Q. Now, did KCP&L ever notify you that they
9 wanted to see the invoices?

10 A. Yes. At one point in time, Jerry
11 Reynolds, I believe, did a two- to three-month review
12 of all Schiff Hardin invoices plus the backup materials
13 that would have included the individual invoices,
14 backup for travel not only of KCP&L but also of its
15 independent contractors, Jay Wilson and Dan Meyer.

16 Q. And do you know when that -- that two- to
17 three-month review by Mr. Reynolds took place?

18 A. The years blend together. It was, I
19 believe, -- I believe it was either January through
20 March of '09 or it was January through March of 2010.
21 I cannot tell you the exact year as I sit here.

22 Q. So those were the months he requested,
23 and the review was done sometime later?

24 A. That's the months and the time that he
25 did the review.

1 Q. Okay. And I just -- you said that KCP&L
2 and subcontractors. Did you mean Schiff Hardin and
3 subcontractors?

4 A. What was your question? I'm sorry.

5 Q. In regards to the receipts, and you said
6 that KCP&L had requested them, and you said yes, they
7 requested them of --

8 A. Yes, Jerry Reynolds did an in-depth dive
9 of not only Schiff Hardin's invoices and backup
10 documents, but those of our independent contractors as
11 well.

12 MS. OTT: Okay. I think that's a good
13 breaking point. Thanks.

14 JUDGE PRIDGIN: Ms. Ott, thank you.
15 Anything further from counsel before we stand to
16 recess? Just to alert counsel, I plan on following a
17 similar schedule tonight that I did last night, which
18 would be an afternoon break, a dinner break, and going
19 anywhere from 9:00, 10:00 o'clock this evening.

20 COMMISSIONER KENNEY: No kidding?

21 JUDGE PRIDGIN: No kidding.

22 COMMISSIONER KENNEY: All right.

23 JUDGE PRIDGIN: We will stand in recess
24 until 1:30. Thank you. We're off the reported.

25 (An off-the-record discussion was held.)

1 JUDGE PRIDGIN: Okay. Good afternoon.
2 We are back on the record. I believe, when we
3 adjourned for lunch, Ms. Ott was cross-examining Mr.
4 Roberts.

5 Is there anything further from counsel
6 before she resumes? All right. Mr. Roberts, you're
7 still under oath. Ms. Ott, when you're ready.

8 BY MS. OTT:

9 Q. Mr. Roberts, I just want to clarify some
10 of the discussions we were having before lunch. Who at
11 KCP&L approved Schiff's hourly rate increase?

12 A. Bill Riggins, Jerry Reynolds.

13 Q. And Mr. Riggins and Mr. Reynolds are no
14 longer employees?

15 A. That's my understanding.

16 Q. So how is it possible for Staff to verify
17 its annual rate increases that were sought by Schiff
18 when both of those individuals are no longer employees
19 of KCP&L?

20 A. One, they're reflected in the invoices I
21 sent; two, I'm a licensed attorney in Missouri, an
22 officer of the court. I would be in serious trouble to
23 be lying to you, which is, I guess, what the
24 implication would be.

25 Q. So is the only documentations that the

1 auditors have to verify the rate increases the invoices
2 that were provided by KCP&L?

3 A. As I sit here, I don't know all the
4 documents that the Missouri Staff received. I know
5 that there's at least one e-mail talking about the rate
6 increases, but I would -- I know the invoices and the
7 documentation that Schiff sent with the invoices
8 reflected the hourly -- or increases.

9 Q. We were talking about Mr. Maiman earlier.
10 what type of due diligence did Schiff Hardin do on Mr.
11 Maiman before you hired him as an independent
12 contractor?

13 A. The -- the due diligence was extensive.

14 Q. And what did you do to verify Mr.
15 Maiman's credentials?

16 A. First, we had worked with him at
17 Commonwealth Edison. Secondly, the vice chairman of a
18 major East Coast utility had hired him for
19 consultation. And third, executives at OPG had hired
20 him as well. Part of the OPG experience was a blue
21 ribbon panel of what was billed the top utility
22 executives was assembled to advise the OPG board and
23 government, and this included executives from Southern,
24 Entergy, Pico, Exelon.

25 They all told the OPG board that they

1 probably had the most experienced person that that blue
2 ribbon panel knew in North America on construction
3 projects involving the utility. So that would -- that
4 would be the basis of the due diligence.

5 Q. OPG, was that a nuclear project?

6 A. What we worked on was nuclear, that's
7 correct.

8 Q. Do you know how many months that Mr.
9 Maiman worked on the OPG project?

10 A. Schiff was engaged on the project from
11 about two and a half to a little over three years. Mr.
12 Maiman was engaged by OPG for the vast majority of it.
13 He had, I believe it was, a -- he had an accident
14 during that tenure that had him in the hospital, but I
15 believe he was on OPG's for about three years as well.

16 Q. Now, did you ever work with Mr. Maiman
17 when you were involved with Commonwealth Edison on any
18 of the nuclear projects?

19 A. I worked -- yes, I was on projects that
20 he was in charge of, correct.

21 Q. Were you on any of the projects that
22 Commonwealth Edison was assessed fines and penalties
23 related to the nuclear project?

24 A. To the best of my knowledge, as I sit
25 here, I'm not aware of any project that Schiff worked

1 on where the NRC -- is that the entity you're referring
2 to -- would have assessed fines.

3 Q. Yes. What years did you work with Mr.
4 Maiman at Commonwealth Edison?

5 A. Our work experience at ComEd, is how we
6 referred to it, was more expansive than the projects
7 that I worked with Mr. Maiman on.

8 Q. Would you have worked with Mr. Maiman in
9 the '90s on nuclear projects?

10 A. I worked with Mr. Maiman on both fossil
11 and nuclear projects.

12 Q. I'm asking for a time frame when you
13 worked with Mr. Maiman.

14 A. And I was trying to answer your question.
15 I'm sorry. I worked at ComEd consistently from the
16 early '90s through mid-2000s, and I would have worked
17 periodically in that time period on projects that Mr.
18 Maiman had both on the fossil, when he ran the fossil
19 site, as well as the nuclear side.

20 But our scope of services for ComEd,
21 which then became Exelon, was much larger in that time
22 period. So the work I did with Maiman was intermittent
23 through that time period.

24 Q. Mr. Roberts, I'm going to hand you the
25 nuclear energy information service. It's radioactive

1 decay, Illinois Reactors, 1996 through 1997, kind of
2 gives some sort of time frame. Have you ever seen this
3 before?

4 A. No, ma'am.

5 Q. Can you take a look and look on the
6 second page? And then the entry under February 22nd,
7 1997, can you read that?

8 MR. HATFIELD: Judge, I'm going to object
9 on reading hearsay into the record.

10 MS. OTT: It's an article published that
11 can be verified on the web. It was recently printed on
12 January 25, 2011. It is from the Nuclear Information
13 Energy Source.

14 JUDGE PRIDGIN: I'll overrule it.

15 THE WITNESS: You want me to read the --

16 BY MS. OTT:

17 Q. The February 22nd entry.

18 A. Sure. "February 22nd, 1997. Experienced
19 reactor operator at Zion violates shutdown procedure.
20 NRC regional director, A. Bill Beach, states 'It
21 doesn't get any worse. No one was in control.' ComEd
22 reactor chief Tom Maiman states, 'This is perhaps the
23 most embarrassing career situation I've ever been in.'"

24 Q. Thank you. Did you work with Mr. Maiman
25 on this project that he's referencing here?

1 A. No, I don't believe I worked on Zion.

2 MR. HATFIELD: Judge, in light of that, I
3 would move to strike the previous reading of that as
4 wholly irrelevant.

5 MS. OTT: It is relevant as in he's
6 stating he fully vetted Mr. Maiman's prior work
7 history, and here's an incident on a nuclear plant in
8 which Mr. Maiman had the most embarrassing career
9 situation because the plant almost shut down.

10 JUDGE PRIDGIN: I'll overrule.

11 BY MS. OTT:

12 Q. Do you know how many months that Mr.
13 Maiman worked on the KCP&L Iatan project?

14 A. I don't know the months. It would have
15 been in the early stages prior to his wife dying.

16 Q. Do you have an approximate date when he
17 left the project?

18 A. I know he was involved in late '05, '06.
19 I want to say into '07. As I sit here right now, I
20 can't remember the date. His wife had lung cancer.

21 Q. Now, have you -- I know you've talked
22 that you've been on various construction projects
23 throughout your career.

24 Have you been on any specific
25 construction project that was related to a new coal

1 plant in the United States?

2 A. No. This is one of the first new
3 coal-fired plants built in the United States in recent
4 years.

5 Q. Are you familiar with Mr. Terry Murphy?

6 A. I am.

7 Q. And how does he relate to the Iatan
8 projects?

9 A. Mr. Murphy was hired in the early stages
10 of the project and was onsite. One of the previous
11 witnesses has said approximately six months in the
12 early stages, and that sounds about right.

13 Q. Now, had you previously worked with
14 Mr. Murphy?

15 A. Yes.

16 Q. And was that the Ontario project you've
17 been speaking of?

18 A. That was one of the projects, yes.

19 Q. Did you introduce Terry Murphy to KCP&L?

20 A. Introduced in terms of recommending him,
21 sure.

22 Q. And Mr. -- you, during your deposition,
23 referred to Mr. Murphy as an award-winning project
24 manager?

25 A. I believe I said that, yes.

1 Q. Now, why did Mr. Murphy leave the
2 project?

3 A. I don't know.

4 Q. Did he voluntarily leave, or was he asked
5 to leave the project?

6 A. It's -- my understanding is he
7 voluntarily left.

8 Q. Are you aware of a Mr. Grimwade?

9 A. Yes.

10 Q. How would you describe Mr. Grimwade and
11 Mr. Murphy's relationship?

12 A. They had difference of opinions, but I
13 mean, it was cordial and professional.

14 Q. Was their differences of opinion a reason
15 why Mr. Murphy left the project?

16 A. I have no idea why he left the project.

17 Q. Did Mr. Murphy provide management
18 oversight?

19 A. He was working in the trailers in the
20 initial stages of the project. I would think he in
21 some form did, yes.

22 Q. Did Schiff provide management oversight
23 for the project?

24 A. No.

25 Q. Do you know for the purposes of the

1 Alstom 1 Unit contract, was the original contract
2 provisional acceptance date roughly December 16, 2008?

3 A. The provisional acceptance for Unit 1
4 Alstom was approximately 12/16, if that was your
5 question.

6 Q. And then that was amended at some point?

7 A. The provisional acceptance, pursuant to
8 the settlement agreement, was pushed back, that's
9 correct.

10 Q. And when -- what's that date?

11 A. It would have been initially pushed back
12 until early 2009.

13 Q. Do you have an exact date?

14 A. Not as I sit here.

15 Q. Does February 1st, 2009, sound right?

16 A. That's approximately correct, yes.

17 Q. What was the amount of liquidated damages
18 that Alstom was to pay KCP&L for each day in delay for
19 the provisional acceptance date?

20 A. In the -- in the Alstom 1 contract?

21 MS. OTT: This might be highly
22 confidential.

23 JUDGE PRIDGIN: Just a moment, please.

24 we'll go HC, in-camera.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 volume 24, pages 1819 to 1843 of the transcript.)
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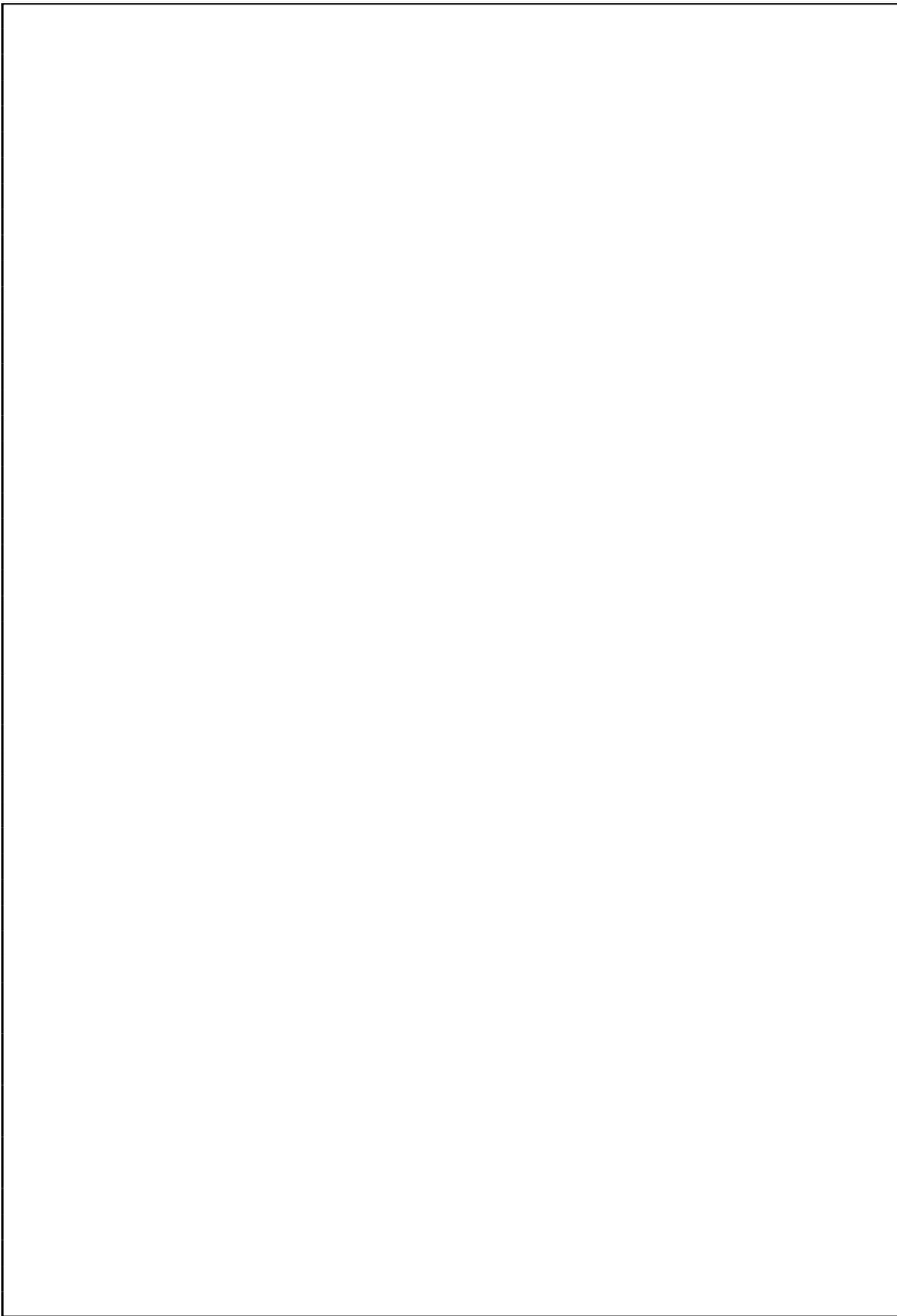
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1 JUDGE PRIDGIN: We're back in public
2 session. Thank you.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. Okay. I'm going to move on, and I think
6 Mr. Schwarz talked about this famous memo that's gone
7 around several times, but I'll hand you a copy just in
8 case you don't still have one up there.

9 A. I don't. He took it back.

10 Q. And, obviously, you looked over it a
11 couple hours ago and you started to talk about who
12 TickTacks, I think, is and I thought the name you said
13 was?

14 A. Volkar Ruminaf.

15 Q. And who is --

16 A. Don't ask me to spell it, please.

17 Q. Who is he, I guess?

18 A. He's -- I consider him one of the
19 industry experts on SER designs and highly -- I think
20 highly revered in the industry expert on -- on back-end
21 work. Ticktack was the name of his company that he was
22 operating at that time period.

23 Q. Is that -- I guess tell me about
24 Ticktack's. Was he just an independent contractor that
25 worked under that name, or was it a business with

1 several employees?

2 A. Ticktack was his corporation that he
3 worked under.

4 Q. And do you know if he had employees that
5 worked under him?

6 A. The person that I dealt with primarily
7 was volkar. I do believe he had others in the company.
8 whether they would have been working in this, I don't
9 know.

10 Q. So is their primarily work only related
11 to back-end work on power plants, SER designs?

12 A. Yes, that's exactly right.

13 Q. Now, in this budget in this 11 pages, is
14 it all for project oversight?

15 A. It would -- I mean, it's difficult
16 sitting here right now and that's not the full
17 description. I'm going off of memory. It broke down
18 the scope of services very similar to our project roles
19 and capability statement that would have been delivered
20 to KCP&L in August of 2005. It would have gone into
21 contract, contract administration. It would have gone
22 into project control, tools and monitoring. It would
23 have gone into issues like that, just to name a few.

24 Q. Is project controls and legal services
25 the same thing to you?

1 A. It is, yes.

2 Q. Is that the same with project oversight
3 and legal services, the same to you?

4 A. Yes.

5 Q. And is management oversight the same
6 thing as legal services to you?

7 A. No, and we didn't provide management
8 oversight.

9 Q. So what would be your -- the difference
10 between management oversight and legal services, in
11 your opinion?

12 A. what we call oversight would have been
13 giving KCP&L senior management team our perspective,
14 which we would call independent, as to the status of
15 the project, as to both budget and schedule, as well as
16 key issues that could impact the overall cost or
17 schedule of the project.

18 Q. Now, Schiff Hardin is a significant cost
19 overrun on the Iatan 2 project, correct?

20 A. The initial -- if I remember it
21 correctly, the initial number in the control budget
22 estimate was exceeded, but I'm not -- this goes back to
23 a point that Mr. Drabinski made. I'm not sure that
24 that would be viewed as a -- an overcost because it
25 could be, and I think it was handled by contingency.

1 Let me try to answer it. I don't believe it was viewed
2 as a variance from the cost control budget.

3 Q. And what was the initial proposed budget
4 for Schiff Hardin services that the board approved?

5 A. As I sit here today, I believe that for
6 Unit 1 -- Unit 2, it was approximately 7 million, 7.5
7 million.

8 Q. And that's the amount that the board
9 approved?

10 A. I don't know. My answer was what was the
11 amount that as I sit here that was in the control
12 budget estimate. I'm not sure I know the amount the
13 board approved.

14 Q. So it's your understanding that Schiff
15 Hardin's costs were treated in a contingency budget and
16 not a cost overrun; that's your understanding?

17 A. Yes, based on the fact that I think that
18 there was an R&O on Schiff, and in the 2008 reforecast,
19 I believe the numbers were -- were increased.

20 Q. And how much was that increased by in
21 2008 reforecast?

22 A. As I sit here, I can't give you a precise
23 number. I believe it would have been in the range of
24 17 to 20 million. The person that can answer that is
25 Forrest Archibald, who will be up.

1 Q. Now, you've worked on several large
2 construction projects before. When you enter into
3 those attorney-client relationships, do you normally
4 submit a budget to approximately how much you think
5 your legal services would be worth on those projects?

6 A. Yes.

7 Q. And do you generally have a contract for
8 your services when you're engaged in construction
9 projects?

10 A. The majority of our work, I would -- I
11 believe is actually done under an engagement letter,
12 not under a formal contract.

13 Q. Now, did those engagement letters
14 generally -- is that where the budget would be laid
15 out?

16 A. No.

17 Q. So when you're proposing a budget to a
18 client for construction project, how -- where is that
19 done?

20 A. I'm not sure I understand your question.
21 I think that the -- I think that the scope of services
22 is laid out in our roles and responsibilities that we
23 provided KCP&L early in the fall of 2005, as well as
24 the engagement letter that lists the hourly billing
25 rate and then the document that -- that you handed me,

1 which is budget for not only this project but the
2 others. Those three documents are very typical of --
3 of what would be explaining to the owner what our
4 services and scope would be.

5 Q. And I'm talking more in general in all
6 construction projects in which Schiff Hardin enters
7 into, into like an attorney-client relationship?

8 A. well, all of the projects that I enter
9 into has the attorney-client.

10 Q. Yeah, and I'm asking if you propose
11 budgets when you enter into those agreements.

12 A. For projects of this size, duration, yes.

13 Q. So how often does Schiff propose a budget
14 in which its services are far exceeded on a
15 construction project?

16 MR. HATFIELD: Services?

17 THE WITNESS: I'm not --

18 BY MS. OTT:

19 Q. when you propose a budget, how often do
20 you incur costs above that budgeted amount?

21 A. well, I don't want to be argumentative,
22 but I would contend that the -- what we identified for
23 KCP&L in December of 2005 using 2006 rates, that we're
24 right at that number. I'm not sure that was exceeded.
25 If your question was related to what KCP&L put in their

1 CBE, there's a number of times where we've laid out
2 portfolio of services to a client, and although they
3 use the items identified in that portfolio services,
4 they don't initially intend to use them as extensively
5 as we laid out.

6 And so from the client's perspective,
7 although our scope hasn't changed, the level of
8 services has increased. Does that answer your
9 question?

10 Q. I'm not quite sure. Maybe I'm not
11 following. Maybe I'm just not being clear enough. I'm
12 trying to figure out, how often do you miss the budget
13 by \$16 million?

14 A. And I don't think we missed the budget.
15 Schiff didn't miss the budget.

16 MR. HATFIELD: Object that it assumes
17 facts not in evidence.

18 THE WITNESS: We gave KCP&L a budget in
19 2005 for a five-year duration project using 2006 rates,
20 and our numbers are very close to what was projected in
21 that document.

22 BY MS. OTT:

23 Q. And what was your proposed budget in 2005
24 based on 2006 rates?

25 A. That's been redacted. You can laugh, but

1 it's not my -- it's not my privilege to waive, sir.

2 Q. So is your budget not the same as what's
3 contained within the budget, the CBE?

4 A. Would you repeat that again?

5 Q. So is your budget that you proposed in
6 '05 not the same number that is contained in the CBE?

7 A. That's correct.

8 Q. Now, Mr. Roberts, did you purchase any
9 gifts and send them to senior members of the
10 construction project team?

11 A. If you're referencing the line of
12 questions that was asked in my deposition, it was in
13 regards to a steak -- steaks that I sent to David
14 Price.

15 Q. Is he the only member at KCP&L that you
16 would have sent some steaks to?

17 A. I would imagine that there were others.
18 There was a specific e-mail that I was questioned about
19 where my assistant was seeking an address from Price
20 where he could refrigerate the steaks.

21 Q. But my question was, did you send it to
22 any other members of the Iatan project?

23 A. I would -- it was my -- it is my custom
24 and practice with all my clients, team members, et
25 cetera, that I send gifts of nominal value, a couple of

1 strip steaks. As I sit here today, I can't tell you
2 who I sent it to. It's an extensive list way beyond
3 KCP&L. The question was related to Price in 2007.

4 Q. And I was just asking in general, but if
5 you have exact names --

6 A. I mean, I probably send out to 50 to 70
7 people Omaha steaks. Not to get a plug in, but --

8 Q. Are you aware of the Federal Acquisition
9 Regulation?

10 A. The FARS?

11 Q. The FARS, yes.

12 A. Am I aware? Yes, I am aware of the FARS.

13 Q. Have you ever worked on a federal
14 government project which required the use of the FARS?

15 A. Yes.

16 Q. Do you know what their rule is for giving
17 gifts and gratuity to government officials are?

18 A. As I sit here right now, I'm not sure you
19 can give a gift to a federal official. I can go on
20 record because my executive committee is watching me.
21 I don't believe I've ever given a gift to a federal
22 official.

23 Q. So why would you treat utility officials
24 different?

25 A. Than a government official?

1 Q. well, why wouldn't you -- yes.

2 A. Because they're -- because I've probably
3 -- they are -- they are -- they're hugely different
4 than a federal official. They're not governed by the
5 FARS, and I have -- I've looked at, at least 60 code of
6 ethics from various businesses, I sit on a board of a
7 major company, I teach corporate governance ethics on
8 behalf of the ABA, I'm intimately familiar with what
9 code of ethics are. And I can tell you from 60-plus
10 reviews of various documents, they all encourage the
11 occasional modest gifts, and they all refer to it as an
12 accepted practice.

13 So I'm very, very comfortable in sending
14 two strip steaks that are somewhere between \$30 and \$40
15 to people that I've worked with, and I'm very
16 comfortable from probably 30 or 40 clients that I deal
17 with that that practice is explicitly accepted.

18 Q. Now, if you only sent them -- did you
19 send them every year or only in 2007?

20 A. I have a practice of sending, somewhere
21 between Christmas and New Year's, a couple of strip
22 steaks to a bevy of people that I work with. And I
23 would tell you that that's been uniformly reviewed as
24 being the occasional giving of modest gifts.

25 Q. Has anyone at KCP&L ever contacted you to

1 tell you not to send them strip steaks or a modest
2 gift?

3 A. As I sit here right now, I can't recall.
4 I can tell you before I would have sent the steaks,
5 it's my customary practice that I would have reviewed
6 with Lora Cheatum, the head of procurement at the time,
7 was that gift acceptable under their policy, and I
8 probably would have reviewed it with Riggins, too, just
9 as a normal course. I don't -- I don't willy-nilly
10 just send out the gifts, especially to corporate
11 clients. I pretty much have a practice of making sure
12 I understand their code of ethics and that, in fact,
13 sending those gifts as a goodwill gesture will not get
14 anybody in trouble and will not be perceived as being
15 wrong.

16 Q. Now, you said you probably would have had
17 a conversation with Ms. Cheatum or Mr. Riggins.

18 Do you know if you had that conversation
19 with either of them?

20 A. I've got to believe. As I sit here
21 today, I can't recall it. But I can tell you on all of
22 my clients, before we send that out, my assistant and
23 I, who is getting the addresses, that's part of our
24 practice to make sure, do we have their code of ethics
25 and have we checked with somebody to make sure that,

1 indeed, it's viewed as an occasional modest gift.

2 Q. Now, what would be your definition of a
3 nominal gift? I know you've been sitting in the
4 audience and heard some people discuss nominal gifts.
5 I haven't heard modest yet, so I'm kind of curious on
6 your definition of nominal.

7 A. I think that the reason why, if you look
8 at ABA material, if you look at corporate governance
9 material, that rarely will you see a policy defined
10 that a dollar amount is because it changes given the
11 level of the employee. So it's -- I think that a
12 couple of strip steaks, a baseball ticket is viewed by
13 everybody as a modest or nominal gift. If I gave you a
14 brand new Mercedes, that would not be nominal. That
15 would be substantial.

16 Q. well, I think some baseball tickets might
17 not be viewed as nominal. They've kind of gone up in
18 price lately. Maybe the Royals are still nominal, but
19 I've been to some expensive seats in St. Louis.

20 A. I'm not going to answer that question.
21 If I understand it, we got the border wars from Kansas
22 City and St. Louis.

23 Q. Going back to Burns & Mc, do you recall
24 if Schiff had any problems getting budget data from
25 Burns & McDonnell?

1 A. As I sit here right now, I couldn't
2 specifically tell you whether we did or didn't. Our
3 earlier reports that we made identified a number of
4 issues in terms of getting material from Burns &
5 McDonnell.

6 Q. How do you define definitive estimate?

7 A. For the purposes of this hearing, it's
8 the CBE that was created in '06, the 1.685 number.

9 Q. How do you use that term not related to
10 this proceeding? Could you use it differently?

11 A. Could you repeat that again?

12 Q. You said for purposes of this proceeding,
13 you use it towards the CBE.

14 A. The one --

15 Q. Do you treat it differently?

16 A. The 1.685 number, correct.

17 Q. But in other proceedings or other
18 instances, do you use that definition differently?

19 A. I don't use that definition.

20 Q. So did you ever recommend to KCP&L not to
21 use the term "definitive estimate?"

22 A. I believe --

23 MR. HATFIELD: That question calls for
24 attorney-client privilege as it's phrased.

25 MS. OTT: I'm asking how he -- why he did

1 not --

2 MR. HATFIELD: I bet she can ask a better
3 one, but I'm objecting to that specific one.

4 JUDGE PRIDGIN: I'll sustain.

5 BY MS. OTT:

6 Q. Did you ever approve the term "definitive
7 estimate" used by KCP&L?

8 MR. HATFIELD: Judge, I think we have the
9 same problem.

10 MS. OTT: He's a witness in the case. I
11 mean, he's here testifying. If he's here as an
12 attorney, I think he's allowed to answer the question.
13 He's a witness.

14 JUDGE PRIDGIN: He is a witness, but I'm
15 concerned we're getting into privileged information,
16 especially when I've got an attorney on the stand
17 balking and we've had, you know, a master appointed to
18 deal with privileged matters. And so that's why I'm
19 hesitant to overrule.

20 MS. OTT: I'll try to rephrase.

21 JUDGE PRIDGIN: Thank you.

22 BY MS. OTT:

23 Q. what would you use instead of the word
24 "definitive estimate" and how it's being used in this
25 proceeding?

1 A. The CBE, 1.685.

2 Q. But outside of this proceeding, what
3 would you -- what term would you use to be that same
4 number?

5 A. CBE, 1.685.

6 Q. Do you know when the control budget
7 estimate was supposed to be completed and presented to
8 the board of directors?

9 A. I believe August 2006.

10 Q. Do you know when it was completed and
11 approved?

12 A. When you say "approved," I think it was
13 completed in December of 2006.

14 Q. Do you know when it was approved by the
15 board of directors?

16 A. Somewhere around that time period.

17 Q. Do you know what the delay between when
18 it was supposed to be done in August and when it was
19 completed in December was for?

20 A. I believe so.

21 Q. And what was that delay?

22 A. It was my understanding that Schallenberg
23 of your staff on or about August had taken until
24 December and get it with more data.

25 Q. So the initial -- there was an initial

1 one drafted in August of '06?

2 A. Not that I'm aware of. We were -- I
3 thought you were asking me the date that it was due.

4 Q. It was due in August, correct?

5 A. Yes.

6 Q. But then it wasn't completed until
7 December. And what did Mr. Schallenberg see, then, to
8 your knowledge, that he was unsatisfactory to him that
9 he wanted more detail?

10 A. Well, that's you saying he saw it as
11 unsatisfactory. Chris Giles would have been the
12 witness or Curtis would have been the witness to go
13 through the dialogue with Schallenberg. As it was
14 related to me and the Schiff team, we were told that it
15 wouldn't be due in August but, rather, in December, and
16 that was by mutual agreement with Schallenberg of the
17 Staff. That's my understanding, obviously hearsay, but
18 --

19 Q. So, then, is it your opinion that
20 Mr. Schallenberg was the only reason for this delay?

21 A. I think that that was -- that -- the
22 reason why it was in December was because there was an
23 agreement with the Staff.

24 Q. Did this delay have any impact on the
25 project?

1 A. Not to my knowledge, it did not.

2 Q. Did it have any impact on the contracting
3 approach?

4 A. No.

5 Q. It didn't affect whether you -- they went
6 with an EPC or multiprime method?

7 A. No.

8 Q. Now, are you ever aware of an instance
9 where Schiff billed KCP&L for its independent
10 contractor's work that was Meyer Consulting, Jim Wilson
11 and Tom Maiman and Steve Jones, that KCP&L ever
12 declined to pay that amount in the invoice?

13 A. There was extensive review of Schiff's
14 bills with Reynolds and Riggins. It was our practice
15 -- it is my practice to aggressively scrub those
16 numbers. I can go into detail how we do it.

17 As I sit here today, there were some
18 items where I know we would have done a write-off at
19 the request of Riggins and Reynolds. I cannot -- those
20 were very, very minor. I can go into that process. I
21 don't recall specifically requests from Riggins or
22 Reynolds as it related to an independent contractor,
23 either Wilson or Meyer, for a specific rate down, but
24 there was a heavy, heavy review process between Riggins
25 and Reynolds and our team as it related to Schiff

1 invoices.

2 Q. Was there ever a write-off related to a
3 Schiff employee on an invoice?

4 A. I, Ken Roberts, as the lead partner,
5 wrote off over a five-year period \$1.7 million worth of
6 services and with adding -- that's write-offs office.
7 write-downs, it would have well been above ten percent
8 of the contract value.

9 Q. Okay. Now, of these 1.7 million in
10 write-offs, is any of that related to the travel that
11 you state you write off and don't charge to the
12 project?

13 A. Part of that would have been travel and
14 part of it would have been non-travel.

15 Q. Do you know what percentage would have
16 been for non-travel?

17 A. It was significant.

18 Q. Now, were any of these write-offs ever
19 related to a dispute in which KCP&L brought to Schiff,
20 or were these write-offs, did they occur before the
21 invoice ever went to KCP&L?

22 A. The vast majority -- and when I say vast
23 majority, I mean 99 percent -- were write-offs that I
24 initiated and explained to KCP&L in a very intensive
25 review of our bills and a pre-review of our bills.

1 Q. In general, from your experience at
2 Schiff in working with clients, what percentage of
3 bills usually are contested by clients?

4 A. I am very proud to tell you that having
5 worked for federal government, both in the United
6 States, outside the United States, having worked for
7 cities, having worked for municipalities as well as
8 governments, the percentage of fees that Schiff has
9 contested is unbelievably low. And by that, I mean
10 literally in hundreds and hundreds of submissions,
11 maybe, maybe one or two. I make my money off the
12 word-of-mouth of Heather Humphreys, Bill Downey, Bob
13 Bell saying not only they get a good bang for their
14 buck, those guys scrub their bills, they aggressively
15 look at their bills harder than anybody that we've ever
16 seen.

17 Q. And is that a Schiff Hardin practice or
18 is that a Kenneth Roberts practice?

19 A. I'm on the executive committee at Schiff.
20 I would say that the percentage of our bills as a major
21 law firm that have pushback or under scrutiny is one of
22 the best in the business. But I am particular with my
23 team, what we do. I am very, very, very proud of how
24 aggressive we look at our bills and the effort we put
25 into it so that they're not pushed back, so that

1 they're not contested.

2 If I ever find myself in a situation
3 where a general counsel is saying, you know, you need a
4 big rate down, this is -- this is not right, I'm in
5 trouble. I'm in big trouble because that's not how I
6 make my money. I make my money by having those general
7 counsels, those executives, not only talking about the
8 level of service, but saying, man, these guys are just
9 out of the world in terms of how aggressive they review
10 it and the review process we have with their bills.
11 It's the best we've had. That's -- that's what we
12 shoot for, and I will tell you that's what we get every
13 time out of the gate.

14 Q. So have you ever had a client contest a
15 bill?

16 A. I've had a client have a write-down of an
17 entry or two. My standing offer to a client is any
18 bill we submit, they have 100 percent carte blanche to
19 write off everything. And that can be a bill on a
20 month that could be several hundred thousand. They
21 don't have to pay it. The only thing I say is that I
22 want to be treated fairly. And we have work that we
23 turn down on a regular basis, and if I ever felt
24 somebody wasn't treating me fairly, I wouldn't continue
25 to work for them.

1 So have I in the last two years had a
2 client say I really don't like this entry? Sure, we'll
3 write that down. But I am telling you, that is a de
4 minimus number.

5 Q. Do you know who Mr. Carl Churchman is?

6 A. I do.

7 Q. Did you work closely with Mr. Churchman
8 on the Iatan project?

9 A. I did.

10 Q. And what was Mr. Churchman's role on the
11 Iatan 2 construction project?

12 A. Without having his exact title, he was
13 the man out in the trailer running the Iatan project
14 for KCP&L.

15 Q. And did you report to Mr. Churchman?

16 A. I didn't report to him in the sense that
17 on our oversight role. It was to the executive
18 committee. We worked very closely with Carl Churchman
19 on a day-to-day basis reporting what we saw, what the
20 information was showing on a daily basis at the site.

21 Q. So who would you say that you reported to
22 at KCP&L?

23 A. We worked closely with Brent Davis, Bob
24 Bell, Carl Churchman, Price, all of those individuals
25 day-in and day-out. We were telling them what we were

1 seeing in the construction trailers. I was reporting
2 to the oversight committee what we were seeing,
3 providing reports, and I was reporting on our budget
4 and our schedule and our scope to Bill Riggins, to
5 Reynolds, and to Cheatum.

6 Q. Did Mr. Churchman have any influence on
7 your work on the Iatan project?

8 A. He -- when you say "influence," he didn't
9 influence reports that we made to the oversight team on
10 the status of the project or issues. Did he influence
11 what we were seeing? We had extensive discussions with
12 him on a daily basis. So I guess that's how do you use
13 the word influence.

14 we listened to his views. We had
15 extensive discussions as to how he saw strategy and
16 issues on the site. But he did not influence, he never
17 altered or changed a report that we would give to the
18 oversight committee as to the status of this project on
19 budget or schedule.

20 Q. Now, did you ever invite Mr. Churchman to
21 come to Chicago to your offices?

22 A. I invited him to Chicago, but actually
23 not to my office.

24 Q. Did you invite him to play in a golf
25 tournament?

1 A. I did. I'm a member of Medinah Country
2 Club in Chicago, and Carl Churchman played in a
3 member-guest tournament at Medinah with me. We did not
4 shoot well.

5 Q. Who paid for Mr. Churchman's green fees
6 for that tournament?

7 A. I would have.

8 Q. Why did you invite Mr. Churchman to play
9 in the golf tournament?

10 A. Several reasons. One, we were working
11 very closely together during that time period; two, he
12 was an avid golfer; and three, you know, we had
13 somewhat of a personal relationship that made it
14 appropriate to spend some time on the golf course with
15 him.

16 Q. Now, did you charge hours for work to
17 KCP&L on the days you played in the golf tournament
18 with Mr. Churchman?

19 A. I believe there's a -- the golf
20 tournament was June 25th, 26th, and 27th. It was a
21 Thursday, Friday, Saturday. The only time that I can
22 recall that I charged was, I think it was on Thursday,
23 the 25th, where I did substantial work around the time
24 we were playing golf.

25 Q. Now, is any of the time while playing

1 golf related to talking strategy with Mr. Churchman?

2 A. I didn't charge time while I was playing
3 golf. I charged time before I got to the golf course,
4 after we were -- after we had played golf, both of us
5 were on the phone extensively talking to the site,
6 talking through issues, and Churchman and I actually
7 had -- we were asked to leave our room because we were
8 both on our cell phone and we got a private room and
9 were working in that room on the 25th.

10 Q. So you were on your cell phone with
11 Mr. Churchman in a room with Mr. Churchman on the cell
12 phone?

13 A. No. Both of us were talking to people
14 onsite on various issues, and then we were talking to
15 one another.

16 Q. So you had your conversation with
17 Mr. Churchman, though, at the country club in which you
18 billed --

19 A. Part of -- I had conversations with Carl
20 Churchman that day at the country club, that's correct.

21 Q. Okay.

22 A. And the time I charged for it was not the
23 time that we were playing golf but was either before or
24 after the round.

25 Q. Did you pay for any other of Mr.

1 Churchman's lodging or meals while he was in Chicago to
2 play in that tournament?

3 A. Meals while we were at Medinah would have
4 been part of the tournament. I didn't pay for lodging,
5 I didn't pay for airfare.

6 Q. Do you know if Mr. Churchman covered
7 those costs or did KCP&L?

8 A. I have no idea.

9 Q. Now, you mentioned Ms. Cheatum was the
10 vice-president of procurement?

11 A. She was in charge of procurement, yes.

12 JUDGE PRIDGIN: Ms. Ott, do you know how
13 much longer you're going to be?

14 THE WITNESS: I could use a break, too.
15 As a male over 50, I'm willing to raise my hand.

16 MS. OTT: We need to take a break.

17 JUDGE PRIDGIN: Okay. We'll take about
18 15 minutes. We'll stand in recess until 3:35.

19 (A break was held.)
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23 JUDGE PRIDGIN: We are back on the
24 record. Ms. Ott, when you are ready.

25 MS. OTT: And actually, I want to go back

1 to the last, when we were talking about the invoice and
2 for clarity, I'd like to have an invoice marked as an
3 exhibit.

4 (Exhibit No. 272-HC was marked for
5 identification by the Court Reporter.)

6 BY MS. OTT:

7 Q. Now, Mr. Roberts, you have Schiff Hardin
8 Invoice No. 1407850 in front of you?

9 A. Yes, August 21, 2009 --

10 Q. Okay. And on page 16 --

11 A. -- that you have marked?

12 Q. Yes.

13 A. Yes.

14 Q. June 25, 2009.

15 A. Yes.

16 Q. This is the reference that you and
17 Mr. Churchman would have had a conversation on that
18 same day as the golf tournament you were in?

19 A. This is my time entry for 6/25/09, which
20 I believe is Thursday of that year.

21 MS. OTT: With that, I'd like to move for
22 KCP&L Exhibit 272 to be admitted.

23 JUDGE PRIDGIN: Any objection? Hearing
24 none, 272-HC is admitted.

25 (Exhibit No. 272-HC was received into

1 evidence.)

2 COMMISSIONER GUNN: what page is that

3 again? THE WITNESS: Page 16.

4 JUDGE PRIDGIN: 272-HC.

5 THE WITNESS: Are you done with this

6 document?

7 MS. OTT: Yes.

8 BY MS. OTT:

9 Q. I believe we were discussing Ms. Cheatum
10 before the break. Do you recall that?

11 A. No, I needed a bathroom break, I wasn't
12 really remembering your last question, to be honest.

13 Q. Okay. well, I think we established that
14 Ms. Cheatum was the vice-president of procurement on
15 the Iatan project.

16 A. Yes.

17 Q. Do you know when Ms. Cheatum left the
18 project?

19 A. As I sit here right now, I couldn't tell
20 you.

21 Q. Do you know who Ms. Maria Jenks is?

22 A. I do.

23 Q. And who is she?

24 A. I would say she's the person that took
25 over procurement responsibilities after Ms. Cheatem

1 left.

2 Q. So do you have an estimate when Ms. Jenks
3 joined the project?

4 A. Well, I believe Mary Jenks was in charge
5 of the audit process, and so she was in an audit
6 function on this project, I want to say from almost the
7 very beginning. If your question is: when did she
8 take over procurement, boy, as I sit here right now, it
9 was -- I think fairly -- '09, 2010 time period.

10 Q. So you're guessing around the end of
11 2009, beginning of 2010?

12 A. Ma'am, it's a guess.

13 Q. Were you ever consulted by KCP&L when she
14 was appointed to be the VP of procurement?

15 A. What do you mean by that?

16 Q. Did KCP&L ever, when Ms. Cheatum left,
17 come to you and consult with you about Ms. Jenks
18 accepting the role of VP of procurement?

19 A. No, they didn't ask my opinion as to who
20 they should put in charge of procurement.

21 Q. Do you know if Ms. Jenks had any prior
22 experience in procurement?

23 A. I would imagine from her audit function,
24 she in fact, had audited procurement.

25 Q. So she had audited procurement, not

1 actually engaged in procurement?

2 A. AS I said right now, I don't know about
3 the background of Ms. Jenks.

4 Q. Did you ever inquire why Ms. Jenks was
5 appointed to the VP of procurement?

6 A. No.

7 Q. So you don't know if she was qualified
8 for the position or not?

9 A. I've had many dealings with her. She's a
10 very intelligent woman. I've dealt with many
11 procurement officers throughout the United States and
12 North America. I think she's, from my opinion,
13 imminently qualified and what I've seen in terms of how
14 she's performed on the job.

15 Q. But you don't know about her experience
16 with procurement prior to this position?

17 A. Right. I said I don't know her
18 background.

19 Q. Were you familiar with Ms. Cheatum's
20 background prior to the Iatan project?

21 A. Prior to the Iatan?

22 Q. Yes.

23 A. You mean did I know Cheatum prior to
24 Iatan?

25 Q. No, did you know anything about her

1 qualifications prior to working on the Iatan project
2 with her.

3 A. I remember discussing her background. It
4 was -- she had a -- I think she had an extensive
5 background, HR procurement throughout her career.

6 Q. So it's your understanding she had
7 procurement experience prior to her role as VP of
8 procurement?

9 A. As I sit here right now, I could not tell
10 you -- I could not recite her resume. All I can tell
11 you is in general, having discussions with her, I
12 thought she had some procurement background. In
13 dealing with her, she was very competent on procurement
14 matters.

15 Q. Now Mr. Roberts, were you required by
16 KCP&L to produce status reports for the Iatan project?

17 A. We weren't required. One of the things
18 that we said we would do is have periodic reports with
19 the oversight committee. Those reports could be both
20 verbal and/or written.

21 Q. Do you know how many reports were
22 written?

23 A. I believe that reports that we would have
24 written are somewhere in the 40 to 50 range.

25 Q. Forty to fifty written reports?

1 A. Yes, not including issue-specific memos.

2 Q. Now, those 40 to 50 reports, were they
3 status reports or were they various other types of
4 reports?

5 A. I think -- I think they were, for the
6 most part, status reports. There might have been some
7 special reports. Indeed when we had -- when we had the
8 settlement with Alstom, I know we wrote a report. I
9 know we've written reports as it relates to cost
10 reforecasts, but the vast majority would have been
11 status reports for the benefit of the executive
12 oversight committee as to what we were seeing and
13 issues impacting budget, schedule, commercial
14 negotiations.

15 Q. Now, did you write these reports
16 yourself?

17 A. My team and I wrote them, yes.

18 Q. Did your independent contractors write
19 any portions of these reports?

20 A. They would have provided data that would
21 have been included in the report. The reports were
22 written by Schiff Hardin. For instance, there's charts
23 that are attached to those reports, charts that were
24 periodically prepared and presented to the oversight
25 committee. Charts like this (indicating).

1 Q. Had to get that in?

2 A. Well, no, Commissioner Kenney, you can't
3 see it. There's a large chart in the room. That's a
4 Wilson chart. That would be an example of charts that
5 he prepared that would have been part of what was
6 submitted on an ongoing basis during the five years.

7 Q. Now, who is Joe Byce?

8 A. Joe Byce is -- is someone who works with
9 Dan Meyer and that we've worked with in the past.
10 Another cost control independent contractor.

11 Q. Do you know where he's located?

12 A. I believe Joe Byce resides in Atlanta,
13 Georgia.

14 Q. Now, does Joe Byce exclusively work with
15 Dan Meyer?

16 A. No.

17 Q. Okay. So Dan Meyer, then, contracts with
18 Joe Byce?

19 A. When -- Joe Byce on this project, and I
20 believe on some others when we've had the additional
21 need for cost expertise, has -- has -- has worked with
22 Meyer and Schiff and did so on this project, if that
23 answers your question.

24 Q. Now, are you familiar with the project
25 management body of knowledge?

1 A. No.

2 Q. So --

3 A. I don't know what you're referring to.
4 You're holding up a book.

5 Q. The Project Management Institute. Are
6 you familiar with that?

7 A. I've heard of Project Management
8 Institute. I'm not familiar with the book that you've
9 just held up.

10 Q. Have you ever heard of the term "project
11 management body of knowledge?"

12 A. As I sit here, no, I've never heard of
13 anybody referring to -- what was the word you used?

14 Q. The project body -- or project management
15 body of knowledge.

16 A. Yes, I've never heard of that term used
17 in the normal course of a job.

18 Q. So you don't know if it's the industry
19 standard for project management?

20 A. No.

21 Q. Are you certified by the Project
22 Management Institute?

23 A. No.

24 Q. Now, are you familiar with Brent Davis's
25 direct testimony in the 2009 KCP&L KCC rate case?

1 A. Yes.

2 Q. Are you familiar with R&O 360 related to
3 the JLG incident?

4 A. I am familiar with the JLG incident and I
5 am familiar that there was an R&O. I want to -- the
6 project management -- if they have local chapters, I
7 think I might have given -- I think I might have given
8 one or two lectures or seminars if they have local
9 bodies, but it was on contract risk transfer. I just
10 -- in case -- I don't remember the -- there was some
11 project management group that has local chapters that I
12 know I've given speeches to.

13 Q. Thank you.

14 A. Sorry.

15 Q. That's all right. Are you familiar --
16 you said you're familiar with Mr. Davis's testimony in
17 the 2009 KCC rate case of KCP&L?

18 A. I remember, I was -- yes, I'm familiar
19 with it. I don't know it by heart.

20 Q. Do you remember if Mr. Davis gave an
21 opinion on the JLG incident?

22 A. Yes. I mean, I'm vaguely familiar with
23 his testimony on the JLG.

24 Q. And do you know what Mr. Davis's opinion
25 was?

1 A. Boy, I mean, as I sit here, I don't think
2 I could cite his exact opinion. Overall, I think he
3 thought it was a prudent expenditure for the JLG.

4 MS. OTT: Can we go in-camera?

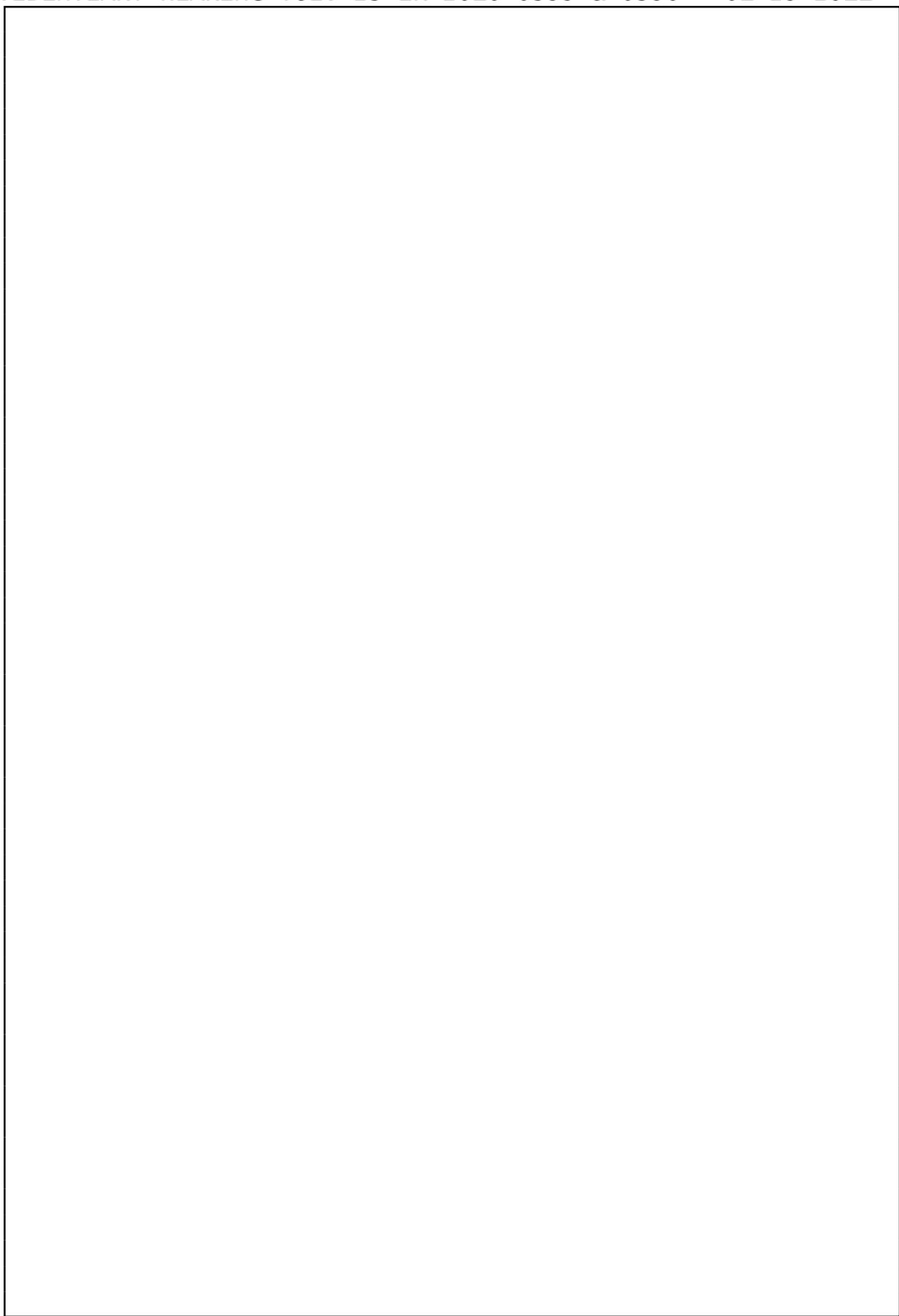
5 JUDGE PRIDGIN: Just a moment, please.

6 (REPORTER'S NOTE: At this point, an
7 in-camera session was held, which is contained in
8 volume 24, pages 1879 to 1881 of the transcript.)

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1 JUDGE PRIDGIN: we're back in the public
2 forum. Thank you.

3 KENNETH ROBERTS testified as follows:

4 By MS. OTT:

5 Q. Can we go to page 16 of your rebuttal
6 testimony? And actually, I think we're going to have
7 to go in-camera for this question. Sorry.

8 JUDGE PRIDGIN: That's all right. we'll
9 go back in-camera.

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 volume 24, pages 1883 to 1884 of the transcript.)

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1 JUDGE PRIDGIN: We're in public session.

2 Thank you.

3 THE WITNESS: I'm on page 34.

4 KENNETH ROBERTS testified as follows:

5 BY MS. OTT:

6 Q. Okay. On line 19, you say, "The
7 Commission should consider the significant personal
8 sacrifice of your attorneys, paralegals and clerks in
9 regards to the Iatan project." And I think this
10 conversation goes into the building rates that started
11 on page 33.

12 A. Okay.

13 Q. Now is this -- I guess I'm having a hard
14 time understanding the personal sacrifice because the
15 response to Mr. Major's data request 852 is that they
16 spent a significant amount of time on the project and
17 having to be away from their families in Kansas City.

18 wasn't that inherent with this -- when
19 Schiff took on this project that you'd be working in
20 Kansas City and working out of their offices and -- I
21 mean, when you took the project, you were aware of the
22 conditions that resulted in having a client not based
23 in Chicago.

24 A. Absolutely.

25 Q. So you're asking for the Commission to

1 find the personal sacrifice that your employees had for
2 having to be in Kansas City and away from their
3 families into consideration?

4 A. Yes. I think that finding people that
5 will go out to the construction sites far away from
6 their homes, spend long hours early in the morning,
7 late at night, that is -- there is something unique
8 about that. We're one of the only firms in the United
9 States that I'm aware of that has people, and very
10 proud to say that has women out on construction sites
11 working on very harsh conditions.

12 And the point is, is that -- and I'm
13 proud to say it. We leave a bit of our soul on every
14 one of these sites when you're out there day in and day
15 out, you know, sometimes six a.m. in the morning until
16 well past ten o'clock. Those are unique circumstances,
17 as Mr. Riggins has cited. It's not the typical
18 conditions, you know, that most attorneys work under.

19 Do we recognize it as a part of our job?
20 Yes. It also is one of the difficulties in attracting
21 and retaining good people is that we're really working
22 and -- in tough conditions. That was the point of
23 citing that.

24 Q. Thank you. Let's go to page 3 of your
25 surrebuttal.

1 A. Page 3.

2 Q. Yes. You're discussing giving reports to
3 the executive oversight committee. Did KCP&L ever
4 disagree with any of Schiff Hardin's evaluations?

5 A. I apologize, can you tell me on page 3
6 what lines you're looking at.

7 Q. It's question that starts on 3 and your
8 answer ends on line 15?

9 A. "QUESTION: If you were working on behalf
10 of KCP&L senior management, what was independent about
11 your role?" That question?

12 Q. Well, and then when you start on line 12,
13 "Schiff Hardin reports to senior management" and I'm
14 asking if KCP&L's senior management ever disagreed with
15 Schiff's evaluation that they provided to senior
16 management.

17 A. I would say that there's never been a
18 project we worked on when Schiff gave its report
19 analysis of a situation, we would not expect senior
20 management to genuflect to Schiff's altar and accept
21 that everything we said in that meeting be
22 instantaneously approved or accepted. So as I sit here
23 right now, I can't tell you of a meeting that I was in
24 that senior management ever said Schiff, you're full of
25 beans when you make that analysis. But I'm sure that

1 there was members of the team throughout the five years
2 of the project when there's give and take as to what
3 the data was showing at any given point in time.

4 Q. Okay. Let's go to page 5.

5 A. We're still in my surrebuttal?

6 Q. Yes.

7 A. Thank you. I'm on page 5.

8 Q. Okay. Lines 21 through 22. You said:
9 Though, those occasions were -- I guess if you read the
10 whole sentence, "Overall, we would spot issues that we
11 believe needed to be corrected in one way that KCP&L's
12 project team was collecting and reporting data,
13 although those occasions were relatively infrequent and
14 usually involved relatively minor adjustments."

15 what were the infrequent or minor
16 adjustments that you're referring to regarding the cost
17 and the scheduling?

18 A. I would contend that those would be
19 included specifically in the numerous reports that --
20 that we provided to KCP&L's senior manager. As I sit
21 here right now, they were more of a technical nature.
22 Dan Meyer certainly can go into issue spotting that he
23 did on cost issues and there was some technical issues
24 Jim Wilson identified on watching the schedule. They
25 were, I would contend, very technical in nature as to

1 how to gather data and interpret the data. But Dan
2 Meyer certainly could identify on a cost perspective
3 things that he suggested and that Forrest Archibald
4 included.

5 Q. Mr. Roberts, do you know how much you've
6 personally charged to both the Iatan projects?

7 A. Ken Roberts himself?

8 Q. Yes.

9 A. Over a five-year period, I think it's
10 approximately 2.5 million. I made a tallying of the
11 invoices provided would give you an exact number, but
12 that's an approximation.

13 Q. That's what I tallied it up to be
14 approximately correct, too, so.

15 A. Thank you.

16 Q. And are you the only Schiff employee who
17 is testifying in this proceeding?

18 A. To the best of my knowledge, yes.

19 Q. Can you identify each Schiff Hardin
20 employee who's in the hearing room right now?

21 A. I can.

22 Q. You can't?

23 A. I can.

24 Q. Oh, can you do that for me?

25 A. Yes. Eric Gould, Carrie Okizaki, Mandy

1 Schermer, Dan Meyer is an independent contractor, but
2 with Schiff.

3 Q. And can you identify what their hourly
4 rates they're currently charging to KCP&L?

5 A. They were frozen as of 2009. I believe I
6 can if you give me a second.

7 Q. Okay.

8 MR. HATFIELD: Judge, can I ask that we
9 go in-camera if we're going to disclose actual rates?

10 MS. OTT: On that note, though, I have a
11 DR on asking Mr. Robert's hourly rates and it's not
12 marked highly confidential, so I don't know that this
13 is highly confidential information.

14 THE WITNESS: It should be.

15 MR. HATFIELD: It should be.

16 THE WITNESS: Without taking your
17 thunder.

18 MS. OTT: I am just saying that in
19 response, it was not highly confidential.

20 JUDGE PRIDGIN: Okay. We'll go in-camera
21 for just a moment, please.

22 MR. HATFIELD: I was assuming the witness
23 knew the answer to this question, by the way.

24 JUDGE PRIDGIN: Okay. We're in-camera.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 volume 24, pages 1892 to 1892 of the transcript.)

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1 JUDGE PRIDGIN: Okay. Just a moment,
2 please.

3 KENNETH ROBERTS testified as follows:

4 BY MS. OTT:

5 Q. Mr. Roberts, who at KCP&L approved for
6 all of the Schiff Hardin employees to sit in this room
7 that are non-witnesses for the past -- last week and
8 this week?

9 MR. HATFIELD: Assumes facts not in
10 evidence.

11 MS. OTT: I think --

12 JUDGE PRIDGIN: I'm sorry, can you ask
13 the question again, please?

14 BY MS. OTT:

15 Q. Mr. Roberts, has Mr. Gould, Ms. Okizaki,
16 Ms. Schermer and Mr. Meyer been present in the hearing
17 room since the commencement of this rate case?

18 A. I believe so. I haven't been in the room
19 for the full duration, but I believe they've been here,
20 that's correct.

21 Q. And who approved those individuals --
22 that you have stated you're the only witness from
23 Schiff Hardin in this case -- to sit in the hearing
24 room?

25 A. Heather Humphrey, the general counsel

1 who's sitting in this room.

2 Q. And was that a verbal request from
3 Ms. Humphrey?

4 A. It was a part of the overall scope and
5 listing out activities in what we would do, yes.

6 Q. So there's no written documentation
7 regarding Ms. Humphrey's request?

8 A. There is a vendor liability form where we
9 list out one-month look-ahead and there is numerous
10 discussions as to -- and documentation as to what
11 Schiff is doing on a legal basis that is heavily
12 discussed and vetted with Roger, KCP&L attorney,
13 in-house, and Heather Humphreys.

14 Q. And what is their role in attending these
15 hearings?

16 A. Well, part of that, I would -- part of
17 that gets into communications between myself and -- and
18 KCP&L legal. Overall, they're here to support and
19 assist in KCP&L's briefing and hearings on this case.

20 Q. Now does Mr. Gould provide legal
21 services?

22 A. Mr. Gould is not an attorney but the
23 product of what he does is incorporated into our legal
24 services.

25 Q. And has Mr. Gould ever worked on project

1 controls for a new coal-fired power plant?

2 A. Nobody in my team has ever worked on a
3 new coal-fired plant.

4 Q. Thank you. Now, in working on several
5 construction plants, I think when Mr. Davis was on the
6 stand, we discussed his experience. Have you ever seen
7 a project director with less experience than Mr. Davis
8 working on a major construction project?

9 A. That's a loaded question. I think Mr.
10 Davis has a great deal of experience.

11 Q. And specifically construction experience?

12 A. I think that he has 30-some years in the
13 operation, maintenance, the way this industry has been
14 without new construction until very recently, that the
15 extensive knowledge he had on maintenance is the -- in
16 this business, is equivalent of a construction
17 experience. I think he's very well versed on it.

18 Q. That wasn't my question. My question
19 was: Have you ever seen a project director with less
20 experience than Mr. Davis, construction experience than
21 Mr. Davis?

22 A. Yes.

23 MS. OTT: I have no further questions.

24 JUDGE PRIDGIN: Ms. Ott, thank you.

25 Commissioner Jarrett?

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EXAMINATION

QUESTIONS BY COMMISSIONER JARRETT:

Q. Good afternoon, Mr. Roberts.

A. Good afternoon.

Q. From your direct testimony, I take it that you have experience working on numerous major capital improvement projects similar to Iatan.

A. Yes, sir.

Q. The Iatan project. I guess I'm kind of looking for like a 50,000-foot level view here, just to sort of get an overall picture. Compared with some of the other projects you have worked on, where would you say KCP&L's management of the project rates?

A. Top notch.

Q. And why -- why is that?

A. I think that there are -- I think there's three factors that if you brought anybody up that has seen projects of a similar nature, and I think that Dr. Nielsen can comment on this and Dan Meyer can. Three things that I would look at.

One is the initial control budget estimate set five years before the project is completed at 25 percent engineering. To have a project that comes within two and a half months of that date, to have a project that comes in within 15, 16 percent of

1 that budget, I think any of those gentlemen would tell
2 you that's top tier.

3 Number two, when you look at the 2008
4 reforecast, when you have engineering at 75 percent
5 done, to have a project that comes on that schedule
6 within two percent of that budget, that 2008
7 reforecast, I think that both of them -- those
8 gentlemen would tell you that that, indeed, is top
9 tier. And that's not by accident. That takes a lot of
10 information. It takes a lot of work to -- to get to
11 that number.

12 The third thing is a project of this
13 duration of this amount of money, to have no major
14 litigation, to have been able to resolve all the issues
15 in realtime during the course of this job, I will tell
16 you anybody that has been in this business would
17 attribute a significant sum of money in terms of the
18 disruption and cost to a project when you are fighting
19 in commercial space through the duration with the
20 various vendors.

21 So that you have a project that is within
22 15 percent of the original budget, absolutely
23 outstanding. Two and a half months of when it was
24 established, outstanding. To have a reforecast in 2008
25 when 75 percent of the drawings are done and then come

1 within two percent of that budget and on schedule, I
2 would tell you that's top tier.

3 And then not to have any litigation
4 associated with it, having issues resolved in the
5 field, all of that adds up to a project management that
6 took all of the issues that Drabinski identified, which
7 really come from the Schiff reports and E&Y audits,
8 every one of the things he listed were issues.

9 what Drabinski doesn't do is he doesn't
10 tell you, if you're familiar with Paul Harvey, the rest
11 of the story. He doesn't tell you how KCP&L's
12 management team worked their butts off to make sure
13 that those issues were resolved or mitigated and the
14 proof positive that indeed they -- all of the issues he
15 cites were, in fact, resolved or mitigated.

16 You don't get a project, you simply do
17 not get a project that is completed five years later
18 from the control budget estimate within 15 percent of
19 that cost within two and a half months of that
20 schedule. You simply don't get a project that is
21 completed within two percent of the first reforecast at
22 75 percent engineering and on that schedule. You don't
23 get that accomplished without a lot of work to mitigate
24 all of the issues that Drabinski cites that really came
25 from, vastly, the Schiff reports and E&Y audit.

1 That's how I would answer your question, sir.

2 Q. Okay. I don't know if you've been here
3 for the entire testimony the last three days or so, or
4 the last few days. Do you recall testimony about
5 quarterly meetings with Staff, our Staff --

6 A. I do, sir.

7 Q. -- those types of things? Were you
8 involved in any of those meetings?

9 A. I was.

10 Q. Could you characterize those meetings,
11 how they were conducted, what generally types of things
12 were discussed?

13 A. I can recall -- I can recall, for
14 instance, a very good conversation, anything they
15 wanted to talk about on March 8. I know we brought in
16 Dan Meyer and he explained in detail the cost
17 reforecast, explained in detail why you do a
18 reforecast. There were people on Staff that were
19 looking at it as if something was wrong to do a cost
20 reforecast. Dan Meyer went into a lengthy explanation
21 that that's not true, that the good projects have cost
22 reforecast. You're testing those fundamental
23 assumptions, you're looking forward. I can remember
24 projects or meetings where Forrest Archibald --

25 MR. HATFIELD: Judge, I'm sorry to

1 interrupt. Before he moves along, I'm not sure if he
2 gave a year.

3 COMMISSIONER JARRETT: Oh, that's right.

4 THE WITNESS: Excuse me, that was March
5 of 2008. Sorry.

6 MR. HATFIELD: Oh, I'm so sorry to
7 interrupt, Commissioner.

8 COMMISSIONER JARRETT: Thank you.

9 THE WITNESS: And I can remember Forrest
10 Archibald walking through the Staff, walking through
11 the various cost reforecasts and how we were tracking
12 the costs. And so I can -- Mr. Miles asking good
13 questions --

14 MR. HATFIELD: Mills.

15 THE WITNESS: Mills, sorry, asking good
16 questions, you know, throughout. And there were people
17 asking questions of what was going on in the job, what
18 we were doing with -- with various settlements. So I
19 viewed it as very proactive. I viewed it as an
20 opportunity that if Staff had any questions, perfect
21 opportunity to raise them, especially with Forrest
22 Archibald giving detailed walk-throughs as to how we
23 were doing costs and looking at it. Dan Meyer being
24 available to go through those issues. So I viewed it
25 as a very open process that I thought was very good.

1 COMMISSIONER JARRETT: Okay. Mr.
2 Roberts, thank you for your testimony. I don't have
3 any further questions.

4 JUDGE PRIDGIN: Commissioner Jarrett,
5 thank you. Commissioner Gunn.

6 COMMISSIONER GUNN: I do have a couple
7 questions. I'll try to go through these very quickly.

8 EXAMINATION

9 QUESTIONS BY COMMISSIONER GUNN:

10 Q. How did you first become aware that
11 Kansas City Power & Light needed help with the project?
12 Who was the person that initiated contact?

13 A. I'm not sure it was they needed help. I
14 think that Tom Maiman said you should meet Bill Downey,
15 they're doing a major project and I think they could
16 use your services.

17 Q. Okay. And that's how contact was
18 initiated, it was a referral, essentially?

19 A. Mr. Maiman introduced me to Bill Downey.

20 Q. Okay. And then how was -- how was --
21 then there was an informal meeting. Did you-guys also
22 do what we referred to yesterday and what we commonly
23 refer to as a dog-and-pony show?

24 A. Yes, sir.

25 Q. So you brought a proposal in to Mr.

1 Downey?

2 A. In early August, 2005, Eric Gould and I
3 were at a nuclear site and were asked to come and meet
4 with Grimwade and Easley and potentially -- I can't
5 remember if Downey was part of it. I know that meeting
6 was definitely with Grimwade and Easley and we were --
7 gave him, in essence, a very thorough review of what
8 we've done on other projects. They knew Grimwade and
9 Easley knew the project. We literally left to come to
10 the meeting, knew the project managers, knew the senior
11 VPs. And it was very evident, had made phone calls
12 before we arrived as to -- to talk about what we were
13 doing for that other utility.

14 Q. Was costs or budget discussed at that
15 initial meeting?

16 A. If it wasn't discussed at that initial
17 meeting, I think that -- I think the initial meeting
18 that I am thinking of with Grimwade and Easley was
19 really a vetting of our background, qualifications,
20 what we did. Once we got through that hurdle, which
21 wasn't just one meeting, there was a number of phone
22 calls, number of discussions, in August, early
23 September, I started sitting down with -- as our scope
24 of services, potential scope of services was being
25 hashed out, I was having discussions with Riggins and

1 Reynolds on cost and budget.

2 Q. So prior to engagement, did you send the
3 company a -- a -- essentially a proposal or a
4 presentation for them to -- to review or was it all
5 just kind of in-person briefings?

6 A. It was a combination of both. I know
7 that -- I know that Bill Riggins had our fee structure
8 prior to him getting the engagement letter. If I can,
9 to answer your question, the first time that Bill
10 Riggins's senior KCP&L management team saw my rates,
11 saw what we were doing, it was prior to the engagement
12 letter being sent to them and accepted.

13 Q. Okay.

14 A. If that answers your question.

15 Q. It does. Now, the first -- the first
16 contact in these first meetings that you had, was the
17 concept always this kind of hybrid legal services,
18 project management approach or was it initially just
19 for legal services?

20 A. I guess I'd start off by saying I don't
21 think we do project management. The oversight we do,
22 on tracking budget and schedule, we view as legal. And
23 that was one of the services that we talked about up
24 front that we literally said, look, here's what we're
25 doing at the site we just came from. We helped them

1 negotiate contracts, we've helped them with change
2 orders, we've helped them with the contract
3 administration, we've helped them with contract
4 strategy. At that particular site we had given some
5 similar very high-level debriefs to senior management,
6 to the board on costs and schedule of the project.

7 Q. But there is a difference with the team
8 that you assemble between the legal side and then some
9 of the management side, because you're bringing in some
10 non-lawyers and consultants to -- to do things other
11 than things that are strictly legal?

12 A. I guess, yes, Dan Meyer's time; yes, Jim
13 Wilson's time in setting up or assisting to set up the
14 project controls and how you collect the data where the
15 schedule is, where the costs are. Those aren't
16 obviously legal services, but the by-product of that
17 work, the data that comes out of that definitely feeds
18 into our legal services in telling KCP&L here's where
19 the project is, here's what the options are, what these
20 contractors --

21 So I would -- I would -- it would be,
22 like, my brother-in-law's a county prosecutor, was a
23 county prosecutor. When he hires an investigator, a
24 former FBI investigator, that investigator is
25 considered part of the legal team and his services are

1 considered part of the legal work. That's what Dan
2 Meyer and Jim Wilson do. That's what Eric Gould does
3 in working with them in the trailers to make sure it's
4 established. That by-product is everything to our
5 analysis to senior management of where the project is.

6 Q. Is part of the benefit of that that you
7 can assert attorney-client privilege with folks that
8 aren't lawyers?

9 A. Yes.

10 Q. Do you market it that way?

11 A. No, but it certainly at OPG, which was a
12 Crown company, the work we did was fed into the
13 government and they have as -- they have Freedom
14 Information Act that is the same or more liberal than
15 ours. And all the work that we provided to OPG and to
16 the government was deemed to be attorney-client and
17 there was significant challenges by various parties in
18 Canada on that.

19 So I don't go to -- I don't go to in
20 KCP&L or OPG and say use us so that you can hide behind
21 attorney-client privilege. That's the opposite. We're
22 trying to get transparency to senior management, we're
23 trying to get transparency to any government body
24 that's overseeing it as to where the project is on
25 budget and schedule.

1 Part of what we do as attorneys in giving
2 that advice on strategy, what's your options on Alstom,
3 how do you react to this data, part of that by
4 definition has always been viewed by any jurisdiction
5 that's looked at it and I would contend by the ALG in
6 this case is indeed attorney-client privilege. But we
7 don't market it and we don't -- that's not a selling
8 point to why you should use Schiff.

9 Q. And I'm not suggesting that privilege was
10 asserted improperly in this case. I think one of the
11 -- one of the problems that we run into is that
12 privilege is probably asserted properly in some of
13 those things, but that creates a challenge for us to
14 determine some of the -- of the prudence because there
15 is a -- there is a legitimate privilege interest that
16 needs to be protected, but it makes it more difficult
17 for us. I'm not in any way asserting privilege is
18 done.

19 A. Okay.

20 Q. What I'm trying to figure out is whether
21 this was -- how this was kind of bundled together and
22 what the purposes was. So let me go back. When did
23 you have the first conversations with Mr. Maiman, if
24 I'm pronouncing that correctly, to join the team?

25 A. I think it would have been in the late --

1 it would have been September or October.

2 Q. of 2005?

3 A. Yes. And that would have been based on
4 describing to Easley the role that Tom Maiman played
5 for OPG and another major east coast utility, my
6 recollection is that Easley said, man, I would like to
7 have that experience, I'd like to have that sounding
8 board, I like that idea a lot. And I think I
9 approached Maiman and said, you know, KCP&L would like
10 to hire you directly to do the same role you did at
11 OPG, same role you did at this major east coast
12 utility. And Maiman said, well, I would like to help
13 you-guys, but I actually want to work under the Schiff
14 umbrella. I would like access to your data, I think
15 that would be more effective. And then there was a
16 discussion with Mr. Easley on that.

17 Q. So the discussion happened after KCP&L
18 came to you and said we want you to hire him?

19 A. Yes, KCP&L hired Schiff and -- you know,
20 if you look at the December budget, that's when we
21 included Maiman.

22 Q. Okay. I'm going to ask you some
23 questions about kind of the legal services that you
24 provided.

25 A. Sure.

1 Q. At some point, I'm going to ask you some
2 specific questions so we can go HC, but for right now,
3 I think I'm okay.

4 So I assume you have a standard schedule
5 of rates for every lawyer, paralegal, everybody in the
6 firm?

7 A. Yes.

8 Q. Does that have -- does that schedule have
9 tiers, like in my experience, you have a standard, you
10 have a premium and maybe a discounted or whatever you
11 want to call it?

12 A. If I understand your question correctly,
13 my going rate for 2011 is anywhere from 680 to 650 an
14 hour.

15 Q. And that's depending on the agreement you
16 have with the client?

17 A. Yes.

18 Q. And there's the exception, obviously,
19 would be KCP&L that I'm billing out at five -- are we
20 in-camera? I need to be, thank you. Help me here,
21 guys.

22 MR. HATFIELD: I'd like to go in-camera
23 for your current rates, but if you don't mind yelling
24 them out.

25 THE WITNESS: well, I'd like to go

1 in-camera.

2 JUDGE PRIDGIN: Just a moment, please.

3 (REPORTER'S NOTE: At this point, an
4 in-camera session was held, which is contained in
5 volume 24, pages 1910 to 1918 of the transcript.)

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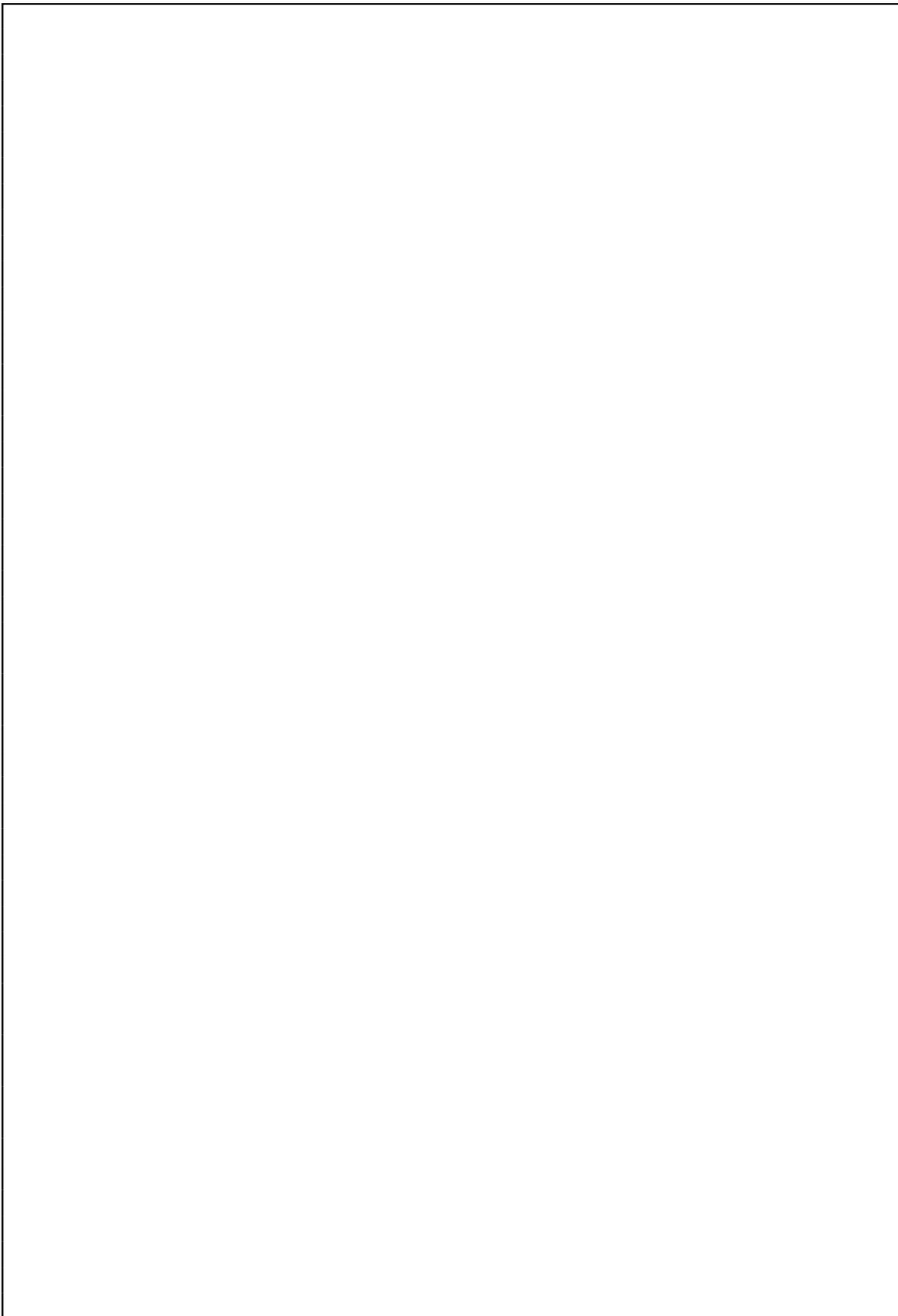
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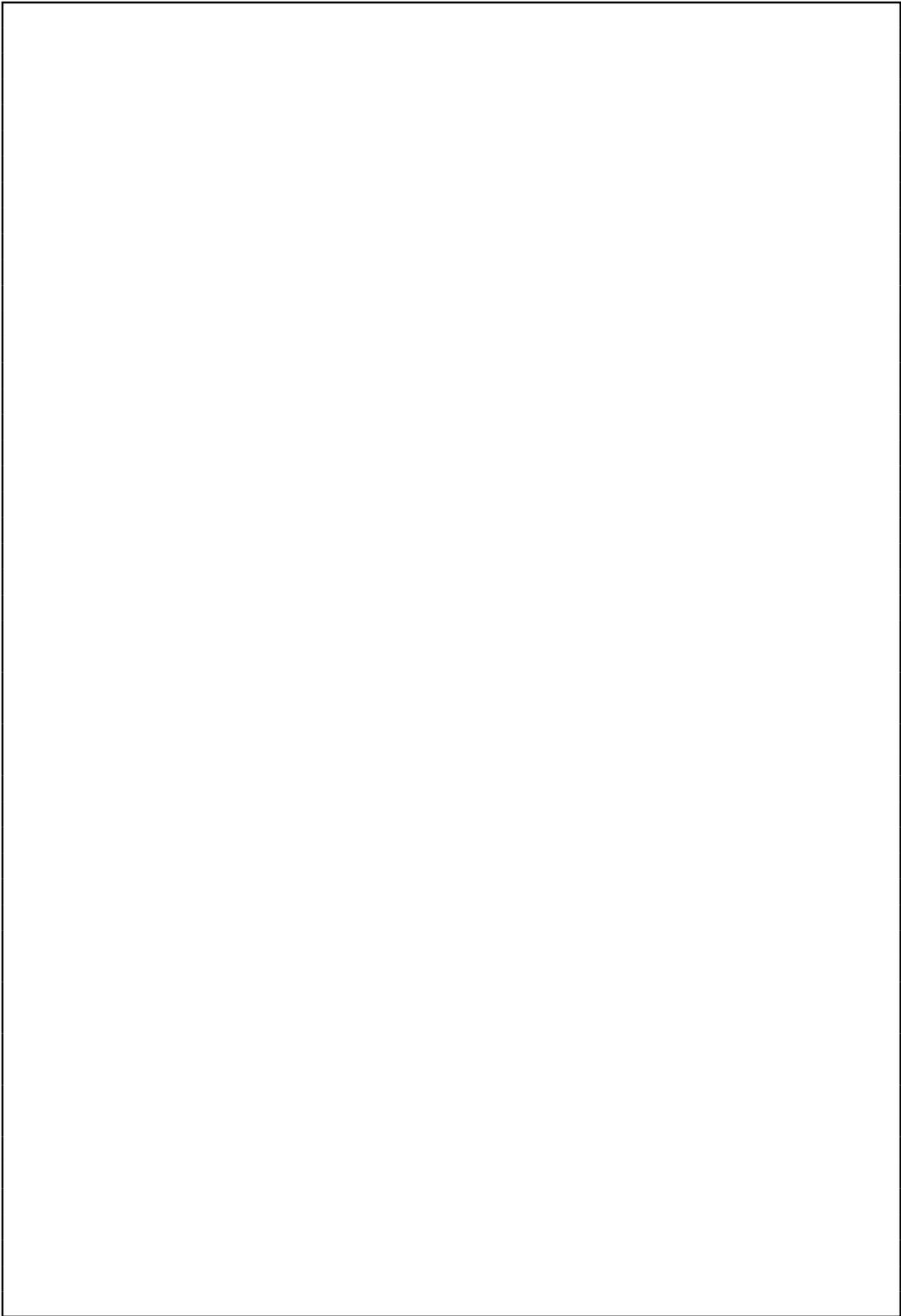
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1 KENNETH ROBERTS testified as follows:

2 BY COMMISSIONER GUNN:

3 Q. There was a question about your
4 recollection on the Pegasus meeting. Did you go back
5 and verify with time records or did you-guys just rely
6 on your own recollections. It's just for my
7 edification.

8 A. I -- somehow it came up, but was there a
9 meeting with Pegasus and I said, man, I can't remember
10 one with the assistant. And Carrie Okizaki and Eric
11 Gould said, you idiot, we had one meeting and you were
12 there. So that was good enough for me.

13 Q. Okay. Fair enough. I want to move on to
14 Mr. Drabinski -- some of Mr. Drabinski's testimony.

15 A. Sure.

16 Q. He used -- he used kind of the -- kind of
17 a confession analogy where he said, well, what KCP&L's
18 asking for is that we essentially -- because Schiff
19 Hardin was brought in, that we wipe away the sins --
20 the original sins that took place between 2004 and
21 2006. Were you here for that testimony?

22 A. I was.

23 Q. Okay. If you had been brought in at the
24 very beginning of the project, do you think that --
25 that whatever mistakes were made from 2004 to 2006

1 would have occurred?

2 A. We were running at the very beginning of
3 the project, the essence of the project. I mean, not
4 when the original maybe stip was signed, but for all
5 practical purposes, if you look at the timeline, if you
6 look at this document and go back to August, 2005, that
7 was very -- I would consider that very early in this
8 project.

9 Q. But there were -- but there were
10 management decisions made prior to you being brought
11 in, correct?

12 A. Well, the -- I'm sure -- there was, but
13 the contracting strategy had not been made.

14 Q. Okay. But you mentioned earlier that
15 said that -- that -- that many of the issues that --
16 that Mr. Drabinski had were based upon Schiff's audits
17 of KCP&L's management of the project up to this point,
18 or analysis. I don't want to call audits.

19 A. Right.

20 Q. But you did some analysis of what
21 happened prior to when you were brought in and changes
22 were made to the project management based on your
23 analysis, correct?

24 A. I don't -- I would say that our reports,
25 specifically in 2005, 2006 was not looking backwards.

1 It was looking at where we were at in realtime.

2 Q. Okay. But you determined that some
3 changes needed to be made to the management of the
4 project.

5 A. And how data was collected, a variety of
6 issues, yes, sir.

7 Q. And part of that was to control costs?

8 A. Control schedule, yeah, which we've done
9 in costs, yes.

10 Q. Okay. So you did -- the analysis did
11 contain, and for lack of a better word -- well,
12 suggested improvements to the way that KCP&L could be
13 running the project?

14 A. Yes.

15 Q. Okay. So there was a period of time in
16 which KCP&L had -- had put systems in place that, if
17 not modified, may have increased the costs --

18 A. Yes.

19 Q. -- later on?

20 A. And if I can add to that, our analysis
21 wasn't looking in the rearview mirror, we were looking
22 in realtime saying this is what you have, this needs to
23 be improved to hold costs and schedule.

24 Q. So you didn't --

25 A. It was a realtime analysis. The project

1 was in its infancy when we joined it.

2 Q. Sure, but your -- so you're saying that
3 at 2005 when you went to -- when you did your analysis,
4 when you were brought into the project, that there were
5 no decisions that were made prior to that that
6 ultimately impacted the cost of the project?

7 A. Very few.

8 Q. Can you put a dollar figure on it?

9 A. Well, the only thing I could -- as I sit
10 here right now and you look at the various charts, it
11 would be the -- just the -- in essence, the agreement
12 that Mr. Giles, Curtis talked about in terms of the
13 overall CEP when KCP&L would -- would have the plant,
14 you know, in service. That would be the biggest one,
15 that they wanted -- about the only decision made prior
16 to -- to Schiff getting involved that would have had an
17 impact, that as I said here today, would have been the
18 discussion to have this plant up and running by the end
19 of summer, fall of 2010.

20 Q. So -- so absent Schiff's involvement,
21 this project -- the cost wouldn't have gone up except
22 for the cost of that decision?

23 A. Well, I'm not saying that at all. I'm
24 saying that that's the only major -- there was
25 literally a thousand decisions since August of 2005

1 that were presented to the management team that but for
2 their mitigation or action, would have caused this
3 project to most certainly be above the 15 percent of
4 the controlled budget estimate and most certainly would
5 have been beyond the two and a half months from the
6 June date.

7 Q. And those decisions would have been
8 necessary in the course of a regularly managed project?

9 A. Yes. What I tell executives is on a
10 project like this, this is your worst roller coaster
11 ride. Bring your vomit bucket because there's going to
12 be issues du jour every week, every month that are
13 going to be gut busters. And that's a -- and a
14 well-managed project, and I think Mr. Nielsen can go
15 into this in depth, a well-managed project is how does
16 that senior management, how do they get the data, how
17 accurate is the data and what is the -- what is the
18 vetting around their decision-making process.

19 That's -- that's -- I believe that that's
20 a shorthand version of his definition of "prudent."
21 That's what I've been brought up as to how you would
22 judge whether this project was -- was managed
23 prudently. It is the collection of the data,
24 timeliness of that data, the vetting of the options
25 that senior management has that judges it, and man, on

1 a project of five-year duration of almost two million
2 dollars, there are going to be a lot of issues.

3 And if I -- I don't want to run, but wolf
4 Creek, the decision in wolf Creek, if you're in this
5 business, you see that decision in almost every state
6 and that decision really is -- is the genesis of our
7 practice. The Commission in wolf Creek says owner, you
8 can't just sign up with an EPC target price, which is
9 what wolf Creek started out as. You can't be in
10 business class. This is your plane, you got to be in
11 the cockpit, you got to see the data, you can't
12 contract away your responsibility.

13 That is, in essence, what Schiff does is
14 it makes sure the owner, the senior management team,
15 that they're in the cockpit, they're seeing data in
16 realtime and making decisions to try to influence those
17 contractors on how to hold budget and schedule. I hope
18 that answered your question.

19 Q. Were you -- were you involved in the
20 original CBE?

21 A. Yes, sir. The original CBE is -- the --
22 the CBE is issued in December of 2006.

23 Q. Right.

24 A. Dan Meyer, my team worked very
25 extensively with the KCP&L team in developing that.

1 Q. And then the reforecast was 2008.

2 A. The first recast -- the first reforecast
3 was 2008, yes, sir.

4 Q. Okay.

5 A. And there was 3rd in September of 2010
6 and I believe they're putting the final touches on
7 that, the final reforecast.

8 Q. Okay. Were you a regular -- did you
9 regularly appear before the EOC?

10 A. Absolutely.

11 Q. Were those -- when you -- were you
12 requested to appear before the EOC or were the
13 appearances driven by Schiff's analysis?

14 A. I was expected to report at each meeting.

15 Q. Okay. Did the EOC ever implement -- did
16 it ever make a decision that went contrary to your
17 analysis or your recommendation?

18 A. The project was managed at the
19 construction trailers on site and the executive
20 committee gave suggestions oversight. They weren't
21 making day-to-day decisions as to how it would be
22 carried out on the site.

23 Q. Right.

24 A. As I sit here right now, boy, I can't
25 think of any major recommendation that Schiff gave to

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.)

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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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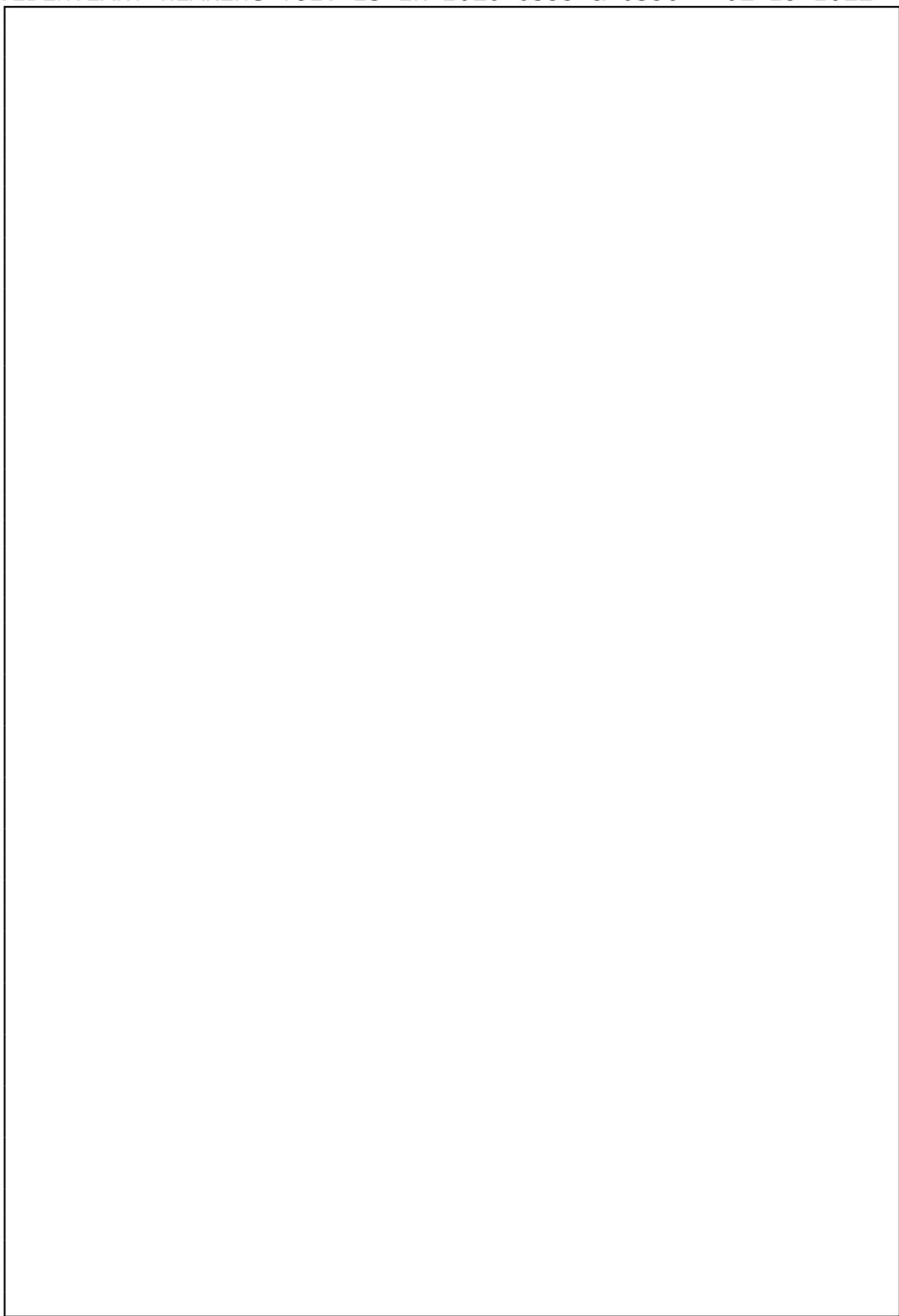
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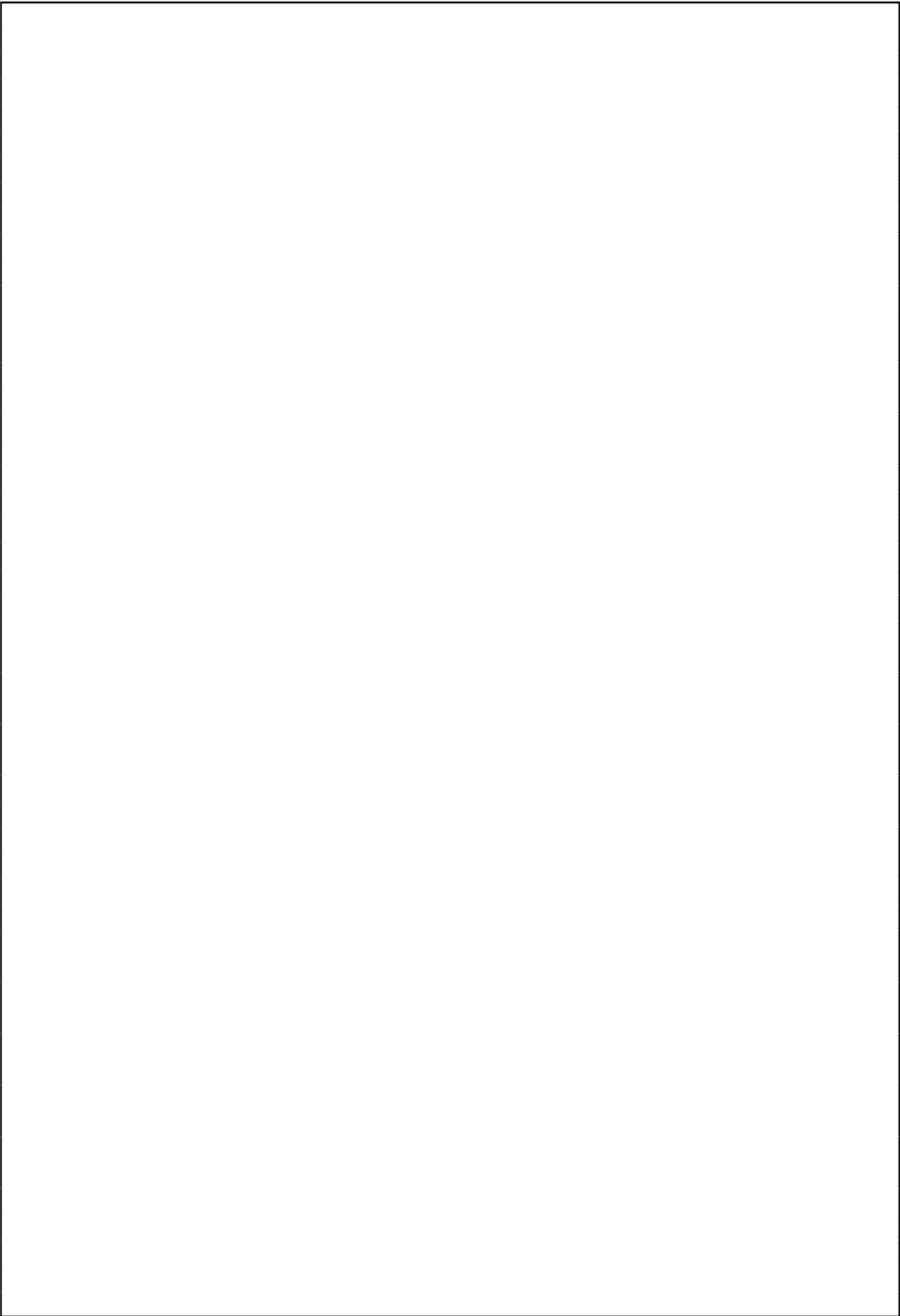


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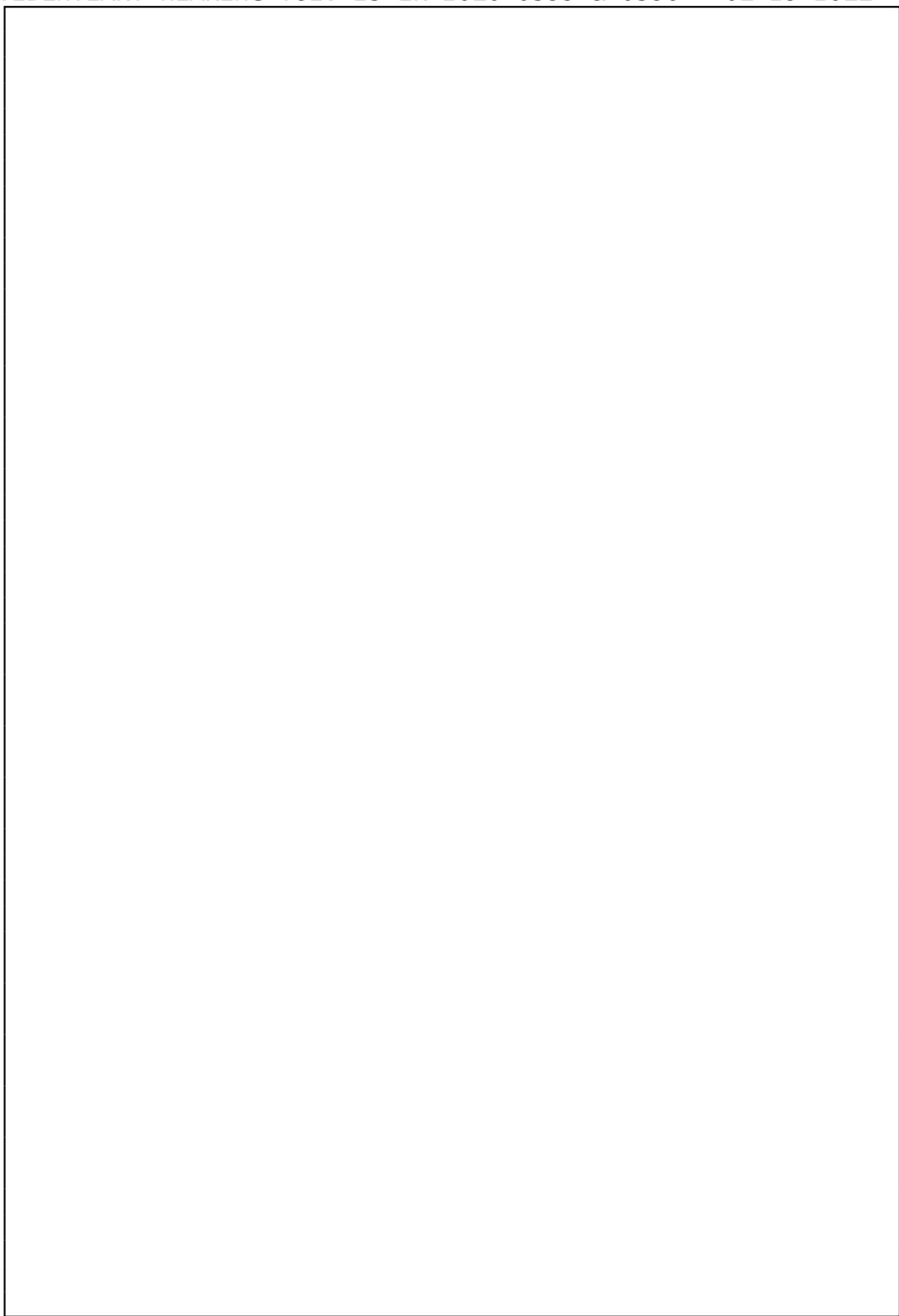
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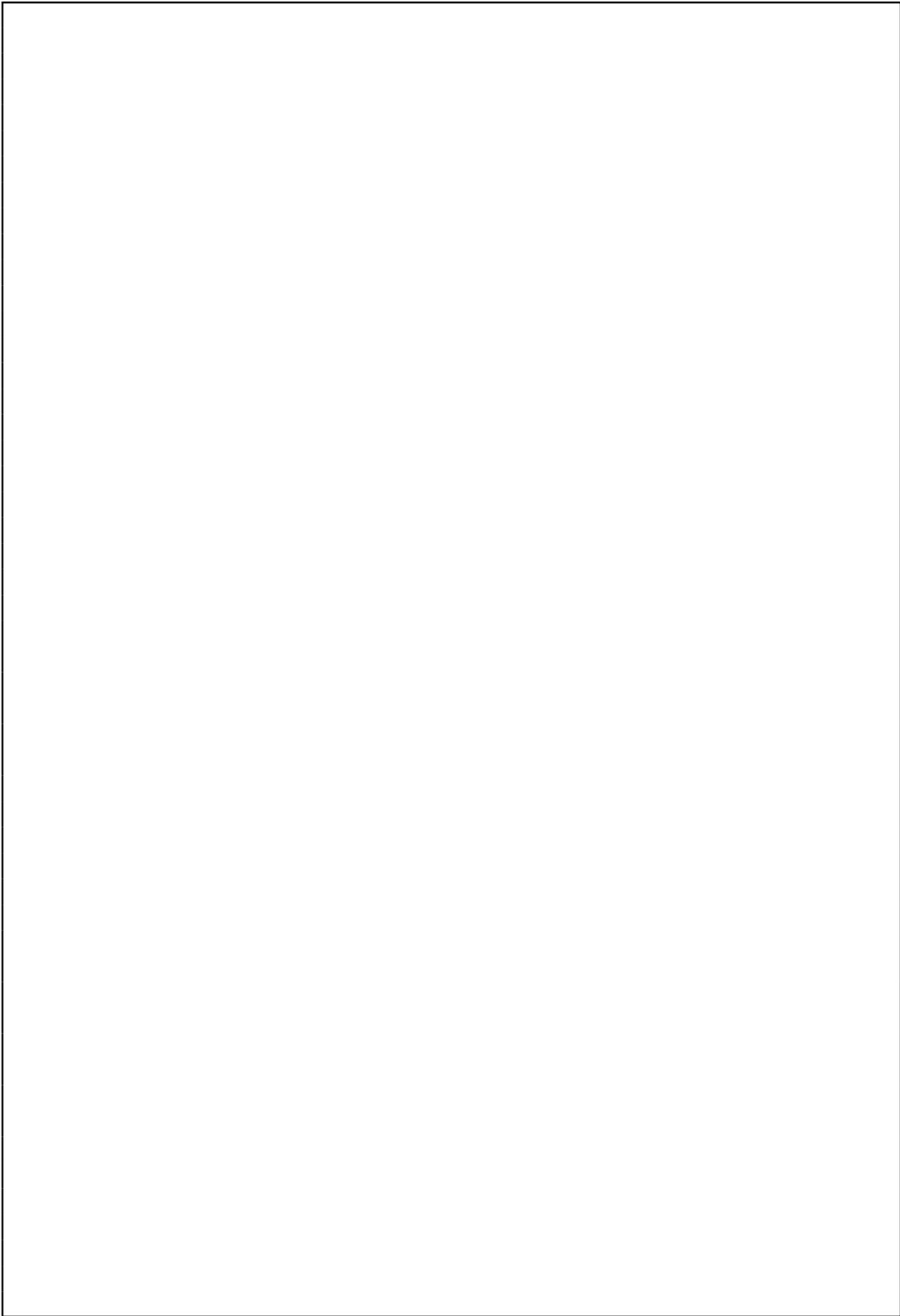
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1 JUDGE PRIDGIN: All right. Good evening,
2 we are back on the record. Before we went on the
3 record, I had a brief scheduling conference with
4 counsel present. And just to announce my understanding
5 of what we discussed, beginning Thursday, we 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 RE-CROSS-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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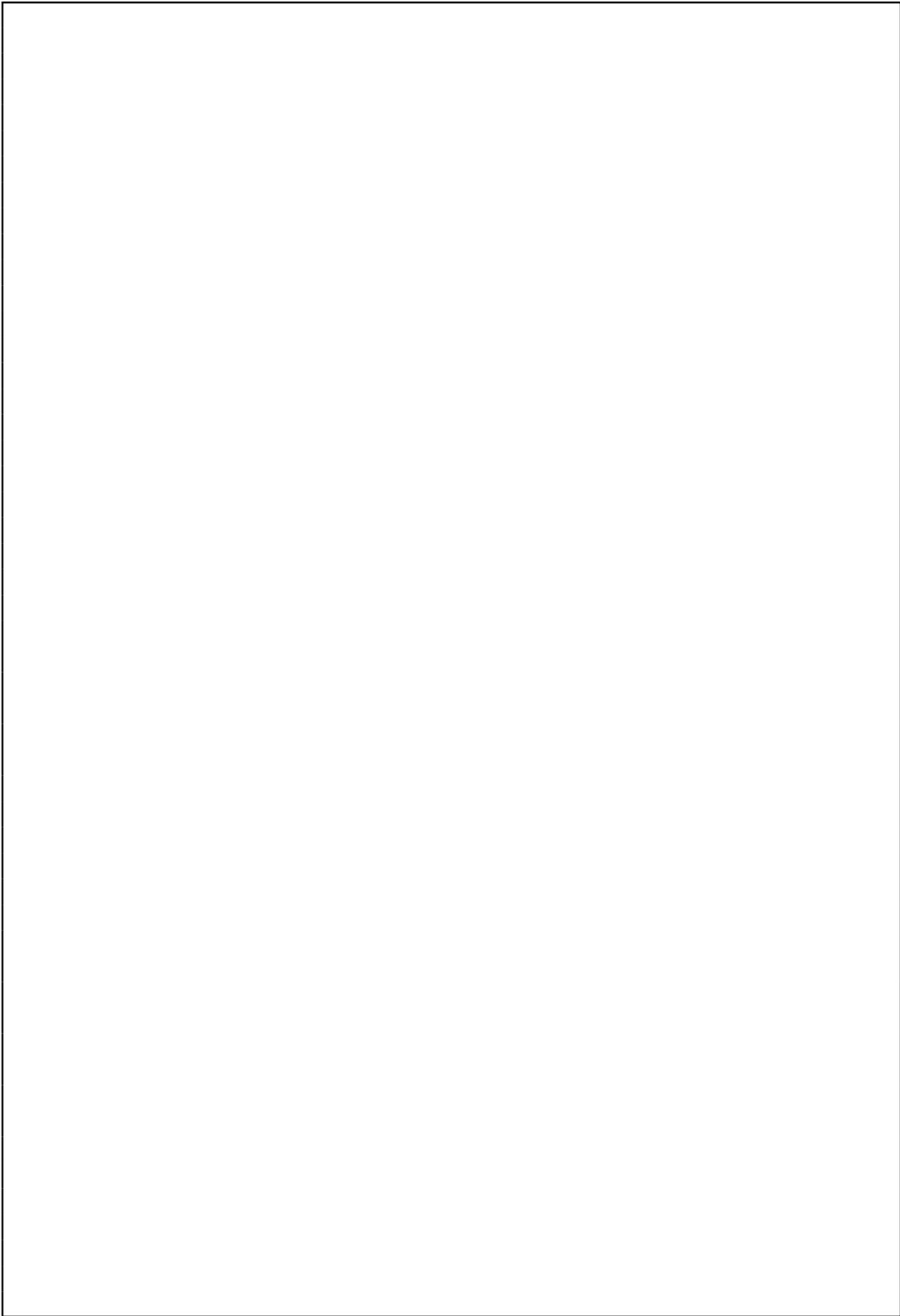
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JUDGE PRIDGIN: We are back in public.

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 volume 24, pages 2003 to { of the transcript.)

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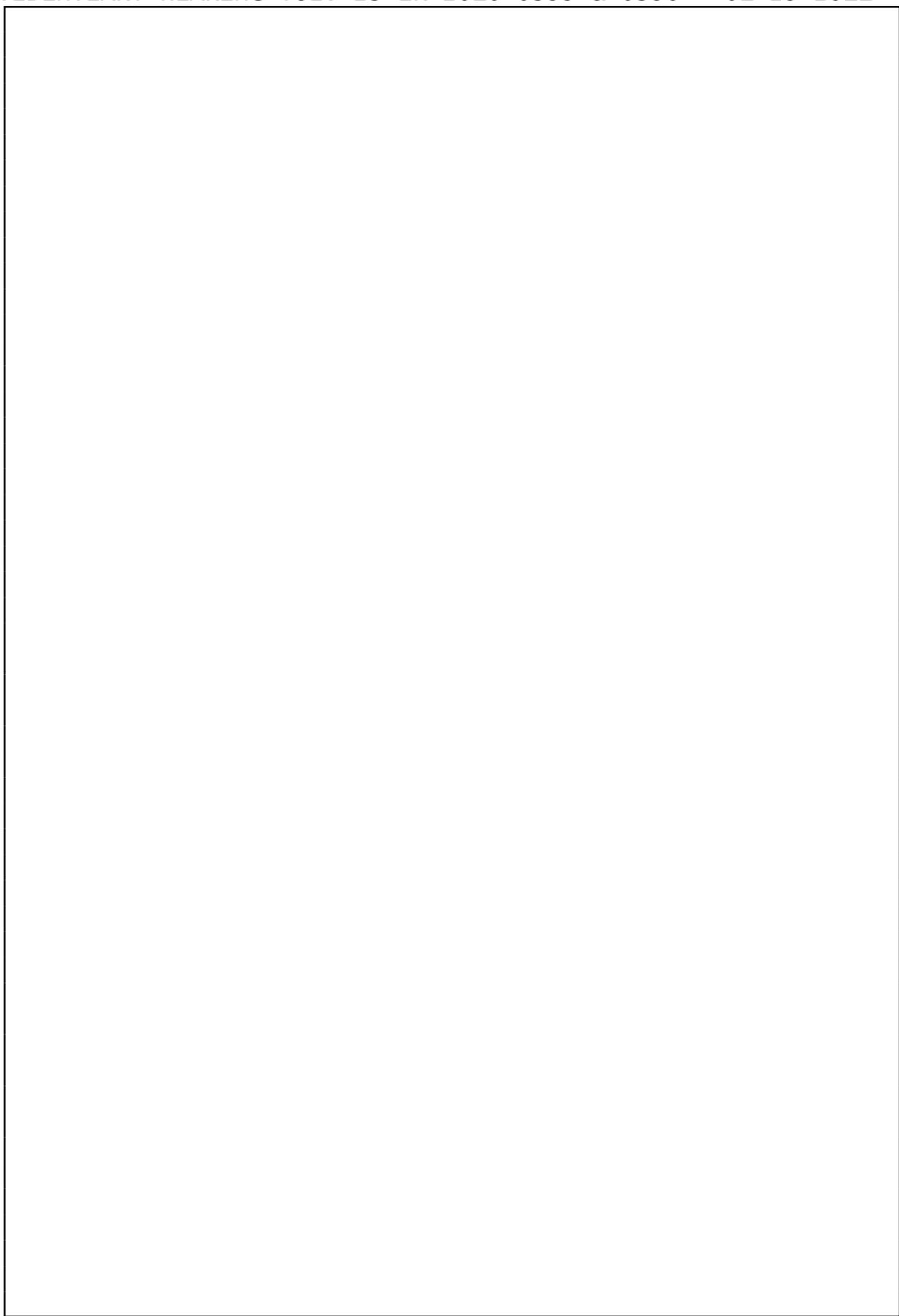
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1 JUDGE PRIDGIN: We're back in public
2 form.

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

1 and he said -- Schiff Hardin budget matters, and he
2 indicated that the client had asserted attorney-client
3 privilege and he couldn't testify. Without -- without
4 that foundation, there is -- is no evidence --
5 foundation evidence to support that any Schiff Hardin
6 services are referenced in the CBE.

7 I want to make clear that I'm not by this
8 suggesting that the Commission should strike all -- I'm
9 not moving to make any adjustment based on that. But
10 to the extent that -- that the -- that there is
11 testimony and there is simply no foundation that any of
12 the costs on the CBE is attributed to Schiff Hardin.

13 JUDGE PRIDGIN: I will -- let me inquire,
14 Mr. Schwarz. I don't know -- if you're only wanting to
15 exclude certain portions of the testimony, do you need
16 a transcript and do you need to file a motion to say
17 these are the lines?

18 MR. SCHWARZ: I have not gone through --
19 there may be no such references, although I think there
20 are.

21 JUDGE PRIDGIN: All right.

22 MR. SCHWARZ: And yes, I would need to
23 eventually identify specific references. But I want to
24 alert the parties now and the Commission now that there
25 is simply no foundation for those particular statements

1 and assertions.

2 JUDGE PRIDGIN: All right. And I
3 appreciate it, Mr. Schwarz. It's my preference if you
4 would raise that in a written motion and certainly
5 reference the page numbers and line numbers and give
6 parties a chance to respond so in case the Commission
7 does rule in your favor.

8 MR. SCHWARZ: Yes, yes.

9 MR. HATFIELD: And Judge, just so we're
10 clear on what it is that Mr. Schwarz is going to be
11 doing, the Commission's own staff filed an audit report
12 that includes references to the Schiff Hardin control
13 budget estimate of \$7.1 million in the Iatan 2 cost
14 report. So if we're going to talk about striking
15 references, I assume we'll take it up in all testimony
16 that's been pre-filed with this Commission.

17 MR. SCHWARZ: That's correct.

18 JUDGE PRIDGIN: All right. Anything
19 further before -- is it Dr. Nielsen --

20 MR. FISCHER: Yes.

21 JUDGE PRIDGIN: -- before he takes the
22 stand? If you'll come forward to be sworn. I don't
23 plan on going much more -- much later than 9:00 or
24 9:30. I realize we may not get very far, but figure
25 we'll just continue to go forward and call it a night

1 here in roughly an hour or so and resume in the
2 morning. Okay. Anything further before I administer
3 the oath?

4 (The witness was sworn.)

5 JUDGE PRIDGIN: Mr. Fischer, anything
6 before he stands cross?

7 MR. FISCHER: Yes, I have a little
8 direct.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. FISCHER:

11 Q. Please state your name and address for
12 the record.

13 A. Kris, K-r-i-s, Nielsen, N-i-e-l-s-e-n.
14 1750 Emmrick Road, Cle Elum, two words, C-l-e, E-l-u-m,
15 Washington 98922.

16 Q. Dr. Nielsen, are you the same Kris
17 Nielsen that caused to be filed in this case rebuttal
18 testimony that for your information has been marked as
19 Exhibit 46-HC and 46-NP?

20 A. Yes.

21 Q. Do you have any corrections that you need
22 to make to that testimony?

23 A. No.

24 Q. If I were to ask you the questions that
25 are contained in that testimony tonight, would your

1 answers be the same?

2 A. Yes.

3 Q. And are they true and accurate to the
4 best of your knowledge and belief?

5 A. To the best of my knowledge and belief.

6 Q. And are there some schedules attached to
7 that -- are attached to your testimony?

8 A. I don't know -- we got exhibits.

9 Q. Exhibits, okay. And do those exhibits
10 accurately depict what they're intended to show?

11 A. I think so.

12 Q. Okay.

13 MR. FISCHER: Judge, with that, I move
14 for the admission of 46-HC and 46-NP and tender the
15 witness for cross.

16 JUDGE PRIDGIN: 46-HC and 46-NP have been
17 offered. Any objections? Hearing none, they are
18 admitted.

19 (Exhibit Nos. 46-HC and 46-NP were
20 received into evidence.)

21 JUDGE PRIDGIN: Mr. Fischer, anything
22 further before he stands cross?

23 MR. FISCHER: No, sir.

24 JUDGE PRIDGIN: All right. Thank you.
25 Mr. Schwarz?

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CROSS-EXAMINATION

QUESTIONS BY MR. SCHWARZ:

Q. Good evening, sir.

A. Good evening.

Q. You testified on behalf of the company in Kansas in front of the Kansas Corporation Commission, did you not?

A. Yes, I did.

Q. Were you retained for both that case and this case at the same time?

A. Yes.

Q. And when were you retained?

A. It was late summer, early fall of 2008.

Q. Okay. What have been your -- what were your fees for testifying in Kansas?

A. I don't -- I didn't break my fees out separately.

Q. You didn't break your fees out separately as between Kansas and Missouri?

A. No, I didn't.

Q. Okay. How much were your fees altogether?

A. Oh, for the for two cases in Kansas, the Iatan 1 case in Missouri, the hearings in Missouri in April and this docket, plus doing the whole review, I

1 think they're about \$1.7 million.

2 Q. And I apologize, when I say "you,"

3 Pegasus is the one who --

4 A. Yes.

5 Q. -- does the bills?

6 A. Yes.

7 Q. And -- and Pegasus activities include

8 more than just yourself?

9 A. Yes.

10 Q. I didn't mean to imply that it was you

11 personally.

12 A. Well, I answered the whole company.

13 Q. Okay. How many days personally did you

14 spend on the Iatan site?

15 A. On the Iatan site? I think three.

16 MR. SCHWARZ: I don't think I have

17 anything further.

18 JUDGE PRIDGIN: Mr. Schwarz, thank you.

19 Mr. Mills?

20 CROSS-EXAMINATION

21 QUESTIONS BY MR. MILLS:

22 Q. Dr. Nielsen, I believe you just answered

23 that you testified in Kansas on behalf of the company;

24 is that correct?

25 A. Yes.

1 Q. Have you ever sponsored a prudence
2 disallowance on behalf of a consumer advocate?

3 A. Yes.

4 Q. And were you successful in that
5 disallowance?

6 A. They settled.

7 Q. So have you ever sponsored a disallowance
8 on behalf of a consumer advocate that was accepted by a
9 Commission?

10 A. No, I have not.

11 Q. Okay.

12 MR. MILLS: No further questions.

13 JUDGE PRIDGIN: Mr. Mills, thank you.

14 Ms. Kliethermes.

15 CROSS-EXAMINATION

16 QUESTIONS BY MS. KLIETHERMES:

17 Q. Thank you. Good evening, Mr. Nielsen.

18 A. Good evening.

19 Q. Did you find any imprudence at Iatan?

20 A. Yes.

21 Q. And what was that imprudence?

22 A. There was two instances of imprudence
23 that I quantified -- found and then quantified. The
24 WSI premium portions of overtime that were paid by
25 KCP&L, and then the expenses with respect to the aux

1 boiler, auxiliary boiler.

2 Q. Is your testimony that all the
3 documentation that was available to Pegasus was
4 available to Staff?

5 A. I believe so.

6 Q. Do you have your rebuttal testimony with
7 you?

8 A. Yes.

9 Q. Would you turn to page 46?

10 A. Forty-six? Yes.

11 Q. Do you contend that you did a prudence
12 review or a prudence audit?

13 A. Prudence audit.

14 Q. And how do you distinguish those two?

15 A. I don't.

16 Q. Did you do that using the -- and I'll
17 refer to GAGAS. Do you know what that is?

18 A. Yes, ma'am.

19 Q. And what is GAGAS?

20 A. The government auditing -- let's see,
21 government -- I got it right here, government auditing
22 standards.

23 Q. And did you use the 2007 revision of
24 that?

25 A. Yes.

1 Q. And you did your review using GAGAS?

2 A. Yes.

3 Q. Does GAGAS define a "prudence audit?"

4 A. As I said before the Commission last
5 April, that prudence audits are -- are a function or
6 subset.

7 Q. I believe my question can be answered
8 with either a yes or a no.

9 A. Yes.

10 Q. GAGAS does define a "prudence audit?"

11 A. They define performance audits, which
12 prudence audits are a subset of performance audits.

13 Q. Does the word "prudence" appear anywhere
14 in GAGAS?

15 A. No.

16 Q. On page 46, you refer to a prudence audit
17 -- or I'm sorry, a prudence review or audit is a
18 category of performance audit.

19 A. Yes.

20 Q. Is that definition found anywhere in
21 GAGAS?

22 A. I believe so. Not -- by the very nature
23 of the definition of performance audit, it includes a
24 prudence audit.

25 Q. And where is that definition of

1 "performance audit" found?

2 A. As I footnoted on the bottom of that
3 page, you will find a series of quotes that I put in
4 this related to GAGAS, and I footnoted each of those
5 where it's found within GAGAS. That also comports with
6 GAGAS having been accepted by NARUC, which is the
7 National Association of Regulatory Commissioners.

8 Q. So your testimony is that a definition
9 that a prudence audit -- I'm sorry, I keep misreading,
10 that a prudence review or audit is a category of
11 performance audit. It is your testimony that that
12 definition is from GAGAS?

13 A. Yes.

14 MS. KLIETHERMES: May I approach?

15 JUDGE PRIDGIN: You may.

16 (Exhibit No. 273 was marked for
17 identification by the Court Reporter.)

18 BY MS. KLIETHERMES:

19 Q. Could you identify what I've just handed
20 you?

21 A. It looks like the 2007 revision of the
22 government auditing standards.

23 Q. Can you show me the word "prudence" in a
24 single instance in that document?

25 A. I said that it doesn't appear in this

1 document.

2 Q. But you just said that a definition that
3 a prudence audit is a -- I'm sorry, what was the word
4 again?

5 A. Performance audit.

6 Q. -- is a category of performance audits.

7 A. Yes.

8 Q. You just stated that that definition is
9 in GAGAS.

10 A. I don't believe I said it's in GAGAS. I
11 said if you take the definitions of performance audits
12 and compare them to the definitions of prudence audits,
13 they're a subset of performance audits.

14 Q. And can you point to a single
15 authoritative source that identifies that?

16 A. Yes.

17 Q. What would that source be?

18 A. As I said, NARUC -- let me start out by
19 saying that in 1984, NARUC commissioned my firm as part
20 of a study that they had done to define "prudence" and
21 the standards that should be applied to prudence. And
22 they recommended that GAGAS be accepted because GAGAS
23 has been in existence ever since then. Not the 2007
24 edition, but GAGAS standards, because we were judging
25 the performance of companies on behalf of utility

1 commissions and what would -- so they said that the
2 only standards that are existing are the yellow book
3 standards, or the GAGAS standards. And so based on the
4 study that we did for NARUC.

5 Q. So NARUC?

6 A. That's all -- that's one of the
7 authoritatives.

8 Q. Is there a NARUC publication that adopts
9 this finding?

10 A. Yes.

11 Q. And what is that publication?

12 A. I don't remember the name of the
13 publication, but it was done in the mid-80s, in the
14 hype of all of the nuclear prudence reviews.

15 Q. Are you a project management
16 professional?

17 A. Yes, ma'am.

18 Q. Do you consider yourself an expert on
19 matters of accounting?

20 A. Cost accounting.

21 Q. Do you have your -- I'm sorry, what about
22 general accounting?

23 A. No.

24 Q. Do you consider yourself an expert on
25 matters of auditing?

1 A. Yes.

2 Q. Do you consider yourself -- pardon me.
3 Do you consider yourself an expert on matters of cost
4 engineering?

5 A. Yes.

6 Q. Do you consider yourself an expert on
7 matters of rate-making?

8 A. Rate-making? No.

9 Q. Are you an engineer?

10 A. Yes.

11 Q. Are you a licensed professional engineer?

12 A. No.

13 Q. What professional licenses do you hold?

14 A. I hold a law degree -- or a license from
15 the state of Virginia and a certification by the PMP
16 and as -- and I also hold a license from the Royal
17 Institution of Chartered Surveyors on the risk
18 management college, the project management college, and
19 forensic college.

20 Q. Are there any additional professional
21 certifications or registrations that you hold?

22 A. Yes. I'm also a professional engineer in
23 Japan, which licensed by the -- like in the British
24 system, the institution, the Japanese Society of Civil
25 Engineers is the licensing body; whereas in this

1 country, they're separately done by boards.

2 Q. You're not directly engaged by KCP&L, are
3 you?

4 A. No.

5 Q. What's the nature of your relationship to
6 KCP&L?

7 A. I was hired by the law firm that KCP&L
8 hired, Duane Morris, as their prudence counselor.

9 Q. So is it your testimony that you've been
10 engaged to perform a prudence audit for KCP&L?

11 A. Yes, as an independent prudence audit.

12 MS. KLIETHERMES: May I approach?

13 JUDGE PRIDGIN: You may.

14 (Exhibit No. 274-HC was marked for
15 identification by the Court Reporter.)

16 BY MS. KLIETHERMES:

17 Q. Could you identify the document I've
18 latently handed you?

19 A. Pegasus Consulting Agreement.

20 MS. KLIETHERMES: And do we need to go in
21 HC for this?

22 If we could go in-camera briefly, please.

23 JUDGE PRIDGIN: Just a moment.

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

1 volume 24, pages 2028 to { of the transcript.)

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1 JUDGE PRIDGIN: All right. We are back
2 in public forum. 274-HC has been offered. Any
3 objections? Hearing none, 274-HC is admitted.

4 (Exhibit No. 274-HC was received into
5 evidence.)

6 KRIS NIELSEN testified as follows:

7 BY MS. KLIETHERMES:

8 Q. Did you look at all of the Iatan
9 construction project costs in the course of your audit?

10 A. I can't say that I looked at every cost.

11 Q. Did you look at the Schiff Hardin rates
12 for the project controls and project management service
13 when you were performing your audit?

14 A. Yes.

15 Q. In a typical prudence audit performed by
16 Pegasus, would you look at the rates for outside
17 consultants?

18 A. Just in passing.

19 Q. And you state that you did not perform a
20 construction audit for KCP&L, correct?

21 A. No, I did not.

22 Q. If you were performing a construction
23 audit, would you have looked at the rates for outside
24 consultants?

25 A. I could. A construction audit is defined

1 by the contractual terms and the scope, statement of
2 the audit. If the statement of the construction audit
3 was to look at those costs or all costs, I would have.

4 Q. Do you know whether you were required to
5 or whether anyone was required to on your behalf file
6 pleadings with the Commission to obtain access to
7 documents held by KCP&L for Pegasus's audit?

8 A. I don't understand the question.

9 Q. Did you have to seek -- were you able to
10 freely obtain any and all discovery you sought in the
11 course of this audit?

12 A. I had access to all of the documents that
13 were made available to both the Kansas and Missouri
14 staff.

15 Q. So you never had to file a motion to
16 compel or have one filed on your behalf?

17 A. No.

18 Q. It's correct that you haven't produced a
19 report or review other than your rebuttal testimony?

20 A. That's not a report.

21 Q. Do you have an opinion whether a state
22 public service commission can lawfully disallow a
23 prudent expense if that expense is not a benefit to
24 retail ratepayers?

25 A. I didn't look at that.

1 Q. Do you believe that it is possible for
2 there to be a prudent expense that is not a benefit to
3 retail ratepayers?

4 A. It depends on many factors.

5 Q. I believe you said you have your
6 testimony with you?

7 A. Yes.

8 Q. Could you turn to Exhibit 2 to your
9 rebuttal testimony?

10 A. Exhibit 2. Yes.

11 Q. Bear with me while I get to Exhibit 2.
12 In Exhibit 2 under Heading A, do you describe power
13 projects in which you have done a -- an audit work?

14 A. This is representative of my non-nuclear
15 power plant experience, just like it says.

16 Q. What was the approximate year on the Red
17 Hills -- is that Massachusetts plants?

18 A. Mississippi.

19 Q. Mississippi, I'm sorry. Second grade was
20 a long time ago.

21 A. Red Hills was approximately 2001, 2002,
22 to 2006.

23 Q. What was the date on the McAdoo,
24 Pennsylvania plant?

25 A. About the mid-'80s.

1 Q. What was the date on the Spurlock,
2 Kentucky, plant?

3 A. Oh, we did several jobs with regards to
4 Spurlock. This is Spurlock 1. This was the original
5 construction, so that would have been about 1982.

6 Q. And if you can pronounce the --

7 A. Scherer.

8 Q. Thank you. In Georgia, what was the year
9 on that?

10 A. Well, there are four units of plant at
11 Scherer. They began in the late '80s and the fourth
12 unit was completed probably by 1994.

13 Q. All right. And the Ohio plants?

14 A. That would have been in the late '80s.

15 Q. And the Jeffrey, Kentucky plant?

16 A. It's the Jeffrey Energy Plant actually in
17 Kansas.

18 Q. Oh, I'm sorry, and what's the year on
19 that?

20 A. That was about 1989, 1990.

21 Q. All right. And I believe the heading on
22 that indicates that these are both coal- and
23 petroleum-fuelled plants?

24 A. They're representative of coal and
25 petroleum plants, yes, fuelled plants.

1 Q. Could you indicate which of those are
2 coal, of the U.S. plants?

3 A. All of those that you've listed, that you
4 asked me questions about.

5 Q. Could you identify which of those were
6 EPC? And first let me say, what does the term
7 "EPC" mean to you?

8 A. It's -- EPC contract is engineered,
9 procure, construct contract from a single source. If
10 it's for the whole plant or there can be components of
11 various plants that can be done on EPC.

12 Q. All right. Can you identify which of
13 these your review was of an EPC contract?

14 A. The Red Hills plant was Bechtel was the
15 EPCM on the project. Alstom was actually the boiler
16 manufacturer on that plant, and I think they had the
17 turbine, too.

18 Q. And is that the only one that was EPC?

19 A. No. The McAdoo plant was EPCM, although
20 there were fixed-priced EPC procurement of components;
21 Spurlock was a fixed-priced EPC contract. The four
22 units of plant Scherer were done -- two of them were
23 done, as I recall, as fixed-price EPC contracts. The
24 third and fourth units were multiprime. Jeffrey Energy
25 Center, I think that was a combination which had

1 components of the plant, fixed-priced EPC contracts and
2 the rest was multiprime.

3 Q. And what was the level of your engagement
4 again on the U.S. plants only?

5 A. Oh, the Red Hills plant, we were retained
6 by the utility.

7 Q. Let me clarify, when I say "your," your
8 personal as opposed to Pegasus.

9 A. I worked on all of these plants.

10 Q. I'm saying if there were other engineers
11 or other personnel involved, what was the level of your
12 personal involvement or engagement versus Pegasus in
13 general?

14 A. I was the project manager on all of these
15 plants --

16 Q. Okay.

17 A. -- for our work.

18 Q. If you could, turn to Exhibit 3.

19 JUDGE PRIDGIN: And Ms. Kliethermes, I
20 hate to interrupt, do you have an idea about how much
21 cross you have remaining?

22 MS. KLIETHERMES: I guess an hour.

23 JUDGE PRIDGIN: Okay. Because we're
24 approaching nine o'clock and it's going to be awhile
25 before Ms. Kliethermes ends, I would propose adjourning

1 for the evening until about 8:30 or so. Ms.

2 Kliethermes?

3 MS. KLIETHERMES: If I could -- this next
4 question is actually pretty simple and I think it would
5 benefit them to have the evening.

6 JUDGE PRIDGIN: Absolutely.

7 BY MS. KLIETHERMES:

8 Q. And this is a scribbled note from one of
9 our other counsel. On Exhibit 3, I'm told that it says
10 prudence reviews but the actual documents included in
11 the schedule are something different.

12 A. It's a complete listing of testimony and
13 depositions that I have given. The prudence matters
14 are contained therein, in which I've given testimony.

15 Q. Okay. And I was told, and I may have
16 misunderstood this, that you would be undertaking some
17 effort or your counsel would undertake some efforts to
18 correct that this is not a listing of only your
19 prudence reviews?

20 A. No, we went over, I think took a
21 half-hour to go through my prudence reviews in the
22 deposition. And Mr. Dottheim said at the conclusion
23 that that would be satisfactory, that if they wanted
24 something in addition, they would file a DR.

25 Q. Okay. So then for purposes of wrapping

1 this up, would it suffice to say that all of the
2 projects listed in your schedule -- or sorry, the
3 Exhibit 3 to your rebuttal testimony are not, in fact,
4 prudence reviews?

5 A. True.

6 MS. KLIETHERMES: We can finish there for
7 the evening.

8 JUDGE PRIDGIN: All right. Ms.
9 Kliethermes, thank you. Is there anything further from
10 counsel before we adjourn for the evening? All right.
11 Hearing nothing, we will stand in recess until 8:30
12 a.m. and Dr. Nielsen will retake the stand.

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I N D E X

MISSOURI RETAILER'S ASSOCIATION'S EVIDENCE

WALT DRABINSKI:
 Cross-Examination by Ms. Cafer (continued) 1665
 Questions by Commissioner Jarrett 1673
 Questions by Commissioner Gunn 1695
 Questions by Commissioner Kenney 1705
 Recross-Examination by Mr. Mills 1714
 Recross-Examination by Ms. Cafer 1717
 Redirect Examination by Mr. Schwarz 1744

KENNETH ROBERTS:
 Direct Examination by Mr. Hatfield 1765
 Cross-Examination by Mr. Schwarz 1769
 Cross-Examination by Ms. Ott 1775
 Cross-Examination by Ms. Ott (In-Camera) 1789
 Cross-Examination by Ms. Ott (In-Camera) 1794
 Cross-Examination by Ms. Ott (In-Camera) 1799
 Cross-Examination by Ms. Ott (In-Camera) 1819
 Cross-Examination by Ms. Ott (In-Camera) 1879
 Cross-Examination by Ms. Ott (In-Camera) 1883
 Cross-Examination by Ms. Ott (In-Camera) 1892
 Questions by Commissioner Jarrett 1896
 Questions by Commissioner Gunn 1901
 Questions by Commissioner Gunn (In-Camera) 1910
 Questions by Commissioner Kenney 1928
 Questions by Commissioner Kenney (In-Camera) 1932
 Questions by Commissioner Kenney (In-Camera) 1940
 Recross-Examination by Mr. Mills 1973
 Recross-Examination by Ms. Ott (In-Camera) 1975
 Redirect Examination by Mr. Hatfield 1982
 Redirect Examination by Mr. Hatfield (In-Camera) 2003

KRIS NIELSEN:
 Direct Examination by Mr. Fischer 2014
 Cross-Examination by Mr. Schwarz 2016
 Cross-Examination by Mr. Mills 2018
 Cross-Examination by Ms. Kliethermes 2019
 Cross-Examination by Ms. Kliethermes (In-Camera) 2027

1	EXHIBIT INDEX	MARKED	RCV'D
2			
3	Exhibit No. 46-NP Rebuttal Testimony of Kris Nielsen		2016
4	Non-Proprietary		
5	Exhibit No. 46-HC Rebuttal Testimony of Kris Nielsen		2016
6	Highly Confidential		
7	Exhibit No. 50-NP Direct Testimony of Kenneth Roberts		1769
8	Non-Proprietary		
9	Exhibit No. 50-HC Direct Testimony of Kenneth Roberts		1769
10	Highly Confidential		
11	Exhibit No. 51-NP Rebuttal Testimony of Kenneth Roberts		1769
12	Non-Proprietary		
13	Exhibit No. 51-HC Rebuttal Testimony of Kenneth Roberts		1769
14	Highly Confidential		
15	Exhibit No. 52-NP Supplemental Rebuttal Testimony of Kenneth Roberts		1769
16	Non-Proprietary		
17	Exhibit No. 52-HC Supplemental Rebuttal Testimony of Kenneth Roberts		1769
18	Highly Confidential		
19	Exhibit No. 53-NP Surrebuttal Testimony of Kenneth Roberts		1769
20	Non-Proprietary		
21	Exhibit No. 53-HC Surrebuttal Testimony of Kenneth Roberts		1769
22	Highly Confidential		
23	Exhibit No. 77 Data Request from Laura Bowman	1666	1672
24			
25			

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EXHIBIT INDEX (continued)

	MARKED	RCV'D
Exhibit No. 78 Data Request from Laura Bowman	1666	1679
Exhibit No. 79-HC E-mail to Brad Lutz	1671	1679
Exhibit No. 80 Page 13 of Walt Drabinski's Kansas Testimony	1731	1733
Exhibit No. 271-HC Risk and Opportunity Identified As 367B	1832	1834
Exhibit No. 272-HC Invoice	1869	1870
Exhibit No. 273 2007 GAGAS	2022	
Exhibit No. 274-HC Pegasus Consulting Agreement	2025	2030

<p style="text-align: center;"><u>\$</u></p> <p>\$1.7 1861:5 2018:1</p> <p>\$120 1748:20</p> <p>\$16 1850:13</p> <p>\$20 1990:5</p> <p>\$200 1705:25 1784:2,8</p> <p>\$23 1698:1 1714:14 1743:10</p> <p>\$231 1723:23</p> <p>\$25 1787:25</p> <p>\$275 1784:9</p> <p>\$3 1674:6</p> <p>\$30 1853:14</p> <p>\$40 1853:14</p> <p>\$500 1730:22</p> <p>\$600 1699:3</p> <p>\$65 1747:24</p> <p>\$7.1 2014:13</p> <p>\$75 1784:2,11,12 ,23,24</p> <p>\$800 1683:17</p> <hr/> <p style="text-align: center;"><u>0</u></p> <p>04 1680:16</p> <p>05 1680:17 1690:2 1814:18 1851:6 1991:11</p> <p>06 1680:23 1690:2 1747:2 1814:18 1856:8 1859:1</p> <p>07 1690:2 1696:9 1756:12,13 1814:19</p> <p>08 1690:2 1696:9</p> <p>09 1696:9 1804:10 1807:20 1871:9</p>	<p style="text-align: center;"><u>1</u></p> <p>1 1670:6 1673:18 1688:10 1711:13 1712:10,15,19 1817:1,3,20 1847:6 1935:5 1970:17 1971:9 1978:17 1986:3 2017:24 2034:4</p> <p>1,370,759 1999:9</p> <p>1.341 1682:1</p> <p>1.35 1681:6,25</p> <p>1.465 1683:3,14 1763:25</p> <p>1.685 1705:25 1856:8,16 1858:1,5</p> <p>1.7 1861:9</p> <p>1.9 1705:25</p> <p>1.95 1713:16 1764:2</p> <p>1/14/2011 1981:6 1984:12</p> <p>1/15/2011 1980:24</p> <p>1:30 1806:14 1808:24</p> <p>10 1681:9 1698:14</p> <p>10:00 1808:19</p> <p>10:45 1744:15</p> <p>100 1863:18</p> <p>1000 1661:15</p> <p>101 1661:19</p> <p>104595 1662:23</p> <p>10th 1992:22</p> <p>11 1679:11 1706:20</p>	<p>1748:17 1750:24 1845:13 1935:19 1985:24</p> <p>1100 1662:7</p> <p>111 1661:6</p> <p>115 1748:25</p> <p>119 1663:2 1735:17</p> <p>12 1674:10 1676:7 1706:16 1707:7 1725:19 1748:12 1887:12</p> <p>12/06/09 1999:8</p> <p>12/16 1817:4</p> <p>12:30 1806:13</p> <p>122.6 1748:11</p> <p>125 1783:22</p> <p>127 1993:2</p> <p>12th 1706:20,25 1769:25</p> <p>13 1678:19 1731:22 1732:2 1736:3 1746:3,4 1748:13 2042:6</p> <p>130 1660:11</p> <p>13220 1663:9</p> <p>136 1993:1</p> <p>137 1748:23</p> <p>14 1678:19 1767:14</p> <p>140 1690:11</p> <p>1407850 1869:8</p> <p>142 1748:22 1992:23</p> <p>144 1992:25</p> <p>145 1747:3</p> <p>1464 1662:20</p> <p>147 1992:21</p>	<p>14-foot 1701:4</p> <p>14th 1753:2</p> <p>15 1678:18 1723:25 1739:10,18 1868:18 1887:8 1896:25 1897:22 1898:18 1923:3</p> <p>150 1710:8 1783:22</p> <p>155.6 1748:11</p> <p>16 1687:2 1717:13 1718:9 1817:2 1869:10 1870:3 1882:5 1896:25 1994:8,13</p> <p>1613 1662:20</p> <p>165 1739:9,17</p> <p>1665 2040:3</p> <p>1666 2041:24 2042:3</p> <p>1671 2042:5</p> <p>1672 2041:24</p> <p>1673 2040:4</p> <p>1679 2042:3,5</p> <p>1695 2040:4</p> <p>16th 1745:18</p> <p>17 1847:24 1994:13</p> <p>1700 1686:25 1687:10 1718:13,15 1719:15,21,24 1720:1,14,15 ,21,22 1727:9,11,12</p> <p>1700-page 1721:3</p> <p>1705 2040:5</p> <p>1714 2040:5</p> <p>1717 2040:6</p>
---	--	--	---

<p>173 1992:24 1731 2042:6 1733 2042:6 1744 2040:6 1750 2015:14 1765 2040:8 1769 2040:9 2041:7,9,11, 13,15,18,20, 22 1775 2040:9 1780 1659:23 2039:7 1789 1788:17 2040:10 1790 1788:17 1794 1793:17 2040:10 1799 1798:14 2040:11 18 1759:9 1994:13 1800 1718:3,24 1801 1798:14 1819 1818:2 2040:11 1832 2042:8 1834 2042:8 1843 1818:2 185 1748:18 1752:15 185-day 1752:14 1869 2042:10 1870 2042:10 1879 1878:8 2040:12 1881 1878:8 1883 1882:12 2040:12 1884 1882:12 1892 1891:2 2040:13 1896 2040:13 18-foot 1701:4,5</p>	<p>19 1749:1 1885:6 1901 2040:14 1910 1909:5 2040:14 1918 1909:5 1928 2040:15 1931 1930:24 1932 2040:15 1934 1930:24 1939 1938:9 1940 2040:16 1969 1938:9 1973 2040:16 1975 1974:5 2040:17 1977 1974:5 1982 2034:5 2040:17 1984 2023:19 1989 1758:18 2034:20 1990 2034:20 1994 2034:12 1996 1813:1 1997 1813:1,7,18 1st 1817:15 1987:23 <hr/> 2 <hr/> 2 1667:14 1673:18 1711:14 1712:13 1739:6,21 1740:5,6,20, 21 1741:7,21 1755:21 1846:19 1847:6 1864:11 1935:5 1970:17 1971:9 1978:18 1995:12 1999:8 2014:13 2033:8,10,11</p>	<p>,12 2,143,317 1999:9 2.5 1889:10 2/1/2005 1986:19 20 1698:14 1732:12,21 1767:14 1847:24 200 1660:11 1664:6,10 1674:4 1690:25 1699:3 1707:7 1784:5 2001 2033:21 2002 2033:21 2003 2002:1 2040:18 2004 1666:2 1667:5 1680:4 1685:5 1690:2 1695:14 1696:25 1698:6,8 1731:8 1739:22 1919:20,25 2005 1679:2 1733:17 1758:12 1771:1 1785:21 1796:1,3,16, 19 1797:2,6 1845:20 1848:23 1849:23 1850:19,23 1902:2 1907:2 1920:6,25 1922:3,25 1930:14 1987:4 2006 1681:7 1682:22 1685:6,25 1695:15 1698:7,9 1700:24</p>	<p>1701:1,3,16 1712:21,25 1730:3,9 1731:8 1732:8,15 1734:15 1735:5 1736:18 1737:5,20 1741:25 1748:2 1749:11,12 1750:12,13 1754:20 1758:16 1849:23 1850:19,24 1858:9,13 1919:21,25 1920:25 1924:22 2033:22 2007 1696:8 1697:19 1736:11,14 1737:6,8,12 1745:19 1750:24 1751:11 1757:17 1758:14 1759:9 1796:13 1852:3 1853:19 2020:23 2022:21 2023:23 2042:12 2008 1694:16 1705:21 1733:21 1750:25 1751:4,5,6 1770:1 1817:2 1847:18,21 1897:3,6,24 1900:5 1925:1,3 2017:13 2009 1817:12,15 1869:9,14 1871:11 1876:25 1877:17 1890:5</p>
---	---	---	--

<p>200-plus 1677:21</p> <p>2010 1707:17,18 1751:7 1807:20 1871:9,11 1922:19 1925:5 1987:23 1992:21</p> <p>2011 1659:7 1813:12 1908:13</p> <p>2014 2040:20</p> <p>2016 2040:20 2041:3,5</p> <p>2018 2040:21</p> <p>2019 2040:21</p> <p>202.586.3409 1661:16</p> <p>2022 2042:12</p> <p>2025 2042:13</p> <p>2027 2040:22</p> <p>2028 2027:1</p> <p>2030 2042:13</p> <p>20585 1661:15</p> <p>21 1767:14 1869:9 1888:8</p> <p>216 1748:16</p> <p>22 1888:8</p> <p>220 1683:3,4,12</p> <p>2230 1664:11</p> <p>227-HC 1994:6</p> <p>22nd 1813:6,17,18</p> <p>23 1659:9</p> <p>230 1662:11</p> <p>24 1788:17 1793:17 1798:14 1818:2 1878:8 1882:12 1891:2 1909:5 1930:24 1938:9</p>	<p>1974:5 2002:1 2027:1</p> <p>25 1659:7 1813:12 1869:14 1896:23</p> <p>25th 1866:20,23 1867:9</p> <p>260 1715:7,15</p> <p>2603 1759:2</p> <p>26th 1866:20</p> <p>270 1770:15</p> <p>271-HC 2042:8</p> <p>272 1869:22 2009:5,11</p> <p>272-HC 1869:4,24,25 1870:4 1994:9 2042:10</p> <p>273 2022:16 2042:11</p> <p>274-HC 2026:14 2031:2,3,4 2042:13</p> <p>27th 1866:20</p> <p>28 1987:4</p> <p>28th 1971:15,18</p> <p>295 1746:11</p> <p>2's 1739:12</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 1667:14 1748:4 1767:10,11 1886:24 1887:1,5,7 2036:18 2037:9 2038:3</p> <p>3:35 1868:18</p> <p>30 1699:8 1748:10 1797:19 1802:20 1803:3 1853:16</p>	<p>300 1660:7 1749:9</p> <p>301 1660:23 1661:2</p> <p>308 1660:19</p> <p>309 1664:6</p> <p>30-some 1895:12</p> <p>312 1661:11</p> <p>312.371.2673 1663:3</p> <p>314.395.8002 1663:14</p> <p>314.725.8788 1660:12</p> <p>320 1663:9</p> <p>32459 1663:2</p> <p>33 1885:11</p> <p>3321 1662:15</p> <p>34 1885:3</p> <p>3420 1660:15</p> <p>35 1748:6</p> <p>36 1668:18 1677:22</p> <p>360 1877:2</p> <p>367B 2042:9</p> <p>398 1746:17</p> <p>3rd 1804:10,11 1925:5</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 1767:10,16 1935:13,16,1 7 1936:13</p> <p>40 1699:8 1853:16 1873:24 1874:2</p> <p>400 1661:19</p> <p>408 1747:19</p> <p>412 1662:20</p> <p>417.864.8800 1660:4</p> <p>418679 1662:2</p> <p>428 1660:7</p> <p>43 1753:2</p>	<p>1767:15 1768:19</p> <p>4520 1662:7</p> <p>456 1661:11</p> <p>46 2020:9 2021:16</p> <p>46-HC 2015:19 2016:14,16,1 9 2041:5</p> <p>46-NP 2015:19 2016:14,16,1 9 2041:3</p> <p>475 1662:19</p> <p>48 1752:15</p> <p>4th 1753:3</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 1767:10,16 1888:4,7 1935:16 1936:13 1998:17</p> <p>5:05 1929:8</p> <p>50 1685:8 1690:11 1739:12,21 1767:7 1769:4 1852:6 1868:15 1873:24 1874:2</p> <p>50,000-foot 1896:10</p> <p>50-HC 1766:17 1769:6 2041:9</p> <p>50-NP 1769:6 2041:7</p> <p>51 1767:7 1769:4</p> <p>51-HC 1766:18 1769:6 2041:13</p> <p>51-NP 1769:6 2041:11</p> <p>52 1767:7 1769:4</p> <p>52-HC 1766:19 1769:7 2041:17</p>
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<p>52-NP 1769:7 2041:15</p> <p>53 1686:25 1718:3,14,22 1767:7 1769:4</p> <p>53-HC 1766:20 1769:7 2041:22</p> <p>53-NP 1769:7 2041:20</p> <p>53-page 1718:25</p> <p>54 1667:2 1670:23</p> <p>555 1747:11,18</p> <p>56 1748:1</p> <p>573.443.3141 1661:7</p> <p>573.634.2266 1660:24 1661:3</p> <p>573.634.2500 1660:20</p> <p>573.635.0427 1661:12</p> <p>573.635.2700 1660:8</p> <p>573.636.6263 1662:12</p> <p>573.636.6758 1661:20</p> <p>573.659.8672 1662:24</p> <p>573.751.0052 1663:6</p> <p>573.751.6514 1664:7</p> <p>58 1748:1</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6/1/10 1988:9</p> <p>6/25 1996:14</p> <p>6/25/09 1869:19 1994:10</p> <p>6/26 1994:21 1995:9</p> <p>6/30/09</p>	<p>1995:11</p> <p>60 1732:17 1853:5</p> <p>601 1660:23 1661:2</p> <p>60-plus 1853:9</p> <p>63105 1660:12</p> <p>63119 1663:14</p> <p>63130 1663:6</p> <p>64.7 1748:18</p> <p>64111 1660:16 1662:7</p> <p>64141-9679 1662:3</p> <p>650 1908:13</p> <p>65101 1660:8,20 1661:20 1662:11</p> <p>65102 1664:7,11</p> <p>65102-0456 1661:12</p> <p>65102-0537 1660:23 1661:2</p> <p>65110-4595 1662:23</p> <p>652 1980:11</p> <p>65201 1661:6</p> <p>65802 1660:3</p> <p>66101 1662:19</p> <p>66213 1663:10</p> <p>66606 1662:15</p> <p>680 1908:13</p> <p>6th 1747:4</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 1847:6 1935:17</p> <p>7.5 1847:6</p> <p>7/21/09 1980:18</p> <p>7/28/2005 1986:23</p> <p>70 1732:17</p>	<p>1852:6</p> <p>700 1683:17</p> <p>74 1749:23 1985:18,19,2 1</p> <p>75 1683:4 1745:18 1784:6 1897:4,25 1898:22</p> <p>753 1662:19</p> <p>75-HC 1745:2</p> <p>76-HC 1745:3</p> <p>77 1666:13,25 1667:1 1672:7,22,23 ,24 1673:1 2041:24</p> <p>78 1666:21,25 1670:23 1672:7,22,23 ,25 1673:1 1748:6 2042:3</p> <p>785.271.9991 1662:16</p> <p>79 1671:20,21,2 5 1672:22,23,2 5 1744:4,10,12</p> <p>79-HC 1673:1 2042:4</p> <p>7th 1771:1</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 1680:13 1899:15 1935:18</p> <p>8.5 1985:24</p> <p>8/17/2005 1986:6</p> <p>8/5/2005 1987:9</p> <p>8:30 2037:1 2038:11</p> <p>80 1731:17,21 1733:6,7,8,1 0 1748:24 2042:6</p> <p>80s</p>	<p>2034:11,14</p> <p>816.360.5976 1660:16</p> <p>816.460.2400 1662:8</p> <p>816.556.2314 1662:3</p> <p>852 1885:15</p> <p>871 1663:13</p> <p>899 1663:5</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 1935:13</p> <p>9.5 1683:15 1763:25</p> <p>9/9/2004 1986:15</p> <p>9:00 1808:19 2014:23</p> <p>9:30 2014:24</p> <p>90 1680:13 1776:8</p> <p>90s 1812:9,16</p> <p>913.321.8884 1662:20</p> <p>913.338.7700 1663:10</p> <p>939 1660:3</p> <p>94 1748:16</p> <p>95 1680:12 1681:8 1776:8</p> <p>98922 2015:15</p> <p>99 1861:23</p> <p>9th 1661:6</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m 1886:15 2038:12</p> <p>AARP 1663:15</p> <p>ABA 1853:8 1855:8</p> <p>ABB 2000:4</p> <p>ability 1703:3 1731:15 2039:12</p> <p>able 1665:11</p>
--	--	---	---

1697:23 1713:12 1714:19 1716:19 1729:1, 11 1735:12 1763:18 1897:14 1930:12 2011:13, 21 2032:9	accident 1811:13 1897:9 accomplished 1898:23 account 1709:1 1730:7 1747:5 accountants 1672:3 1673:20 1704:20 1710:20 1738:5 accounting 1671:9 1710:16, 18 1738:14 1742:17 2024:19, 20, 2 2 accuracy 1752:11 accurate 1731:15 1733:3 1743:6 1767:4 1780:18 1923:17 1927:16 1936:2, 3 2016:3 accurately 1719:15, 22 1733:2 2016:10 accusation 1708:23 acid 1687:13, 14 1721:7 acknowledge 1733:24 acquainted 1785:18 Acquisition 1852:8 act 1696:18 1761:21, 24 1905:14 action 1677:3 1723:2, 4	1753:9, 18, 19 1761:17 1762:5 1923:2 1926:7 2001:11 2039:14, 18 actions 1675:16 1716:11 actively 1927:18 1983:17, 19 activities 1709:25 1734:15 1735:6, 8 1738:10 1749:17 1894:5 2018:7 activity 1721:9 1736:20, 23 actual 1667:22 1668:20 1678:12 1712:16 1730:7 1747:18 1749:4 1806:23 1807:3 1890:9 1979:16 1990:13 1991:3 1993:10 1999:1, 3 2037:10 actually 1674:25 1675:5 1676:16 1698:23 1711:4 1712:15 1715:20 1747:24 1748:3, 6, 23 1758:13 1767:22 1774:5 1787:20 1805:15 1848:11	1865:22 1867:6 1868:25 1872:1 1882:6 1907:13 1994:8 1998:7 1999:3, 9 2009:20 2034:16 2035:15 2037:4 add 1681:1, 2 1685:6 1724:5 1921:20 added 1680:20 1681:1 1697:24 1707:15 addendums 1687:1 adding 1861:6 addition 2037:24 additional 1676:21 1681:1, 3 1685:6 1694:8 1705:18 1716:7 1729:16 1791:11 1875:20 2025:20 address 1674:9 1737:13 1765:8 1851:19 2015:11 addressed 1674:11, 12 1676:2, 4 1684:18 1723:20 1725:24, 25 1742:15 1751:16 1767:22 1792:14 1937:20 addresses 1765:25
absent 1922:20 absolutely 1738:20 1806:18 1885:24 1897:22 1925:10 1982:12, 16 1988:2 1999:19 2001:6 2037:6 accept 1673:23 1674:13 1887:20 acceptable 1854:7 acceptance 1817:2, 3, 7, 1 9 1987:23 1988:1 accepted 1675:22, 23 1686:9, 10 1689:2 1708:21 1710:10, 11 1853:12, 17 1887:22 1903:12 2019:8 2022:6 2023:22 accepting 1871:18 access 1667:16, 18 1670:13 1671:16 1792:6 1907:14 1997:6 2032:6, 12			

1854:23	1672:25	1995:22	1990:12
addressing	1733:9	1996:20	Alstom
1676:5	1768:1	ago 1844:11	1676:16
1726:7	1769:5	1984:20	1677:7
1737:21	1869:22,24	2033:20	1681:18
adds 1898:5	2016:18	AGP/SIEUA/	1684:3
adequate	2031:3	MEUA 1660:9	1686:24
1676:14	adopts 2024:8	agreeing	1687:11
1677:25	adult 1696:4	1679:6	1688:10,14
adequately	advance	agreement	1693:13
1675:8	1767:24	1766:5	1696:15,16,19
1706:12	1802:21	1784:1	9
adjourn	advancing	1806:24	1717:13,21,23
2038:10	2000:21	1817:8	3 1718:13,19
adjourned	adverse	1859:16,23	1719:2,25
1809:3	1761:17,21,25	1908:15	1720:1,20
adjourning	5 2000:5,7	1922:11	1721:12
2036:25	advice 1696:5	1986:20	1722:8
adjust	1755:3,5	2026:19	1727:8,10,13
1971:23	1769:20,24	2042:13	1728:1,19,23
adjusted	1770:4,5,13	agreements	1729:16,18
1746:13,17	1771:21	1849:11	1730:23
adjusting	1773:17,18,19,20,22,24	1995:10	1750:16
1757:4	1774:1,11,15	1996:9	1757:22
1993:6	,19	ahead 1682:4	1761:9
adjustment	1778:10,15	air 1663:1	1762:7
1761:18,22	1906:2	1731:5	1774:8
1762:1,4,19	advise	airfare	1817:1,4,18,20
2013:9	1810:22	1868:5	1874:8
adjustments	advocate	alert 1808:16	1906:2
1753:8,9	2019:2,8	2013:24	1938:3
1764:12	aerators	ALG 1906:5	1978:17,18
1803:1	1680:20	allegations	1980:18
1888:14,16	affect 1860:5	1689:13	1981:8,11,12
administer	affidavit	1690:9	,14,16,17,20,21
2015:2	1767:24	all-in	1982:8,9,11,14,22
administratio	afraid 1998:6	1720:9,12	1983:7,15,23
n 1845:21	afternoon	all-inclusive	1995:10
1904:3	1808:18	1728:16	1996:9
1989:15	1809:1	allowed	1997:17,18,22
1991:5	1896:3,4	1665:20	1999:6,11,18,22
administrativ	afterwards	1669:1	2000:1,5,17,25
e 1787:23	1729:12	1693:6	2001:4,7
1791:10	1983:3	1757:7	2035:15
administrator	Agencies	1857:12	Alstom's
s 1784:18	1663:3	allows	1720:15
admission	aggressive	1738:23	1995:11
1672:22	1862:24	alone 1748:19	1998:25
1733:6	1863:9	already	altar 1887:20
2016:14	aggressively	1683:18	altered
admit 1694:15	1860:15	1726:2,8,14	1865:17
admitted	1862:14	1730:22	alternative
		1759:11	1723:11

<p>alternatives 1677:13,14</p> <p>altogether 2017:22</p> <p>am 1699:16 1745:22 1754:13 1756:10 1765:14 1805:21 1815:6 1852:12 1862:4,22,23 1864:3 1877:4,5 1890:18 1902:18 1971:7 2039:13,15</p> <p>AMASH 1662:18</p> <p>amended 1817:6</p> <p>amendment 1980:19</p> <p>Ameren 1661:7</p> <p>America 1811:2 1872:12</p> <p>amicably 1687:4</p> <p>among 1726:22</p> <p>amongst 1926:3</p> <p>amount 1676:24 1677:2,22 1681:2,3 1684:21 1688:11 1704:10,12,2 1 1707:15 1741:15 1791:9 1817:17 1847:8,11,12 1849:20 1855:10 1860:12 1885:16 1897:13 1930:18 1972:25 1997:21 2001:11 2011:9</p>	<p>amounted 1677:23</p> <p>amounts 1684:8 1715:21,22 1763:18</p> <p>analogy 1919:17</p> <p>analysis 1668:7,23 1670:7 1671:10 1673:17,19 1674:19 1675:10 1676:12 1677:24 1678:10 1688:13 1689:1,24 1690:12,16 1692:16 1697:1,23 1699:21,22 1702:6 1706:9 1707:15 1708:16 1709:10 1710:5 1712:14,18 1717:18,19 1723:24 1724:12 1756:2,3,4 1773:10 1887:19,25 1905:5 1920:18,20,2 3 1921:10,20,2 5 1922:3 1925:13,17 1936:20 1937:2,21 1978:6,12 2011:14,17,1 9,20</p> <p>analyze 1712:6 1717:16 1718:20 1995:11 2011:2,5</p> <p>analyzed 1706:20 1717:23</p>	<p>analyzing 1725:14 1928:5</p> <p>and/or 1873:20</p> <p>ANNETTE 1664:4</p> <p>announce 1970:4</p> <p>announced 1740:1</p> <p>annual 1803:1 1809:17</p> <p>answer 1678:7 1726:11 1728:12,13 1737:18 1740:8 1743:2,6,8 1749:17 1772:19 1774:22 1777:11 1778:11 1792:4 1797:13 1802:16,21 1803:21 1804:5 1805:8 1807:5 1812:14 1847:1,10,24 1850:8 1855:20 1857:12 1887:8 1890:23 1899:1 1903:9 1937:5,10,18 1973:19 1980:5,6 1981:19</p> <p>answered 1726:11,13,1 4,17 1792:18 1924:18 1990:12 2018:12,22 2021:7</p> <p>answering 1928:16</p> <p>answers 1767:1 1806:7</p>	<p>1875:23 1903:14 2016:1</p> <p>anticipate 1692:7</p> <p>anticipated 1682:21 1693:9</p> <p>anybody 1678:24 1721:9 1854:14 1862:15 1876:13 1896:17 1897:16</p> <p>anymore 1682:4 1746:2 1747:14</p> <p>anyone 1752:10 1753:21 1780:3 1853:25 1929:3 2032:5</p> <p>anyplace 1709:17</p> <p>anything 1665:4 1744:1,7,13, 20 1764:25 1766:22 1769:9 1776:6 1806:15 1808:15 1809:5 1872:25 1899:14 1926:9 1928:16 1972:2 1992:7 2011:19 2014:18 2015:2,5 2016:21 2018:17 2038:9</p> <p>Anyways 1681:25</p> <p>anywhere 1734:3 1808:19</p>
--	--	---	--

<p>1908:13 1989:21 2021:13,20 APC 1747:9,18 apologies 1743:17 apologize 1702:22 1704:5 1887:5 2018:2 appear 1925:9,12 1971:18 1985:15,22 1986:2 2021:13 2022:25 appearance 1979:16 appearances 1925:13 appeared 1979:7 1988:10 appears 1970:19 1971:10 1994:8 2039:9 appendices 1718:24 applicable 1706:25 Application 1659:11,15 applied 1674:22 1678:5 1706:25 2023:21 applies 1706:16,22 1710:24 applying 1695:1 appointed 1857:17 1871:14 1872:5 appreciate 1695:8 1713:25</p>	<p>1928:16 2014:3 approach 1670:6 1674:23,24 1675:2,12,23 1699:12,13,1 4,16 1710:12 1762:23 1770:18 1860:3 1903:18 1973:8 1998:13 2022:14 2026:12 approached 1678:17 1741:4 1907:9 approaching 2036:24 appropriate 1737:3 1753:8,9 1761:18 1866:14 1926:7 appropriately 1689:7 1695:23 1727:20 1733:4 approval 1659:12,16 1667:24 1668:24 1679:4 1797:16,21 1986:22 approve 1857:6 approved 1803:2 1809:11 1847:4,9,13 1858:11,12,1 4 1887:22 1893:5,21 1986:16,24 1987:17 approximate 1814:16 2033:16 approximately</p>	<p>1750:14 1751:7 1796:18 1797:2 1815:11 1817:4,16 1847:6 1848:4 1889:10,14 1987:19 2033:21 approximation 1889:12 April 1701:3 1745:18 1992:25 1993:1 2017:25 2021:5 arbitration 1687:5 1722:3,7,11, 14 2001:18 Archibald 1847:25 1889:3 1899:24 1900:10,22 architect 1701:7 area 1997:9 areas 1719:3 1749:19 1775:5 1996:20 aren't 1667:25 1684:1 1721:8 1904:15 1905:8 argue 1691:22 1693:12 1697:17 1736:22 argument 1737:3 1936:22 argumentative 1806:2 1849:21 arise 1719:10 1721:3 1722:16</p>	<p>1991:7 arises 1721:21 arrive 1751:2 arrived 1902:12 ARTHUR 1661:14 article 1813:10 aside 1768:3 aspect 1724:6 1738:4 1749:13 1776:23 1777:24 aspects 1727:16 1756:1 assemble 1904:8 assembled 1810:22 assert 1905:7 asserted 1768:6,15,18 1906:10,12 2013:2 asserting 1906:17 2012:19 assertions 1709:14,15 2014:1 assessed 1811:22 1812:2 asset 1970:17 1971:8 assignment 1743:5 assist 1783:13 1791:24 1792:2,5 1894:19 assistant 1851:19 1854:22 1919:10 assisting</p>
--	--	--	--

<p>1904:13 2010:20 associate 1779:13,18 1791:24 associated 1778:24 1804:19,20 1898:4 1930:7 1991:14 associates 1773:12 1779:20 1795:6 Association 1660:21 1710:11 2022:7 ASSOCIATION'S 2040:2 assume 1699:17 1742:1 1747:11 1776:18,22 1792:5 1908:4 1936:21 1982:13 2014:15 assumed 1715:3 1729:7 1937:13 assumes 1796:23 1850:16 1893:9 assuming 1707:10 1890:22 1930:8,15 1971:17 1987:22 1990:13 assumptions 1678:15 1899:23 assured 1720:25 Atlanta 1875:12 attached</p>	<p>1668:10 1712:16 1792:22 1798:4 1874:23 2016:6,7 attachment 1711:13 1744:6 1998:8 attachments 1667:15 1754:17 attained 1689:11,19 1987:18 attempt 1979:19 attended 1702:12 attending 1894:14 attestation 1710:17 attorney 1660:2,6,10, 14,15,18,22 1661:1,5,9,1 0,14,18 1662:1,5,6,1 0,14,18,22 1663:1,5,8,1 2 1691:10 1719:5 1771:21 1773:13 1774:9,13 1775:24,25 1776:4,6,7 1809:21 1857:12,16 1894:12,22 1928:23 1980:24 2039:16 attorney- client 1771:20 1776:15 1777:1,16,19 ,21 1848:3 1849:7,9 1856:24 1905:7,16,21 1906:6 1973:5</p>	<p>1981:3 2010:25 2011:1,6 2013:2 attorneys 1691:9 1763:19 1885:8 1886:18 1906:1 2009:19 2010:4,15 2011:9 attracting 1886:20 attributable 1930:9 1999:6 2009:8 attribute 1897:17 attributed 2013:12 audience 1855:4 audit 1669:23 1670:5 1673:11,12,1 5,22,23 1694:2 1696:6,8 1709:20,23 1710:2,5,18 1711:1,7,9,1 0,17,21 1712:6,11 1714:21 1736:6 1737:12,13,2 0 1871:5,23 1898:25 2014:11 2020:12,13 2021:3,10,16 ,17,18,23,24 2022:1,9,10, 11 2023:3,5 2026:10,11 2031:9,13,15 ,20,23,25 2032:2,7,11 2033:13 audited 1871:24,25 auditing 1710:10</p>	<p>2020:20,21 2022:22 2024:25 auditor 1694:12 auditors 1701:21 1802:14 1810:1 audits 1673:19 1693:18,20,2 5 1694:1 1696:7,9 1708:20 1709:2,5,8,1 1,18 1710:8,9,15, 16,19,22,23 1735:21,23,2 5 1736:2,4,10 1898:7 1920:16,18 2021:5,11,12 2023:6,11,12 ,13 August 1682:11,16 1732:25 1733:17 1796:18 1797:6 1804:10,11 1845:20 1858:9,18,23 1859:1,4,15 1869:9 1902:2,22 1920:6 1922:25 authoritative 2023:15 authoritative s 2024:7 aux 2019:25 auxiliary 1684:11 2020:1 available 1669:11 1671:10 1672:12,16 1900:24 2011:5,14 2020:3,4</p>
--	--	--	--

2032:13 Ave 1662:19 Avenue 1660:3 1661:11,15 avid 1866:12 award 1981:11,17,2 1 awarded 1693:6 1981:22 award-winning 1815:23 aware 1721:16 1753:21 1755:9 1796:7,10 1806:20 1811:25 1816:8 1852:8,12 1859:2 1860:8 1885:21 1886:9 1901:10 1979:2,20 1980:7,9 1988:11 away 1678:20 1885:17 1886:2,5 1919:19 1924:12 awhile 1761:11 1806:11 2036:24 <hr/> <p style="text-align:center">B</p> <hr/> B&W 1981:14 Babcock 1688:9 1689:6 back-end 1774:7 1844:20 1845:11 background 1666:9 1742:13 1743:3 1782:15 1872:3,18,20	1873:3,5,12 1902:19 backup 1667:23 1669:12,17,1 8 1702:15,18 1807:3,6,12, 14 1808:9 backwards 1920:25 bad 1677:13,14 1688:21,22 1692:4,7 1694:9 1716:6 1996:15 balance 1730:12,14 1748:7,9 1749:5,8,17 balking 1857:17 bang 1862:13 2000:20 Bardgett 1660:19 base 1686:24 1718:25 baseball 1855:12,16 based 1689:25 1707:16 1708:11 1715:1 1724:9 1743:15 1776:12 1777:19 1847:17 1850:24 1885:22 1907:3 1920:16,22 1936:19 1982:21 1983:12 2000:10 2013:9 2024:3 basically 1687:3 1696:18 1702:7 1707:5	1715:2 basis 1676:2 1708:9 1724:17 1756:23 1764:12 1778:12 1784:15 1811:4 1863:23 1864:19,20 1865:12 1875:6 1894:11 1981:4 1990:14 2012:22 bathroom 1870:11 1929:6 Beach 1663:2 1813:20 beans 1887:25 Bear 2033:11 bearing 1973:17 became 1678:12 1737:22 1780:23 1783:24 1812:21 Bechtel 2035:14 become 1734:10 1785:18 1901:10 beef 1929:19 begin 1679:5 1687:25 1736:17 beginning 1675:7 1871:7,11 1919:24 1920:2 1970:5 begins 1744:21 begs 1689:5 behalf 1768:21	1853:8 1887:9 2017:5 2018:23 2019:2,8 2023:25 2032:5,16 behaved 1983:23 behavior 1983:24 behind 1752:16 1905:20 behold 1685:25 belief 2016:4,5 believe 1667:21 1670:10 1671:20 1672:17 1676:13 1678:18 1687:24 1688:17 1694:17 1705:21 1706:10 1709:17 1711:20 1713:9,18 1715:25 1717:11 1726:8 1730:5 1736:14 1741:2 1742:16,24 1744:7,19 1754:20 1758:13 1763:23 1764:1 1768:3,5 1777:7 1779:12,22 1780:19 1782:22 1784:3 1785:4 1796:17 1797:1,10,19 1798:4 1802:24 1803:7
---	---	--	---

1804:9	1724:25	bidder	1674:6
1805:23	1743:15	1687:20	1681:6,25
1806:22,24	1746:23	1688:14	1682:1
1807:11,19	1755:17	1693:6,7	1683:14,15,1
1809:2	1762:9	bidders	8 1713:16
1811:13,15	beneficial	1688:8	1747:3
1814:1	1782:3	bidding	1749:9
1815:25	benefit	1981:12,15	1758:5,6
1845:7	1874:11	1983:18	1763:25
1847:1,5,19,	1905:6	bids 1682:20	1764:2
23 1848:11	2032:23	1686:1	bills 1731:10
1852:21	2033:2	1688:11,13	1791:11
1854:20	2037:5	1689:6	1793:5
1856:22	best 1722:17	1700:25	1804:19
1858:9,20	1723:3	1720:24	1860:14
1866:19	1724:13	1747:11	1861:25
1869:20	1767:5	bigger	1862:3,14,15
1870:9	1795:13	1685:15	,20,24
1871:4	1811:24	1700:9	1863:10
1873:23	1862:22	1701:6,7,8,1	1990:20
1875:12,20	1863:11	0 1984:7	1992:14,15,1
1888:11	1889:18	biggest	8 2018:5
1890:5	1982:25	1696:11	binding
1893:18,19	1983:16	1922:14	1724:8
1923:19	2000:12	bill 1701:8	bison 1929:19
1925:6	2016:4,5	1770:5	bit
1927:9,11,24	2039:11	1771:13,14	1678:16,24
1929:14	bet 1857:2	1772:16	1691:8
1935:5,12	better	1797:2,3,25	1705:23
1971:15	1677:13,14	1804:15,19	1706:2
1972:18,22,2	1738:23	1805:7	1707:20,24
4 1978:25	1782:6	1809:12	1712:21
1979:5,13	1857:2	1813:20	1751:20
1982:14	1921:11	1862:12	1886:13
1984:10	1983:23	1863:15,18,1	1972:8
1985:14,17,1	bevy 1853:22	9 1865:4	1982:3
9 1986:4,5,9	beyond	1901:14,19	1986:8
1987:23	1683:23	1903:7,9	1988:16
1990:2,15,20	1691:1	1993:8,10,20	2011:3
1994:8	1724:22	1994:1,10	Black
1997:14	1852:2	1995:23	1688:4,5,7,1
1998:1,17	1923:5	1996:21	6,17,21
1999:15	2010:11	2009:8	1692:2
2009:18	bid 1682:20	billed	1719:22
2010:2,7,24	1688:2,23	1810:21	1721:17
2012:14	1689:1	1860:9	1729:4,9
2018:22	1720:7,9,13	1867:18	1987:7
2020:5	1721:18	1930:15	blacked
2021:7,22	1723:8	1995:22	1715:8,16
2023:10	1727:14	1996:1	Blake 1662:18
2033:1,5	1728:3,4	billing	blanche
2034:21	1729:4	1805:20	1863:18
Bell 1862:13	1746:13,17	1848:24	blend 1807:18
1864:24	1747:19	1908:19	blind 1682:23
belt 1996:18	1988:24	1930:9	1686:14
Bemiston	1989:1,2	billion	
1660:11			
bench 1673:4			

<p>Blitz 1660:19 blown 1989:24 blue 1810:20 1811:1 board 1683:5 1751:6,17 1810:22,25 1847:4,8,13 1853:6 1858:8,15 1904:6 1907:8 1986:17 boards 1984:22 2026:1 Bob 1862:12 1864:23 bodies 1877:9 1991:21 body 1678:19 1685:19 1711:8 1712:18 1875:25 1876:11,14,1 5 1905:23 2025:25 boiler 1679:9 1680:7,21 1681:18 1684:11 1685:14 1688:10 1700:22 1701:2 1719:14,20 1720:5,17,20 1721:10,11 1727:19 1728:7,25 1729:11 1730:21,25 1731:10 1747:9,18,25 1987:8 2020:1 2035:15 boilerplate 1718:14 boilers 1761:10 Bond 1772:22 book 1876:4,8</p>	<p>2024:2 Boonville 1660:3 border 1855:21 boss 1696:20 bottom 1745:25 1772:16 1998:18 2022:2 bottoms-up 1680:6,7 bought 1701:10 Boulevard 1663:13 Bowman 1667:2 1669:4,22,25 1670:7,23 1671:2,5,10 1672:3,6 2041:24 2042:3 box 1661:11 1662:2,23 1663:5 1664:6,11 1685:15 1746:6 boxes 1703:11 1745:24 boy 1787:15 1805:21 1871:8 1878:1 1925:24 Brad 1672:1 2042:5 brand 1730:25 1855:14 break 1665:10 1743:21 1744:14,17 1806:9,14,16 1808:18 1868:14,16,1 9 1870:10,11 1929:1,4,6,8 ,9 2009:7,20 2017:16,18 breaking 1808:13</p>	<p>breathed 2010:19 Brent 1864:23 1876:24 brief 1970:3 1992:20 briefing 1894:19 briefings 1903:5 briefly 1765:22 1990:24 1994:5 2001:21 2026:22 briefs 1725:24 Bring 1923:11 bringing 1786:12 1904:9 British 2025:23 broad 1710:21 1776:22 Broadway 1660:15 broke 1845:17 broken 2009:12 brother-in-law's 1904:22 brought 1693:24,25 1696:16 1711:9 1737:11 1780:14 1861:19 1896:17 1899:15 1901:25 1919:19,23 1920:10,21 1922:4 1923:21 1986:10 BRUDER 1661:14 Bryan 1663:9</p>	<p>Brydon 1661:10 buck 1862:14 2000:21 bucket 1923:11 budget 1679:25 1682:10,16 1683:3,13 1685:16,18 1689:20 1690:25 1694:2 1700:10 1701:15 1705:24 1707:7 1712:21,25 1713:4,6,9 1715:2 1732:9,16 1733:15,18,2 1 1740:2 1746:23 1747:2 1763:25 1771:1,9 1845:13 1846:15,21 1847:2,3,12, 15 1848:4,14,17 1849:1,13,19 1850:12,14,1 5,18,23 1851:2,3,5 1855:24 1858:6 1865:3,19 1874:13 1896:21 1897:1,6,22 1898:1,18 1902:14 1903:1,22 1905:25 1907:20 1923:4 1924:17 1982:20 1989:4,17,24 1991:4,11 1997:24 2012:21,25 2013:1 2014:13 budgetary</p>
---	--	--	---

<p>1704:15 1773:10 1796:3 budgeted 1715:22 1849:20 1989:9,20 budgeting 1989:13 budgets 1713:19 1849:11 build 1680:12 1681:8 1682:8 1699:6 building 1679:23 1682:19 1684:21 1685:3 1701:14 1885:10 built 1683:7 1706:11 1728:8,22 1740:10,15 1815:3 bulk 1747:6 bundled 1906:21 burden 1674:3,6,14 1691:18 1707:8 1935:21 1936:23 1937:8 burdensome 1981:5 burgers 1929:20,24 Burns 1676:17 1680:5 1681:1 1685:13,17,1 8 1688:19 1701:13,15 1719:1 1731:7 1732:9 1756:7 1757:2,20 1758:9,10,12 ,17</p>	<p>1759:7,10 1760:1,2,17, 18 1855:23,25 1856:4 1986:14 business 1714:21 1765:8 1844:25 1862:22 1895:16 1897:16 1924:5,10 1984:4 2011:25 businesses 1853:6 bust 1700:19 busters 1923:13 butts 1898:12 buy 1687:15 1700:6 1701:3,4 1728:25 1729:10 1730:20 buying 1687:16 1719:25 1721:10 1730:20 Byce 1875:7,8,12, 14,18,19 byproduct 1778:14 by-product 1904:16 1905:4 <hr/><p style="text-align:center">C</p><hr/>cables 1731:5 Cafer 1662:14 1665:6,7,9 1666:11,23 1671:19,23 1672:18,20,2 1 1717:1,2,4 1725:5,18 1726:1,15,20 1728:9,17 1731:19</p>	<p>1733:5,12 1734:21 1735:2 1739:17,20 1742:16,24 1743:1,16 1744:3 1745:23 1747:15 1756:17 1760:4 2040:3,6 calculate 1711:15 Callaway 2010:12 Canada 1905:18 cancer 1814:20 capability 1719:6 1727:23 1845:19 capacity 1783:10 capital 1681:20 1896:7 Capitol 1660:7 1661:11 CAPT 1663:1 car 1687:16 1701:3,4,10 care 1760:11,12 career 1813:23 1814:8,23 1873:5 2000:2 careful 1673:15 Carl 1660:10 1696:12 1864:5,18,24 1866:2 1867:19 Carrie 1779:24 1889:25 1919:10</p>	<p>1992:13 1995:9 1996:6 carried 1925:22 carte 1863:18 CARTER 1661:10 case 1673:12 1693:12 1695:2 1702:6,7 1704:6 1707:22 1712:9 1716:8 1722:5 1732:12 1735:18 1737:15 1746:16 1760:6 1765:13 1768:12 1779:3,5 1782:2,5,14 1788:3 1797:24 1802:9 1844:8 1857:10 1876:25 1877:10,17 1893:17,23 1894:19 1906:6,10 1930:8,10,13 ,15 1936:13 1970:19 1971:10 1991:8 2014:6 2015:17 2017:9,10,24 cases 1665:25 1684:7 1723:10 1770:10,11 1779:6 1936:15 1937:12 1995:20 2009:9 2017:23 casually 1702:13</p>
---	---	--	--

<p>catch 1802:16</p> <p>catchall 1706:21 1707:1</p> <p>categories 1678:15</p> <p>category 2021:18 2022:10 2023:6</p> <p>cause 1716:7 1753:13,15</p> <p>caused 1923:2 2015:17</p> <p>causes 1713:7 1753:10</p> <p>Cave 1663:9</p> <p>CBE 1674:5 1713:13 1732:9,15,18 ,25 1746:19 1747:4 1850:1 1851:3,6 1856:8,13 1858:1,5 1924:20,21,2 2 1982:21 2012:24 2013:6,12</p> <p>CCR 1659:23 2039:6</p> <p>cell 1867:8,10,11</p> <p>Center 2035:25</p> <p>CEO 1772:1,20</p> <p>CEP 1922:13 1987:21,22,2 5</p> <p>certain 1659:12,16 1665:17 1673:16,17 1693:8 1700:4 1704:15 1710:25 1711:2 1736:7 1738:5 2013:15</p> <p>certainly</p>	<p>1729:10 1768:24 1770:12 1772:6 1778:14 1888:22 1889:2 1905:11 1923:3,4 2014:4</p> <p>CERTIFICATE 2039:1</p> <p>certification 2025:15</p> <p>certification s 2025:21</p> <p>certified 1876:21 2039:6,7</p> <p>certify 2039:9</p> <p>cetera 1784:14,21 1851:25</p> <p>chair 1761:5</p> <p>chairman 1778:19 1779:1 1810:17</p> <p>challenge 1767:25 1906:13</p> <p>challenged 1752:11</p> <p>challenges 1714:23 1905:17</p> <p>chance 1674:19 1702:13 2014:6</p> <p>change 1666:3,10 1667:24 1668:5,12,16 ,21 1669:15 1672:5,13 1677:1,2,20 1681:11 1687:12,13 1696:11 1700:14 1701:23,24 1703:8,14</p>	<p>1715:20,21 1721:14 1726:12 1728:1 1729:2,15 1730:18 1733:19 1734:8 1738:10,25 1797:16 1904:1 1991:6</p> <p>change/add 1682:4</p> <p>changed 1668:8 1700:2 1733:23 1850:7 1865:17</p> <p>changes 1659:12,16,1 7 1685:11,23 1700:1 1707:13 1730:23 1750:3 1802:6,14,18 ,23 1855:10 1920:21 1921:3</p> <p>changing 1744:10</p> <p>chapters 1877:6,11</p> <p>characterize 1899:10</p> <p>charge 1780:20 1803:12,19 1811:20 1861:11 1866:16 1867:2 1868:11 1871:4,20</p> <p>charged 1763:19 1866:22 1867:3,22 1889:6</p> <p>charges 1659:12 1792:16</p> <p>charging</p>	<p>1787:20 1890:4</p> <p>Charles 1662:10 1767:11</p> <p>chart 1735:20 1749:8 1875:3,4 1998:20,22</p> <p>Chartered 2025:17</p> <p>charts 1874:22,23,2 5 1875:4 1922:10</p> <p>cheaper 1723:11</p> <p>Cheatem 1870:25</p> <p>Cheatum 1781:8,10,18 1782:1,16 1783:7 1784:2,23 1792:21 1854:6,17 1865:5 1868:9 1870:9,14,17 1871:16 1872:23</p> <p>Cheatum's 1783:4 1872:19</p> <p>checked 1854:25</p> <p>Chicago 1765:10 1803:13 1865:21,22 1866:2 1868:1 1885:23</p> <p>chief 1664:1,2 1813:22</p> <p>choose 1771:21</p> <p>chose 1679:13 1684:17 1693:14 1994:14</p> <p>chosen 1795:20</p>
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<p>1796:5 Chris 1859:11 Christmas 1853:21 Chuck 1998:4,10 Churchman 1696:10,12 1711:11 1751:2,5 1864:5,7,15, 18,24 1865:6,20 1866:2,8,18 1867:1,6,11, 17,20 1868:6 1869:17 1926:5 Churchman's 1864:10 1866:5 1868:1 circle 1723:14 circumstances 1675:20 1700:2 1734:10 1886:16 2011:17 citation 1752:24 citations 1764:6 cite 1717:10 1878:2 1936:13 cited 1886:17 cites 1767:14 1898:15,24 Citibank 1997:14 cities 1862:7 citing 1886:23 City 1659:8,11 1660:8,16,20 ,23,24 1661:2,3,12, 20,21 1662:2,3,4,7 ,8,11,12,16,</p>	<p>19,23,24 1663:6 1664:7,11 1803:13 1855:22 1885:17,20 1886:2 1901:11 1986:17 1987:24 civil 1748:15,19 1749:6 2025:24 claim 1723:23 claimed 1693:7 claiming 1697:11 1721:15 claims 2000:11 2001:1 clarification 1973:25 clarified 1971:5 clarify 1809:9 1926:9 2036:7 clarifying 1726:6 clarity 1869:2 class 1924:10 classified 1772:3 Clayton 1660:12 cle 2015:14 C-l-e 2015:14 clean 1984:6 cleaning 1721:8 clear 1683:22 1695:14 1698:4 1766:7 1802:24 1850:11 1928:9</p>	<p>1982:8 1987:20 2000:24 2013:7 2014:10 clearer 1690:15 clearly 1681:14 1683:23 1686:4 1689:19 1691:17 1716:13 1724:18 1737:16 clerks 1885:8 client 1704:6 1784:19 1797:4 1848:18 1850:2 1863:14,16,1 7 1864:2 1885:22 1908:16 2013:2 clients 1851:24 1853:16 1854:11,22 1862:2,3 client's 1850:6 close 1748:14 1749:3 1850:20 closed 1744:6 closely 1864:7,18,23 1866:11 club 1866:2 1867:17,20 coal 1700:7 1814:25 2034:22,24 2035:2 coal-fired 1815:3 1895:1,3 coast 1786:14 1810:18 1907:5,11 coaster</p>	<p>1923:10 cockpit 1924:11,15 code 1853:5,9 1854:12,24 Coffman 1663:12,13 cohesive 1736:25 cohesiveness 1737:3 collect 1712:6 1904:14 1991:4 collected 1921:5 collecting 1888:12 collection 1923:23 college 2025:18,19 colloquy 1986:8 Columbia 1661:6 combination 1903:6 2035:25 ComEd 1785:19 1812:5,15,20 1813:21 comes 1720:19 1729:22 1896:24,25 1897:5 1904:17 comfortable 1853:13,16 coming 1682:16 1686:1 1687:23 1700:5 1777:2 1791:13 1991:19 Comley 1660:22 1661:1 commencement</p>
--	--	---	--

<p>1893:17 comment 1896:19 commercial 1771:10 1772:24 1778:10,15 1874:13 1897:19 2011:11 commission 1659:1 1664:5,8 1673:12 1674:2 1677:25 1689:10 1691:4 1694:22,25 1695:4 1699:12 1705:19 1707:12 1709:14 1711:24 1713:20 1723:15,22 1724:4,8,9,1 1,15,19 1725:14,20 1727:4 1750:2 1756:14 1757:12 1767:17 1768:12,22,2 4 1778:18 1885:7,25 1924:7 1937:4 1985:11,16 1986:21,24 1987:16 1997:20 2009:23 2010:21 2011:4 2012:6 2013:8,24 2014:6,16 2017:6 2019:9 2021:4 2032:6,22 commissioned 2023:19 Commissioner</p>	<p>1666:15,17 1673:4,6 1695:6,9,10, 13 1699:15 1705:6,9,10, 12 1706:15 1708:1 1713:24 1714:2,8 1715:24 1734:19 1742:14,20,2 3,24 1747:13 1756:20 1798:7,11 1808:20,22 1870:2 1875:2 1895:25 1896:2 1900:3,7,8 1901:1,4,5,6 ,9 1919:2 1926:8,24 1927:4,7,12 1928:4,8,14, 18,19,21 1929:3,14,16 ,17 1930:1 1935:3 1972:18,19,2 3 1974:1 1983:10,22 1986:9 1989:3 1996:25 1999:16 2009:17 2010:23,24 2012:2 2040:4,5,13, 14,15,16 Commissioners 1683:21 1706:4 1710:12 1756:1 1985:13 1988:17 1994:15 1996:1 2000:23 2022:7 Commissioner' s 1734:23 1993:23 COMMISSIONERS 1659:21</p>	<p>commissions 1679:3 2024:1 Commission's 1673:25 1709:10 1725:19 1937:18 2014:11 committed 1736:23 committee 1784:17 1852:20 1862:19 1864:18 1865:2,18 1873:19 1874:12,25 1887:3 1925:20 1985:11 1997:6 1998:24 commodities 1681:22 common 1669:16 1970:17 1971:9 commonly 1901:22 Commonwealth 1785:15 1786:5 1810:17 1811:17,22 1812:4 communication s 1894:17 1980:12 community 1997:8 companies 1983:14 2023:25 company 1659:12,16 1660:17 1661:13,21 1662:2,4,8,1 2,16 1667:13 1674:4,7 1677:10 1691:9</p>	<p>1692:20 1693:10 1694:5 1695:15 1697:9 1704:1,12,24 1716:13 1728:24 1729:2 1736:23 1752:10,21 1754:6,8 1755:2,8 1757:3 1760:15 1761:20,24 1762:23 1763:3,9,13 1764:7 1773:5 1777:5,15,21 1844:21 1845:7 1853:7 1903:3 1905:12 1936:23 1937:14,17 1973:4 2017:5 2018:12,23 company's 1690:3 1718:18 compare 2023:12 compared 1896:11 1997:3 compares 1739:12 1768:8 comparing 1678:8 1720:24 comparison 1676:8,9 1679:1,21 1739:6 1740:5,23 comparisons 1739:5,24 1740:9 compel 2032:16 compensated</p>
---	---	---	--

<p>1783:19,24 competent 1682:6 1703:16 1873:13 competitively 1723:8 complete 1687:9 1713:14 1717:24 1730:10 1742:9,11 1754:1 1759:8 2037:12 completed 1680:18 1703:25 1736:4,6 1858:7,10,13 ,19 1859:6 1896:22 1898:17,21 2034:12 completely 1719:16 completion 1695:21 1696:25 1742:4 1990:13 complex 1693:20 1698:24 1721:20 components 1679:10 1730:21 1731:10 1758:2 2035:10,20 2036:1 comport 1711:18 comported 1993:11 comports 2022:5 comprehensive 1771:2 1775:8 1780:17 compressed</p>	<p>1665:11 compression 1676:22 concept 1903:17 concerned 1706:2 1857:15 concerning 1745:3 1756:8 1988:17 concerns 1706:3 concessions 1978:13,16 conclusion 1674:15 1725:17 2037:22 conclusions 1711:4 1712:7 1756:5 1768:11 conditioning 1731:6 conditions 1730:8 1754:21 1796:11 1797:11 1885:22 1886:11,18,2 2 conduct 1669:23 1670:5 1712:10 1764:11 conducted 1736:8 1756:5 1899:11 conducting 1693:19 1709:2,5 conference 1703:10 1704:2 1970:3 1996:6,13 confession</p>	<p>1694:13 1919:17 confidential 1666:12 1771:7,17 1772:3,15,17 ,19 1817:22 1890:12,13,1 9 2041:6,10,14 ,19,23 confirming 1782:22 conflict 1681:14 conflicts 1719:10 congestion 1676:22 1754:25 1755:6 conjunction 1732:10 1736:1 connect 1690:9 1731:4 connecting 1689:13 Conrad 1660:6,7 consequence 1689:11,19 consequences 1685:23 1761:25 consequently 1689:3 consider 1699:13 1724:10 1753:22 1759:12,23 1768:25 1788:6 1844:18 1885:7 1920:7 2024:18,24 2025:2,3,6 consideration 1886:3 considered</p>	<p>1693:21 1699:3 1725:14,22 1726:22 1743:4 1768:15 1769:2 1795:18 1904:25 1905:1 1973:1,5 consistent 1739:23 1990:8 consistently 1812:15 constitute 1687:8 constitutes 1935:21 2000:15 construct 2035:9 constructed 1740:6 construction 1678:17,22 1681:23 1682:7 1686:10 1693:20 1696:14 1706:12 1717:6 1721:21 1736:17,24 1737:24 1738:1,6,7,9 ,17,22 1740:2 1741:24,25 1742:2 1748:5,10,11 ,15,18,19,22 1749:5,6,13, 16 1772:5 1778:4 1780:13 1781:24 1785:24 1811:2 1814:22,25 1848:2,8,18 1849:6,15 1851:10 1864:11 1865:1</p>
---	--	---	---

<p>1886:5,10 1895:5,8,11, 14,16,20 1925:19 1937:13 1983:25 1988:4,5,8 2031:9,20,22 ,25 2032:2 2034:5</p> <p>construed 1711:21</p> <p>consult 1871:17</p> <p>consultant 1735:24 1763:20,21</p> <p>consultants 1697:21 1710:20 1764:7 1773:12 1904:10 2031:17,24</p> <p>consultation 1810:19</p> <p>consulted 1871:13</p> <p>consulting 1775:12 1860:10 2026:19 2042:13</p> <p>consumer 2019:2,8</p> <p>Consumers 1663:15</p> <p>contact 1782:16 1796:17 1901:12,17 1903:16</p> <p>contacted 1853:25 1983:3</p> <p>contain 1754:24 1766:13 1784:24 1921:11 1997:2</p> <p>contained 1706:16 1754:1</p>	<p>1788:16 1793:16 1798:13 1818:1 1851:3,6 1878:7 1882:11 1891:1 1909:4 1930:23 1938:8 1974:4 1997:10 2001:25 2015:25 2026:25 2037:14</p> <p>contemplated 1684:22</p> <p>contemporaneo us 1753:4 1757:1</p> <p>contemporaneo usly 1752:7 1764:11</p> <p>contend 1849:22 1888:18,25 1906:5 2020:11</p> <p>content 1756:16</p> <p>contents 1755:23 1756:16</p> <p>contest 1863:14</p> <p>contested 1862:3,9 1863:1 2010:10,13</p> <p>context 1983:12</p> <p>contingency 1680:14 1681:2 1683:4,15,16 1846:25 1847:15</p> <p>continue 1659:13 1688:12 1698:17 1722:9,10 1863:24</p>	<p>1970:11 2014:25</p> <p>continued 1665:8 2040:3 2042:1</p> <p>continuing 1990:19 1997:15</p> <p>contract 1678:19 1679:11,12 1685:12 1686:18,25 1687:8,10,25 1692:1,4,12, 13,15,16,20 1693:1,2,4,9 ,14 1717:6,10,17 ,21,23 1718:13,14,1 7,23,25 1719:2,8,9 1721:3,4,7,1 5,24 1723:8,9,18 1727:9,17 1728:3,4,15 1747:9,18 1757:4,17,22 ,24 1758:3,6,9,1 0,13,16,20 1760:1,18,22 1761:9,10 1762:7,14,15 ,25 1763:5,7,14 1772:24 1795:8,11,21 1796:7,22 1797:6,11,14 ,15,19 1798:3,7,8 1802:19,25 1803:6 1817:1,20 1845:21 1848:7,12 1861:8 1877:9 1904:2,3 1924:12 1980:19 1981:11,21 1982:15,19,2 4 1983:1,20</p>	<p>1989:15 1991:5 2035:8,9,13, 21</p> <p>contracting 1860:2 1920:13 1988:3</p> <p>contractor 1679:5,6 1723:1 1780:18,23,2 4 1781:3,6,11, 12,20 1783:6,19,25 1784:11,19 1785:9 1786:2,18 1787:8,10 1793:3 1810:12 1844:24 1860:22 1875:10 1890:1</p> <p>contractors 1676:18,21 1680:8 1757:1,5 1803:25 1804:22 1805:24 1806:23 1807:7,15 1808:10 1874:18 1904:20 1924:17 1979:19 1984:3 2000:7</p> <p>contractor's 1763:1 1860:10</p> <p>contracts 1677:9 1679:9 1686:16,17 1692:21 1741:16 1744:5 1745:13 1750:16 1803:16 1875:17 1904:1</p>
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2035:23 2036:1 contract's 1686:24 contractual 1721:25 2032:1 contrary 1925:16 control 1686:8,11 1695:22 1698:5 1709:21 1712:21,25 1713:9 1813:21 1845:22 1846:21 1847:2,11 1858:6 1875:10 1896:21 1898:18 1921:7,8 1997:24 2000:12 2012:21 2014:12 controlled 1923:4 controls 1778:8,9 1845:24 1895:1 1904:14 1991:3 2031:12 controversies 2001:17 convenience 1746:10 conversation 1854:17,18 1867:16 1869:17 1885:10 1899:14 conversations 1867:19 1906:23 1983:21 1991:22 converse 1982:13	convince 1982:3 COOPER 1660:15 coordinate 1742:18 coordinating 1759:18 copies 1665:21 1669:1 1745:13 copy 1746:19 1758:21 1788:11 1844:7 1980:10,18,20 cordial 1816:13 corporate 1853:7 1854:10 1855:8 corporation 1673:11 1705:19 1709:10 1724:3,6,11 1845:2 2017:6 correct 1665:23 1667:7,8,12,17 1670:18,21 1672:8,10,11,15 1673:13 1699:19,21 1700:16 1702:8,23 1706:18 1712:12 1714:11,12 1715:9 1716:16,17,20 1720:4 1721:19 1722:19 1725:7,11 1732:1,5,13 1735:15 1736:9,11,19 1739:15 1740:12 1743:8,23	1746:14 1750:17 1752:1,3,19 1753:1,6,20 1757:22,23,25 1758:1,3,8,17 1761:2 1762:6 1763:11 1764:4,8,13 1770:7,25 1771:4 1775:24 1778:20 1780:19,25 1781:1 1785:15,16 1787:12 1791:19 1793:11 1796:16 1797:22 1803:7,14 1811:7,20 1817:9,16 1846:19 1851:7 1856:16 1859:4 1867:20 1889:14 1893:20 1920:11,23 1926:19 1927:3 1928:13 1930:10 1987:11 1992:15 2009:12 2010:5 2014:17 2018:24 2031:20 2032:18 2037:18 corrected 1694:15 1695:20 1752:18 1766:23 1888:11 correcting 1694:17 correction 1753:2 corrections	2015:21 correctly 1683:16 1706:1 1739:14 1777:20 1846:21 1906:24 1908:12 1971:22 1984:11 correspondence 1667:24 1668:22 1745:15 1980:14,20 1981:1 cost 1666:2,3 1669:16,23 1674:4,5 1679:7,22 1680:9,11 1681:20,22,23 1682:13 1683:6 1684:16 1685:24 1690:17,18 1694:7 1697:4,16,20 1698:21,23 1700:13 1704:14 1705:22 1713:6,19,21 1716:11 1730:16,18 1731:11 1735:15 1738:18,21 1749:4 1761:18,25 1768:8 1782:23 1784:3 1787:6 1805:4 1846:16,18 1847:2,16 1874:9 1875:10,21 1888:16,23 1889:2 1897:18 1898:19 1899:16,19,21 1900:11 1903:1
--	--	---	--

<p>1922:6,21,22 1990:13 2001:9 2014:13 2024:20 2025:3 2031:10 cost/low 1683:10 costs 1680:2,13,22 1681:4,11,21 1683:23,25 1684:4 1694:8 1695:16 1698:1,4,7,1 1 1699:2,11 1700:10 1705:24 1711:16 1713:7 1714:13 1716:7,9 1722:21,23 1723:12 1731:16 1732:17 1733:2 1739:11 1747:3,17 1748:11,13,1 8,19,25 1749:8 1753:10 1755:6 1757:6 1762:5 1774:18 1775:2,9,11 1787:24 1803:1 1847:15 1849:20 1868:7 1900:12,23 1902:14 1904:6,15 1921:7,9,17, 23 1989:9 1999:3 2000:12,22 2012:20,24 2013:12 2031:9 2032:3 Council 1663:15</p>	<p>counsel 1664:1,2,3,4 ,5,10,12 1665:4 1726:13 1743:10 1744:1,20 1772:2,6,21 1791:24 1803:2,5 1806:15 1808:15,16 1809:5 1863:3 1893:25 1970:4 1972:2 1988:17 2037:9,17 2038:10 2039:13,16 counselor 2026:8 counsels 1863:7 1926:10 counsel's 1725:3 1971:23 count 1986:3 country 1866:1 1867:17,20 2026:1 county 1676:9 1678:25 1679:4 1739:6,10 1740:6,19,21 1741:7,16,21 1904:22,23 2039:3 coup 1683:6 couple 1665:13,18 1677:23 1678:6 1680:15 1681:10 1695:10 1704:20 1714:4 1733:23 1739:4 1743:20 1844:11</p>	<p>1851:25 1853:21 1855:12 1901:6 course 1682:9 1734:19 1771:25 1854:9 1866:14 1867:3 1876:17 1897:15 1923:8 1989:16 1991:18 2001:10 2031:9 2032:11 court 1659:24 1666:14,22 1671:22 1731:18 1809:22 1869:5 2022:17 2026:15 2039:6,21 courtroom 1752:23 1778:17 1787:4 cover 1770:24 2009:11 covered 1868:6 created 1764:10 1856:8 creates 1906:13 creation 1759:14 credentials 1779:4 1810:15 credibility 1768:13,25 Creek 1924:4,7,9 2010:12 creep 1685:5 criteria 1936:19 critical</p>	<p>1680:19 1685:10 1734:15 1735:6,8 1985:9 criticism 1709:11 criticisms 1709:12 criticize 1693:18 criticizes 1708:25 crop 1737:14 cross 1675:3 1765:1 1769:10 1806:10 2015:6 2016:15,22 2036:21 cross- examination 1665:5,8 1695:12 1705:11 1745:1 1746:23 1755:17 1756:19,20 1757:8 1762:8 1763:24 1767:13,19 1769:13,14 1775:21 1990:21 2017:1 2018:20 2019:15 2040:3,9,10, 11,12,13,20, 21,22 cross-examine 1768:4 cross- examining 1809:3 Crown 1905:12 1973:4 crux 1683:20 C-scope 1742:15 cumulative</p>
--	--	--	--

<p>1724:5 1745:24 CUNNINGHAM 1662:6 curb 1670:4 curious 1855:5 current 1908:23 1992:5 currently 1681:9 1781:12 1890:4 1926:17 1971:14 Curtis 1660:11 1859:12 1922:12 custom 1851:23 customary 1854:5 Customer 1973:10</p> <hr/> <p style="text-align: center;">D</p> <p>D.C 1661:15 d/b/a 1660:17 daily 1864:20 1865:12 damages 1817:17 1937:24 1938:2 Dan 1787:3 1807:15 1875:9,15,17 1888:22 1889:1 1890:1 1896:19 1899:16,20 1900:23 1904:12 1905:1 1924:24 1990:15 data 1665:25 1666:5 1667:1,23 1670:8,13</p>	<p>1672:7 1677:23 1707:20 1712:6,7 1738:25 1742:8 1745:10,12 1776:10 1778:9 1791:12,14,1 5,17,21 1792:3,6,9 1855:24 1858:24 1874:20 1885:15 1888:3,12 1889:1 1904:14,17 1906:3 1907:14 1921:5 1923:16,17,2 3,24 1924:11,15 1926:2,6 1936:1,4 1980:10 1981:5 1984:8 1991:3,4 2041:24 2042:3 database 1741:14 date 1741:18,19,2 1 1752:3 1756:11 1803:3 1814:16,20 1817:2,10,13 ,19 1859:3 1896:24 1923:6 1984:11 1985:14,21 1986:2 1987:23 1988:1,4,10 2033:23 2034:1 dated 1771:1 1981:6 dates 1985:4 2000:22 Dave 1745:4</p>	<p>David 1660:6 1785:4,7 1851:13 Davis 1747:13 1756:7 1759:6,22 1760:7,9,11 1864:23 1877:20 1895:5,7,10, 20,21 Davis's 1876:24 1877:16,24 day 1696:16 1805:10,18 1806:5 1817:18 1867:20 1869:18 1886:14 1926:4 1970:23 1971:11,12,1 8 day-in 1864:25 day-out 1864:25 days 1703:6,9 1752:15 1767:25 1797:19 1802:20 1803:3 1866:17 1899:3,4 1993:23 2018:13 day-to-day 1755:14 1864:19 1925:21 de 1864:3 de-aerator 1685:7 deal 1681:17,18,1 9 1687:21 1690:13 1732:23 1853:16 1857:18 1895:10 1983:4</p>	<p>dealing 1757:4 1873:13 2000:10 dealings 1872:9 dealt 1845:6 1872:10 1926:14 DEAN 1660:15 DEARMONT 1664:4 debate 1926:6 debriefs 1904:5 decay 1813:1 December 1682:17 1697:25 1732:8 1733:1,18,21 1747:4,19 1749:12,19 1769:25 1771:1 1796:2 1817:2 1849:23 1858:13,19,2 4 1859:7,15,22 1907:20 1924:22 decide 1698:19 1711:25 1732:21 decided 1675:17 1679:4,14 1685:5 1700:3,7 1706:5 1783:5 1927:1 decision 1679:3,14,20 1688:18 1691:15 1692:12 1693:11 1708:17 1709:3,6,21 1716:4,5,6,1 2 1723:20</p>
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1724:4,7,18 1922:15,22 1924:4,5,6 1925:16 1927:21,22 1935:25 1937:17 2010:22 2012:1 decision-making 1676:3 1689:12 1690:9,13 1693:22 1923:18 1936:6 decisions 1689:12 1690:1,8,12, 16 1691:6,13 1693:18 1694:9 1698:15 1699:24 1708:4,12 1711:15 1723:13 1738:1 1776:11 1920:10 1922:5,25 1923:7 1924:16 1925:21 1935:24 1937:13 1988:12 2011:16 declined 1860:12 deduct 1713:13 deemed 1768:1 1772:23 1776:15 1905:16 1937:21 1973:14 deep 1992:12 defend 1674:19 deficiencies 1722:7 deficiency 1760:17,18,2	2 1761:1 1762:25 define 1691:17,23 1856:6 2021:3,10,11 2023:20 defined 1691:9 1855:9 2031:25 definite 1763:5 definitely 1902:6 1904:17 definition 1680:4 1691:20 1732:7 1855:2,6 1856:18,19 1906:4 1923:20 2021:20,23,2 5 2022:8,12 2023:2,8 definitions 1673:20 2023:11,12 definitive 1682:16 1683:2 1705:23 1712:25 1713:10,15 1856:6,21 1857:6,24 definitively 1804:2,18 1806:1 degree 1704:15 1996:18 2025:14 delay 1796:21 1817:18 1858:17,21 1859:20,24 delayed 1682:17 1733:1 delays 1684:17	deliverables 1759:6 delivered 1735:13 1845:19 1927:15 Denton 1662:6 Department 1661:16 1663:7 1739:25 1741:13 depending 1908:15 1986:11 depends 1721:23 1738:3,21 2033:4 depict 2016:10 depicts 1998:20 deposition 1691:7 1719:7 1742:10 1779:12,15 1815:22 1851:12 2037:22 depositions 2037:13 depth 1677:18 1923:15 Deputy 1664:1 describe 1770:5,8,10 1780:14 1785:6 1816:10 2033:12 described 1995:8 describing 1907:4 1991:23 description 1804:10,11,1 2 1805:3,22 1845:17 1980:16 1993:17,18	descriptions 1807:1 design 1682:3,5 1685:23 1701:14 1730:10,11,1 2,14,17,19 1731:3,6,14 designated 1744:13 1772:14,15 1773:1 designation 1744:10 designed 1681:9 1688:3 1700:3,25 1730:23 1731:12 designing 1730:25 designs 1844:19 1845:11 desire 1783:3 detail 1666:4 1668:6 1677:19,22 1690:20 1707:15 1724:25 1730:6 1796:12 1859:9 1860:16 1899:16,17 1998:19 detailed 1900:22 1993:19 details 1687:21 1702:3 determination 1715:1 1725:22 2011:22 determine 1686:18 1699:20 1717:24 1719:3,15,21 1727:5
---	--	--	--

1763:18 1906:14 determined 1708:6,10,11 1727:5,9 1921:2 determines 1727:13 determining 1708:7 1716:2 Deutsch 1660:19 develop 1679:5 1688:13 1712:7,8 developed 1679:8 1680:23 developing 1924:25 development 1676:11 1736:24 devoted 1725:21 1764:6 dialogue 1859:13 DIANA 1661:10 difference 1698:24 1710:1,4 1740:25 1816:12 1846:9 1904:7 differences 1725:12 1816:14 different 1668:18 1673:19 1678:15 1679:13 1703:14 1707:3 1711:17 1712:3 1725:7 1726:6 1740:15,16 1741:9	1742:4 1754:22 1762:22 1782:11 1786:19 1852:24 1853:3 1937:6 1985:4 1997:17 2037:11 differential 1688:15 differently 1684:13 1856:10,15,18 difficult 1692:18 1845:15 1906:16 1936:10 difficulties 1886:20 difficulty 1683:21 digits 1746:10 diligence 1810:10,13 1811:4 dinner 1808:18 direct 1695:25 1732:11 1735:17 1739:9,17 1740:9 1755:21 1765:2,5,15 1766:16 1767:10,11 1768:21 1802:21 1803:23 1876:25 1896:5 1935:12 1936:10 1998:2,4,7 2015:8,9 2040:8,20 2041:7,9 directed	1696:10 1771:13 direction 1696:23 1697:15 1737:3 1782:11 1783:14 2039:13 directly 1684:5 1773:21,25 1774:12 1781:12 1782:7 1783:20 1795:15,24 1907:10 2026:2 director 1780:16 1813:20 1895:7,19 directors 1858:8,15 1986:17 disagree 1693:24 1887:4 disagreed 1887:14 disagreement 1721:2 1759:3 disagreements 1722:16 disallow 1700:14 2032:22 disallowance 1676:24 1716:15 1723:24 1742:12 1743:10 2010:11 2019:2,5,7 disallowances 1665:15 1701:22 1712:9 disallowed 1688:1 1698:7	disappointed 1759:7 disclose 1890:9 disclosed 1973:15,17 disclosing 2010:6 disconnected 1700:20 discount 1996:21 discounted 1908:10 discounts 1996:24 discover 1763:9 discovered 1700:15 1709:23 1737:9,10 discovery 1745:8 1984:14,17 2032:10 discuss 1855:4 1935:8,15,18 1936:10 discussed 1670:11 1673:10 1708:1 1710:1 1792:21 1894:12 1895:6 1899:12 1902:14,16 1935:7 1970:5 1979:2,9 1991:12 1994:3 1995:9 1996:8 2001:1 2010:6 discusses 1670:6 discussing 1756:24 1870:9
---	---	--	---

<p>1873:3 1887:2 1937:25</p> <p>discussion 1670:4 1706:14 1724:4 1727:1,2 1751:20 1808:25 1907:16,17 1922:18 1937:23 1972:17 1978:5 1988:16 1993:11 1994:7 1995:16 1996:23 1997:16 1999:24 2010:25</p> <p>discussions 1712:22 1763:13 1797:25 1809:10 1865:11,15 1873:11 1894:10 1902:22,25 1926:3 1993:8 2000:25</p> <p>disharmony 1737:2</p> <p>dispute 1687:8 1717:12 1718:21 1721:20 1723:1,17 1760:15 1861:19 1984:14,17 1989:15,23</p> <p>disputes 1687:2,4 1718:11</p> <p>disruption 1897:18</p> <p>disseminate 1772:17</p> <p>distinguish 2020:14</p>	<p>distribution 1772:20</p> <p>District 1661:13</p> <p>dive 1808:8 1992:12</p> <p>diversion 1751:19</p> <p>division 1930:6</p> <p>divvied 1703:15</p> <p>divvy 1703:12</p> <p>docket 2017:25</p> <p>doctrine 1981:3</p> <p>document 1703:7 1767:15 1770:21 1771:7,14 1772:23 1773:7 1775:3,9 1776:21,24 1777:25 1778:1 1797:5 1802:18,23 1848:25 1850:21 1870:6 1920:6 1927:10,20,2 3 1978:10 1991:1,9,16 2022:24 2023:1 2026:17</p> <p>documentation 1665:17 1666:1 1667:5,11 1669:22,23 1672:13 1702:18 1738:24 1739:2 1782:20 1802:5,14 1810:7 1894:6,10 1979:13,22 2020:3</p>	<p>documentation s 1809:25</p> <p>documented 1802:9</p> <p>documents 1665:20 1666:25 1667:17,25 1668:2 1696:25 1704:13 1705:1 1721:18 1745:5 1754:3 1759:18 1763:17 1764:6,10 1768:10 1776:14,17,1 9 1777:3,8,17 1792:12 1797:20 1808:10 1810:4 1849:2 1853:10 1927:1 1928:5 1978:7,14,21 1979:3 2010:18 2011:10,24 2032:7,12 2037:10</p> <p>dog-and-pony 1901:23</p> <p>Dogwood 1660:13</p> <p>dollar 1713:11 1741:15 1763:18 1855:10 1922:8 1930:17</p> <p>dollars 1677:3 1683:18 1687:24 1693:15 1723:6 1758:6 1924:2 1982:22 1991:14</p>	<p>done 1670:3,5 1677:8 1683:16 1689:20 1696:8 1697:13 1698:6 1710:8,16,18 ,20 1712:5 1731:1 1735:22,25 1739:24 1740:19,24 1741:6 1748:2 1754:18,19 1769:24 1782:10 1807:23 1848:11,19 1858:18 1860:18 1870:5 1897:5,25 1902:8 1906:18 1921:8 1970:21 1971:8 1988:6,21 1989:5 1994:2 2001:20 2009:14 2012:1 2023:20 2024:13 2026:1 2033:13 2035:11,22,2 3</p> <p>door 1687:16,18</p> <p>Dority 1661:18,19</p> <p>Dottheim 1664:1 2037:22</p> <p>double 1684:21</p> <p>doubled 1700:22 1715:3,4</p> <p>doubt 1927:14 1935:10,21,2 3 1936:7,16,18</p>
---	--	---	--

<p>,22 1937:2,5,9,1 5,19 1972:13 2000:15 2001:3,6 DOUG 1660:2 Downey 1761:4 1771:13,22 1772:25 1773:2 1797:3 1862:12 1901:14,19 1902:1,5 2012:23 Downey's 1749:24 1771:4 1772:16 dozens 1687:11 1721:13 Dr 1675:8 1778:16,22 1779:2,7,9,1 1,13,18 1780:3 1890:11 1896:18 1936:19 1937:1,16 2011:20,24 2012:17 2014:19 2015:16 2018:22 2037:24 2038:12 Drabinski 1665:2 1666:24 1672:18 1673:7 1674:22 1689:10 1691:4 1695:7 1705:7,13 1713:25 1714:7 1724:16,21 1725:2 1726:2 1743:21,22 1744:20,25 1760:12 1764:17</p>	<p>1846:23 1898:6,9,24 1919:14 1920:16 1982:19 2010:10 2040:3 Drabinski's 1693:17 1724:12 1760:8 1765:24 1766:1,4 1919:14 2042:6 draft 1711:7 drafted 1859:1 drawings 1668:9 1669:18 1756:9 1759:9,19 1897:25 driven 1925:13 DRs 1787:24 du 1923:12 Duane 2026:8 due 1677:3 1684:2,5 1707:18 1713:7 1714:9,22 1723:13 1733:1 1754:22 1810:10,13 1811:4 1859:3,4,15 duly 2039:10 dumb 1675:20 duration 1741:24 1742:1 1849:12 1850:19 1893:19 1897:13,19 1924:1 durations 1742:2 during 1665:25</p>	<p>1681:12 1693:20 1732:23 1735:5,13 1737:22 1740:10 1744:25 1751:12 1756:24 1791:8 1811:14 1815:22 1866:11 1875:6 1897:15 1984:25 1989:16 1991:18 2012:7 dying 1814:15 <hr/>E<hr/>E&Y 1898:7,25 earlier 1698:16 1724:7 1737:9 1810:9 1856:3 1920:14 1926:11 1972:19 1987:21 2009:6 2010:1 early 1696:8 1734:24 1736:11 1749:12 1754:20 1757:10 1812:16 1814:15 1815:9,12 1817:12 1848:23 1886:6 1902:2,22 1920:7 1926:1 1991:10 2017:13 earn 1999:4,9 earned 1999:1,3 easier 1792:6</p>	<p>Easley 1751:3,4 1902:4,6,9,1 8 1907:4,6,16 1926:4 east 1786:14 1810:18 1907:5,11 easy 1684:12,15 economists 1738:5 edification 1919:7 Edison 1785:15 1786:5 1810:17 1811:17,22 1812:4 edition 2023:24 effect 1716:19 1753:14,18 effective 1747:23 1803:3 1907:15 effects 1753:13 effort 1862:24 1993:24 1994:2 1995:22 1996:17 2037:17 efforts 2037:17 eight 1748:21 1992:22 1993:16 1997:25 either 1723:10 1752:23 1760:17,22 1762:25 1763:4 1782:18 1807:19 1854:19</p>
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<p>1860:23 1867:23 1926:15 1972:25 1986:10 1992:17 2021:8 Electric 1659:13,17 1661:13 elicited 1745:11 Elliott 1701:25 else 1685:2 1926:9 else's 1926:18 Elum 2015:14 E-l-u-m 2015:14 e-mail 1672:1 1782:17,22 1810:5 1851:18 2042:5 e-mails 1926:16,20 embarking 1771:11 embarrassing 1813:23 1814:8 embed 1781:25 1782:12 1783:8 embedded 1782:3,7 1784:13 embedding 1782:23 1784:3 Emmrick 2015:14 Empire 1661:13 employed 1691:5 1708:3 2039:14,17 employee 1696:17</p>	<p>1785:9 1803:9 1855:11 1861:3 1889:16,20 2039:16 employees 1803:12,23 1804:18 1809:14,18 1845:1,4 1886:1 1893:6 encourage 1853:10 energy 1660:13,17 1661:16 1739:25 1741:14 1771:2 1780:17 1812:25 1813:13 2034:16 2035:24 enforce 1797:11 enforceable 1719:3 1763:6 enforced 1723:9 enforcement 1763:6 engage 1724:15 1771:12 engaged 1811:10,12 1848:8 1872:1 1983:19 2026:2,10 engagement 1797:3,8,18 1802:19 1848:11,13,2 4 1903:2,8,11 2036:3,12 engineer 1688:19 1713:22 1741:11</p>	<p>1742:7 1758:10,17 1759:16 2025:9,11,22 engineered 1734:16 1735:7,9 2035:8 engineering 1685:2,18 1700:11,24 1730:6 1732:17 1733:25 1734:16 1735:6 1738:15 1740:19,24 1741:6 1742:4,9,13, 18 1743:3 1758:20 1759:5 1896:23 1897:4 1898:22 2025:4 engineers 1669:20 1700:25 1701:21 1710:20 2025:25 2036:10 England 1661:10 enter 1848:2 1849:8,11 1987:25 entered 1797:7 1803:6 Energy 1810:24 entering 1763:5 enters 1849:6 entire 1675:3 1684:14 1687:8 1689:24 1691:15 1699:5 1715:8 1718:23</p>	<p>1730:21 1756:4 1899:3 entirely 1694:4 1774:4 entitled 1757:10 1772:1 entity 1812:1 entries 1752:2 1992:14,22,2 3,24,25 1993:1,2 entry 1813:6,17 1863:17 1864:2 1869:19 1994:7 1995:14,15 1996:3,5,8,1 1 EOC 1925:9,12,15 1926:1 EPC 1678:19,21,2 2 1679:5,6,16, 17 1687:9 1747:9 1761:10 1860:6 1924:8 2035:6,7,8,1 1,13,18,20,2 1,23 2036:1 EPCM 2035:15,19 equipment 1681:20 1683:7 1685:14 1734:17 1735:7,13 1748:5,12,13 ,15,20 1749:3 equivalent 1895:16 ER-2010-0355 1659:13 ER-2010-0356</p>
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<p>1659:16 Eric 1664:4 1779:24 1889:25 1902:2 1905:2 1919:10 Ernst 1736:1 erroneous 1674:22 erroneously 1752:17 especially 1854:10 1857:16 1900:21 essence 1902:7 1920:3 1922:11 1924:13 1983:4 1994:3 1996:20 essential 1759:12 essentially 1695:19 1710:17 1901:18 1903:3 1919:18 established 1675:8 1717:9 1734:15 1736:16 1870:13 1897:24 1905:4 establishing 1712:24 estimate 1679:25 1682:11,16 1683:1,3,14 1700:11 1705:24 1712:21,25 1713:1,6,10, 15 1715:1 1730:3,7 1731:8,16 1733:17 1739:25</p>	<p>1740:20 1741:7,17 1747:19 1796:3 1846:22 1847:12 1856:6,21 1857:7,24 1858:7 1871:2 1896:22 1898:18 1923:4 1982:20 1993:13 1997:24 2012:21 2014:13 estimated 1730:18 1731:11 1747:17 1748:1,14 estimates 1701:16 1713:4,19 1731:9 1732:4,6,7 1749:4 estimating 1730:16 et 1784:14,21 1851:24 ethics 1853:6,7,9 1854:12,24 evaluate 1711:15 1719:2 1737:25 evaluated 1686:17 1688:24 1689:7 1690:8,12 evaluating 1689:12 1691:5 1708:3 1716:4 evaluation 1688:23 1887:15 evaluations 1887:4</p>	<p>evening 1808:19 1970:1 2017:3,4 2019:17,18 2037:1,5 2038:7,10 events 1691:25 1805:15 1985:7 eventually 2013:23 everybody 1696:4 1855:13 1908:5 everybody's 1928:15 everyone 1692:3 1729:6 1926:18 everything 1686:3 1689:2,8 1699:6 1704:1 1863:19 1887:21 1905:4 1926:19 1999:24 evidence 1673:2 1690:23 1691:1 1707:8 1724:9 1733:11 1768:15 1769:1,8 1796:24 1850:17 1870:1 1893:10 1936:24 1937:4 2010:21 2013:4,5 2016:20 2031:5 2040:2 evident 1902:11 Evidentiary</p>	<p>1659:6 exact 1676:10 1684:9 1690:21,22 1787:16 1807:21 1817:13 1852:5 1864:12 1878:2 1889:11 1995:17 exactly 1668:7 1690:4 1691:21 1754:9 1787:23 1845:12 1993:20 1994:2 examination 1673:5 1744:23 1765:5 1896:1 1901:8 1928:20 1972:3 1982:5 2015:9 2040:6,8,17, 18,20 example 1678:18 1684:24 1686:24 1692:1 1700:19,20 1701:11 1711:1,23 1715:7 1728:7 1757:1 1875:4 1992:20 1994:12 examples 1691:16 exams 1710:17 exceeded 1846:22 1849:14,24 Excel 1667:19 1669:9 except</p>
---	--	--	--

<p>1922:21 1926:16,20 exception 1691:22 1699:8 1709:4 1752:13 1908:18 excess 1684:16 1699:11 exclude 2013:15 exclusive 1726:22 exclusively 1875:14 excuse 1727:11 1759:1 1900:4 1992:11 executing 1759:13 executive 1663:3 1745:2,18 1784:17 1785:14 1852:20 1862:19 1864:17 1874:11 1887:3 1925:19 1997:6 executives 1810:19,22,2 3 1863:7 1923:9 Exelon 1810:24 1812:21 exhibit 1666:11,13,2 1,25 1668:18 1670:22 1671:19,21,2 5 1677:22 1715:7,14 1731:17,21 1732:3,14 1733:6,10 1744:4 1745:2,18</p>	<p>1749:23 1756:18,23 1766:17,18,1 9,20 1769:6 1770:24 1869:3,4,22, 25 1985:21 1994:6 2009:5,11 2015:19 2016:19 2022:16 2026:14 2031:4 2033:8,10,11 ,12 2036:18 2037:9 2038:3 2041:1,3,5,7 ,9,11,13,15, 17,20,22,24 2042:1,3,4,6 ,8,10,11,13 exhibits 1666:25 1672:7,22 1673:1 1766:14 1767:7 1768:5 1769:4 2016:8,9 existence 2023:23 existing 2024:2 exotic 1721:8 expanded 1694:3 expansive 1812:6 expect 1687:15 1717:25 1718:19 1721:10 1742:3,6 1887:19 expectation 1688:16 1719:11 1720:22 1728:25 1729:10 expectations 1693:14</p>	<p>1720:8 1754:21 expected 1682:14 1691:1 1697:14 1720:6 1721:6 1727:19 1729:20,23 1730:1 1748:3 1774:18,22 1775:2,6,9,1 1 1925:14 1991:25 1992:8 2009:25 expended 1999:9 expenditure 1708:7 1878:3 1937:7 expenditures 1697:21 expense 1665:17 1714:9 1930:8,10,14 2032:23 2033:2 expenses 1930:7 2019:25 expensive 1679:18 1701:10 1704:17 1855:19 experience 1680:6 1738:7,11 1743:4 1759:13,15 1810:20 1812:5 1862:1 1871:22 1872:15 1873:7 1895:6,7,10, 11,17,20 1896:6 1907:7 1908:9</p>	<p>1982:21 1983:12,24 1988:19 1990:9 2000:1,10,11 2033:15 experienced 1692:20 1811:1 1813:18 expert 1774:7 1844:20 2024:18,24 2025:3,6 expertise 1737:25 1738:15,17,2 3 1781:24 1875:21 experts 1676:4 1683:24 1685:21 1755:6 1768:11 1844:19 explain 1710:3 1740:25 1747:1 1756:14 1765:22 1982:17 2011:3 explained 1861:24 1899:16,17 explaining 1796:1 1849:3 explanation 1665:16 1899:20 1993:19 explicitly 1804:20 1853:17 explore 1678:7 extended 1757:8 extensive 1746:22 1782:2,5,14 1810:13</p>
---	---	--	--

<p>1852:2 1860:13 1865:11,15 1873:4 1895:15</p> <p>extensively 1771:13 1792:21 1850:4 1867:5 1924:25</p> <p>extensiveness 1791:8</p> <p>extent 1724:10 2013:10</p> <p>external 1704:23</p> <p>extra 1687:18</p> <p>extras 1687:24 1689:4</p> <p>extremely 1984:5 1990:16 2011:11</p> <p>eyes 1771:4,16,22 1772:2,6,9,1 4,16,19,21 1773:1</p> <hr/> <p style="text-align: center;">F</p> <p>facilitation 1979:1,4,21, 23 1980:8,12</p> <p>facilitations 1979:5,10,18</p> <p>facing 1679:2</p> <p>fact 1693:19 1694:6,14 1703:24 1707:5 1709:4,22 1720:23,25 1722:7 1723:5,16 1726:7 1733:1,18,19 ,20,22 1756:24 1775:25 1776:3,9,19 1779:17</p>	<p>1802:22 1847:17 1854:12 1871:24 1898:15 1937:20 1973:16 1978:21 1982:23 2038:3</p> <p>factor 1675:9 1694:3 1696:3 1706:21,22 1740:11,13</p> <p>factors 1674:10,11 1676:8 1704:24 1706:15,17,2 0 1707:7 1709:12 1716:4 1725:9,13,20 ,21 1726:21 1740:9 1896:17 1937:16 2033:4</p> <p>facts 1699:17 1760:14,16 1782:15 1796:24 1850:17 1893:9 2000:16,19 2010:17,21 2011:14,16,2 3</p> <p>failing 1709:1</p> <p>failure 1760:2</p> <p>fair 1688:11 1709:22 1919:13 1995:1</p> <p>fairly 1748:25 1863:22,24 1871:9</p> <p>fall 1785:21 1848:23 1922:19 1990:14 1991:10</p>	<p>2017:13</p> <p>familiar 1754:11 1756:9 1763:14 1778:16 1802:13 1815:5 1853:8 1872:19 1875:24 1876:6,8,24 1877:2,4,5,1 5,16,18,22 1898:10</p> <p>families 1885:17 1886:3</p> <p>famous 1844:6</p> <p>FARS 1852:10,11,1 2,14 1853:5</p> <p>fashion 1670:5</p> <p>fast 1682:5 1742:3</p> <p>faster 1792:7</p> <p>favor 2000:20 2014:7</p> <p>FBI 1904:24</p> <p>February 1750:12,25 1751:4 1813:6,17,18 1817:15 1992:22</p> <p>fed 1905:12</p> <p>federal 1663:3 1852:8,13,19 ,21 1853:4 1862:5</p> <p>fee 1697:17 1787:16,25 1788:4 1903:7</p> <p>feed 1680:20,21 1685:6 1747:25</p> <p>feeds 1904:17</p> <p>feel 1702:22</p> <p>fees 1773:11</p>	<p>1802:25 1862:8 1866:5 1930:18 2001:16 2017:15,16,1 8,21</p> <p>felt 1670:1 1677:8,24 1679:15 1733:2 1782:1 1863:23</p> <p>field 1669:19,20 1688:6 1898:5</p> <p>fifty 1873:25</p> <p>fighting 1897:18</p> <p>figure 1850:12 1906:20 1922:8 1936:14 2014:24</p> <p>file 1659:12,16 1765:15,17,1 9 1766:10 1805:4 2013:16 2032:5,15 2037:24</p> <p>filed 1717:17 1731:24 1765:13,23 1766:4,6 1768:21 1926:16 2014:11 2015:17 2032:16</p> <p>files 1668:21 1767:23</p> <p>filing 1766:7 1971:5</p> <p>filled 1703:11 1751:3</p> <p>final 1693:16 1925:6,7</p> <p>finalists 1688:9</p>
--	--	---	---

finalized 1700:23	1676:5 1678:8 1686:13 1687:11 1694:10 1705:20 1711:9 1713:11 1714:7 1718:3 1730:5 1732:8 1746:9 1750:7,8 1754:17,19 1757:16 1773:10 1785:18 1796:17 1810:16 1815:2 1898:21 1901:10 1903:9,15,16 1906:23 1925:2 1929:18 1937:7 1971:9,18 1996:2 2010:9 2035:6	1771:9 1772:24 1774:21 1850:19 1861:5 1889:9 1924:1 1985:3 1991:14	Ford 1663:11 1687:17 forecast 1733:2 foregoing 2039:8,10 foremost 2010:9 forensic 1793:1 2025:19 foreseen 1681:5 forgive 1694:8 forgives 1694:17 forgiving 1694:13 forgot 1752:18 form 1816:21 1894:8 1983:9 2009:2 formal 1797:6 1848:12 formally 1987:17 format 1777:19 formats 1754:23 former 1904:24 formerly 1765:9 Forrest 1847:25 1889:3 1899:24 1900:9,21 forth 1751:21 1803:13 fortunately 1746:4 Forty 1873:25 Forty-six 2020:10 forum 1791:2 1795:2
financially 2039:17	1718:3 1730:5 1732:8 1746:9 1750:7,8 1754:17,19 1757:16 1773:10 1785:18 1796:17 1810:16 1815:2 1898:21 1901:10 1903:9,15,16 1906:23 1925:2 1929:18 1937:7 1971:9,18 1996:2 2010:9 2035:6	five-year-long 1985:7 fix 1698:5 1714:15 fixed 1761:10 1982:23 1983:2,19 fixed-price 2035:23 fixed-priced 2035:20,21 2036:1 fixing 1698:5 FL 1663:2 flag 1937:19 flaws 1675:8,10 fleet 1786:12 flooding 1683:9 flow 1720:18 fluctuations 1681:3 flying 1682:23 folded 1991:11 fold-out 1998:2 folks 1700:5 1712:22 1905:7 follow-up 1670:23 footings 1731:5 footnoted 2022:2,4 Force 1663:1 forced 1696:22	financial 1673:21 1710:2,4,15,18 financially 2039:17 finding 1693:16 1716:9 1886:4 1970:24 1971:2 2024:9 findings 1674:18 1689:9 1691:3 1711:3,12 1712:7 finds 1689:10 1768:13 fine 1673:9 1705:3,4,15 1774:5 finer 1811:22 1812:2 finish 1665:12 2000:22 2038:6 finished 1743:22 1990:23 Finnegan 1660:7 fired 1696:14 firm 1697:17 1769:18 1862:21 1908:6 2001:16 2023:19 2026:7 firms 1710:16,18 1886:8 1997:4 first 1675:14
five-year	Fischer 1661:18,19 1743:24 1764:22,25 2014:20 2015:5,7,10 2016:13,21,23 2040:20 fit 1685:15 1730:24 1751:10 1988:4,8 five 1750:14 1752:22 1775:9 1875:6 1888:1 1896:22 1898:17 1908:19 1986:5 1989:21,25 1992:10 1993:15 2010:19		

<p>1802:2 1882:2 1935:1 2031:2 forward 1666:2 1686:13 1775:10 1899:23 1930:14 1936:25 1987:13 2014:22,25 fossil 1812:10,18 fought 1984:5 foundation 1756:23 1768:7 2012:22 2013:4,5,11,25 foundational 1734:21 1735:1 foundations 1731:5 four-inch 1668:1 fourth 1676:15 1707:25 1708:25 2034:11 2035:24 fragile 1678:24 frame 1676:11 1679:23 1812:12 1813:2 Frankly 1759:9 free 1702:22 1725:3,4 freedom 1905:13 1973:6 freely 2032:10 Friday 1866:21 1970:8,9</p>	<p>1971:24 front 1694:23 1758:22 1768:22 1770:16 1773:7 1776:21 1869:8 1903:24 1979:7 1985:17,25 2010:21 2017:6 frozen 1890:5 fuel 1720:18 fuelled 2034:25 full 1723:14 1784:20 1845:16 1887:24 1893:19 1995:1,20 full-blown 2001:17 fully 1727:3 1814:6 fulsome 1926:6 1999:24 function 1871:6,23 2021:5 functional 1676:19 functions 1675:13 fundamental 1899:22 <hr/><p style="text-align:center">G</p><hr/>GAGAS 1710:14 1711:1 2020:17,19 2021:1,3,10,14,21 2022:4,5,6,12 2023:9,10,22,24 2024:3 2042:12 G-A-G-A-S 1710:14</p>	<p>game 1709:22 garage 1701:6,7,9 Garrett 1660:11 Gas 1660:17 GASCONADE 2039:3 gate 1863:13 gather 1889:1 gathering 1936:3 gauging 1753:17 general 1673:23 1772:2,5,21 1775:5,14 1776:22 1791:23,24 1803:2,5 1849:5 1852:4 1862:1 1863:3,6 1873:11 1893:25 1988:25 1989:8,12 1999:5,17 2024:22 2036:13 generally 1710:10 1848:7,14 1899:11 generated 1764:7 1991:10 Generation 1786:11 generator 1786:15 generators 1731:1 genesis 1924:6 gentlemen 1897:1,8 genuflect 1887:20 geographic</p>	<p>1996:24 1997:9 Georgia 1875:13 2034:8 gesture 1854:13 gets 1719:14 1894:17 1989:24 1991:11 getting 1682:13 1687:22 1689:3 1714:22 1720:8,25 1854:23 1855:24 1856:4 1857:15 1903:8 1922:16 1988:24 1995:5 gift 1852:19,21 1854:2,7 1855:1,3,13 gifts 1851:9,25 1852:17 1853:11,24 1854:10,13 1855:4 Giles 1859:11 1922:12 given 1666:6 1668:11,12 1669:10,13 1670:12,25 1690:24 1745:1 1756:14 1757:7 1770:6,13 1775:24 1776:3,10 1852:21 1855:10 1877:7,12 1888:3 1904:4 2000:16 2011:15,16 2037:13,14</p>
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<p>gives 1813:2 giving 1689:2 1776:7 1805:9 1846:13 1852:16 1853:24 1887:2 1900:22 1906:1 GLEND A 1662:14 golf 1865:24 1866:9,14,17 ,19,24 1867:1,3,4,2 3 1869:18 golfer 1866:12 gone 1679:17 1689:6 1724:5 1844:6 1845:20,21,2 3 1855:17 1922:21 2013:18 goodwill 1854:13 Gorman 1970:8 Gotcha 1712:20 gotten 1695:21 1755:3 Gould 1779:24 1780:7 1889:25 1893:15 1894:20,22,2 5 1902:2 1905:2 1919:11 governance 1853:7 1855:8 governed 1853:4 government 1710:10 1810:23 1852:14,17,2 5 1862:5 1905:13,16,2</p>	<p>3 2020:20,21 2022:22 governments 1862:8 GPE's 1735:25 grade 2033:19 Grady 1672:2 gratuity 1852:17 great 1681:12,17 1687:21 1704:19 1732:23 1982:18 1983:7,8 2011:13 Greater 1659:15 green 1866:5 greet 1895:10 Grimwade 1737:16 1816:8,10 1902:4,6,8,1 8 1926:5 ground 1981:2 group 1684:3 1786:19 1877:11 groupings 1684:18 1775:14 groups 1714:15 1973:9,10 grown 1682:14 growth 1747:2,6 1749:18 guarantee 1727:23 guarantees 1719:9 guess 1685:1 1690:25 1697:23 1712:2 1771:15 1809:23 1844:17,23 1865:12</p>	<p>1871:12 1885:13 1888:9 1896:9 1903:20 1904:12 1999:13 2036:22 guessing 1783:22 1871:10 Gunn 1659:20 1695:9,10,13 1705:6,9 1714:8 1742:25 1870:2 1901:5,6,9 1919:2 1926:8,24 1927:4,7,12 1928:4,8,14, 18 1972:19,23 1986:9 1996:25 2010:24 2040:4,14 gut 1923:13 guys 1862:14 1863:8 1908:21 <hr/> H half 1686:14 1796:21 1811:11 1896:24 1897:23 1898:19 1923:5 half-hour 2037:21 hand 1703:18 1762:13 1798:3 1804:3 1812:24 1844:7 1868:15 1980:10 handed 1666:24 1731:20 1848:25 1994:6</p>	<p>2022:19 2026:18 handful 1983:16 handle 1682:18 1686:4 1780:15 handled 1684:12 1846:25 1928:10,11 handles 1687:17,18 handrails 1762:24 1763:9 hands 1685:19 handwritten 1669:19 happen 1993:6 happened 1692:25 1734:24 1907:17 1920:21 happens 1692:7 hard 1679:9 1885:13 1984:5 1996:19 2011:2 harder 1715:6 1862:15 hard-fought 1984:2 1999:19 Hardin 1682:23 1686:2 1696:1,2 1697:5,13,22 1755:4 1763:19 1769:20,24 1776:8 1779:11 1780:2,24 1781:5,19 1782:25 1783:3,8 1784:4,6,10, 20 1785:17</p>
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<p>1786:2 1787:11,14 1791:16,21 1792:8,12 1793:4,6 1795:8,11,18 1796:6,8 1804:18 1806:1,21,22 1807:6,12 1808:2 1810:10 1846:18 1847:4 1849:6 1862:17 1869:7 1874:22 1887:13 1889:19 1893:6,23 1919:19 1980:15,17 1981:7,10 1985:22 1986:7,13 1987:10,12,1 7 1990:20 2001:12 2009:19 2012:20,24 2013:1,5,12 2014:12 2031:11</p> <p>Hardin's 1769:18 1798:8 1808:9 1847:15 1887:4 1985:15 1988:18</p> <p>hardly 1771:24</p> <p>harsh 1886:11</p> <p>Harvey 1898:10</p> <p>hashed 1902:25</p> <p>hate 1806:12 2036:20</p> <p>Hatfield 1662:10 1715:12 1764:25 1765:2,6 1766:2,9</p>	<p>1767:6,20,21 1768:24 1769:11 1771:18 1777:4 1781:14 1786:25 1788:3 1793:7,11 1796:23 1804:7 1813:8 1814:2 1849:16 1850:16 1856:23 1857:2,8 1890:8,15,22 1893:9 1899:25 1900:6,14 1908:22 1929:24 1980:1 1982:2,6 1985:16,20 1998:13,16 2001:19 2009:4 2012:11,13 2014:9 2040:8,17,18</p> <p>Hathoway 1970:7</p> <p>haven't 1718:7 1744:6 1796:13 1855:5 1893:18 1927:9 2032:18</p> <p>having 1670:10 1675:25 1687:16,17 1694:9 1738:7,22 1779:23 1784:10,12 1802:13,14 1809:10 1862:4,6,7 1863:6 1864:12 1873:11 1885:13,17,2 2 1886:2</p>	<p>1898:4 1902:25 1928:9 1937:6 1978:5 1986:8 1994:7 1996:13 2009:18 2022:6</p> <p>HC 1744:5,7,10, 13 1746:1 1767:7 1769:5,7 1788:5,6 1793:7,10,14 1798:2 1817:24 1908:2 1930:18 1938:2,5 2001:21,23 2026:21</p> <p>head 1781:9 1854:6</p> <p>heading 2033:12 2034:21</p> <p>Healy 1660:2</p> <p>hear 1666:16,17 1705:14,15 1777:10 1798:11 1930:2</p> <p>heard 1717:16 1752:22 1855:4,5 1876:7,10,12 ,16</p> <p>hearing 1659:6 1672:24 1697:24 1712:1 1722:24 1733:8 1856:7 1869:23 1889:20 1893:16,23 2010:10,18 2016:17 2031:3 2038:11</p>	<p>hearings 1702:13 1707:19 1714:16 1727:1 1894:15,19 2017:24</p> <p>hearsay 1767:25 1768:1 1813:9 1859:17</p> <p>heart 1686:7 1877:19</p> <p>heated 1926:3</p> <p>heaters 1680:21 1685:7</p> <p>Heather 1662:1 1862:12 1893:25 1894:13</p> <p>Heavens 1754:4</p> <p>heavily 1894:11 2010:9,13</p> <p>heavy 1860:24</p> <p>heavyweights 2011:25</p> <p>Hecker 1662:10</p> <p>Heinz 1660:11</p> <p>held 1699:10 1723:12 1744:17 1788:16 1793:16 1798:13 1808:25 1818:1 1868:19 1876:9 1878:7 1882:11 1891:1 1909:4 1929:9 1930:23 1938:8 1974:4 2001:25 2026:25</p>
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<p>2032:7 help 1757:12 1772:11 1791:18 1804:5 1901:11,13 1907:12 1908:20 helped 1903:25 1904:1,2,3 helpful 1759:12 1985:10 helping 1991:8 Henderson 1970:20,22 hereby 2039:8 here's 1685:4 1814:7 1903:24 1904:18,19 HERNANDEZ 1664:3 he's 1725:3 1726:7 1759:6 1760:4 1768:11,19 1772:1 1773:14 1774:10 1778:17,19,2 4,25 1787:4,6,10 1793:2 1795:19 1803:8 1805:3,9,21 1813:25 1814:5 1844:18 1857:10,11,1 2,13 1875:11 1895:17 hesitant 1857:19 hesitating 1738:3 hey 1700:3 hide 1905:20 high 1660:19 1683:10</p>	<p>2011:3 higher 1679:22 1753:10 2001:13 high-level 1904:5 highly 1703:16 1771:7,17 1772:3,17 1817:21 1844:19,20 1890:12,13,1 9 2041:6,10,14 ,19,23 Hills 2033:17,21 2035:14 2036:5 hindsight 1679:19 1691:5,10,14 ,16,17,21,23 ,24 1692:6,8 1708:3,23 1715:24 1716:1,3 1723:24 1751:20 1753:23 1990:4 hinges 1723:24 hire 1694:11 1705:20 1781:10,19 1782:25 1783:3,5,8,9 1795:15 1907:10,18 1982:10,14 hired 1681:13 1704:7 1750:11 1781:5 1783:11,13,1 7 1785:2 1810:11,18,1 9 1815:9 1907:19 1985:22 1987:10 2026:7,8</p>	<p>hires 1904:23 hiring 1696:1,12 1982:9 1985:15 history 1814:7 hit 1697:19 1996:19 hold 1686:2 1693:13 1921:23 1924:17 2025:13,14,1 6,21 holding 1778:20 1780:4 1876:4 holistic 1674:23,24 1675:1,11 1678:1,5 homes 1886:6 honest 1711:19 1870:12 Honor 1728:9 1744:3 1970:13 Hookum 1767:11,12 Hookum's 1768:21 hope 1924:17 hospital 1811:14 hour 1784:8 1908:14 1998:5 2015:1 2036:22 hourly 1803:12 1809:11 1810:8 1848:24 1890:3,11 1996:23 1997:3 hours 1704:25 1743:20 1844:11</p>	<p>1866:16 1886:6 1991:25 1992:14 1999:4,9,10 HR 1873:5 huge 1696:18 2010:13 hugely 1853:3 Humphrey 1662:1 1893:25 1894:3 2010:7 Humphreys 1862:12 1894:13 Humphrey's 1894:7 hundred 1677:24 1684:4 1703:14 1713:15 1863:20 1927:11,12,1 5 1928:7 1997:25 hundreds 1862:10 hurdle 1902:20 hybrid 1903:17 Hyneman 2012:7,9 Hyneman's 1798:4 hype 2024:14 hypothetical 1700:5 <hr/> <p style="text-align: center;">I</p> <hr/> i.e 1782:11 Tatan 1666:1 1672:4 1673:18 1676:9 1678:9,22,25 1679:13 1688:10 1703:23 1727:6</p>
--	---	---	--

<p>1738:2 1739:12,21 1740:5 1742:1 1778:4 1779:8,19 1780:12,15,2 1 1781:6 1785:24 1786:3 1795:9,12,16 1814:13 1815:7 1846:19 1851:22 1864:8,11,13 1865:7 1870:15 1872:20,21,2 4 1873:1,16 1885:9 1889:6 1896:7,9 1930:7 1970:17 1971:9 2014:13 2017:24 2018:14,15 2019:19 2031:8</p> <p>IBEW 1662:20 I'd 1703:18 1733:5 1734:18 1742:21 1743:20 1744:4,6 1747:1 1750:1 1778:1 1785:6 1806:13 1869:2,21 1903:20 1907:7 1908:22,25 2011:8</p> <p>idea 1678:20 1741:15 1806:9 1816:16 1868:8 1907:8 1984:15,18 1991:16 2036:20</p> <p>Ideally</p>	<p>1722:2</p> <p>ideas 1682:14</p> <p>identificatio n 1666:14,22 1671:22 1731:18 1869:5 2022:17 2026:15</p> <p>identified 1667:2 1675:10 1690:1,19 1694:4,15 1732:4 1754:9 1774:18 1775:7 1792:20 1849:22 1850:3 1856:3 1888:24 1898:6 1979:6 1982:19 1988:8 2009:22 2011:12 2042:8</p> <p>identifies 1709:20 2023:15</p> <p>identify 1671:24 1675:15 1677:19 1683:25 1689:18 1694:5,12 1713:12 1727:21 1731:20 1738:12 1755:18,25 1776:20 1778:12 1889:2,19 1890:3 2012:23 2013:23 2022:19 2026:17 2035:5,12</p> <p>identifying 1678:3</p>	<p>idiot 1919:11</p> <p>ignore 1693:18</p> <p>I'll 1697:3 1724:5 1726:10,12,1 9 1728:7 1735:1 1742:25 1745:19 1757:13 1760:20 1772:8,9 1774:24,25 1813:14 1814:10 1844:7 1857:4,20 1901:7 1980:10 1982:10 1998:11 2020:16</p> <p>Illinois 1765:10 1813:1</p> <p>illustrate 1735:21</p> <p>illustrates 1723:15</p> <p>illustration 1740:14</p> <p>I'm 1669:8,13 1672:21 1673:9,14 1679:18 1684:6 1687:7 1688:20 1689:17 1690:5 1691:16,19,2 1 1692:11,14,1 5 1694:13 1699:1,2,5,8 1700:18 1707:10 1709:9 1714:12 1718:2,4 1719:5 1722:12 1724:2,24 1725:18 1726:6,15,16 1736:2</p>	<p>1738:3 1739:16 1741:8,10,19 1743:16 1746:5 1756:22 1757:7,10 1760:4 1764:3 1767:21 1774:22 1776:6,7 1780:19 1781:21 1782:5 1785:5 1787:18 1792:4 1798:3 1803:24 1806:1,8 1808:4 1809:21 1811:25 1812:12,15,2 4 1813:8 1844:5 1845:17 1846:22,23 1847:12 1848:20 1849:5,10,17 ,24 1850:10,11 1852:18 1853:8,13,15 1855:5,20 1856:25 1857:3,14,18 1859:2 1862:19 1863:4,5 1866:1 1868:15 1876:8 1877:18,22 1885:3,13 1886:9,12 1887:13,25 1888:7 1893:12 1896:9 1899:25 1900:1,6 1901:13 1906:9,17,20 ,24 1907:22 1908:1,3,19 1920:12</p>
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<p>1922:23 1927:11 1928:6,23 1930:8,14 1936:9,13 1970:23,24 1971:2 1973:21 1979:20,21 1980:9 1982:3 1984:9,11 1990:23 1997:5 1998:11 2001:20 2013:7,8 2021:17 2022:9 2023:3 2024:21 2025:22 2033:19 2034:18 2036:10 2037:9</p> <p>imagine 1778:2 1851:17 1871:23</p> <p>imminently 1872:13</p> <p>impact 1689:14 1690:10 1753:18 1757:5 1761:18,21 1846:16 1859:24 1860:2 1922:17 2001:8 2011:20</p> <p>impacted 1922:6</p> <p>impacting 1874:13</p> <p>impacts 1754:22</p> <p>implement 1925:15</p> <p>Implementatio n 1659:13</p> <p>implication 1809:24</p>	<p>1999:17</p> <p>implied 1691:10</p> <p>implies 1667:20</p> <p>imply 2018:10</p> <p>importance 1730:2</p> <p>important 1678:9,12 1691:24 1736:23 1737:24 1738:16 1747:7 1749:2 1759:23 1985:6</p> <p>importantly 1979:16 1992:6,18 2011:12</p> <p>imposed 1804:21</p> <p>impossible 1714:24</p> <p>improper 1684:6</p> <p>improperly 1691:4 1708:3 1906:10</p> <p>improved 1921:23</p> <p>improvement 1896:7</p> <p>improvements 1680:22 1921:12</p> <p>imprudence 1674:16 1675:15 1684:2 1689:11 1716:19 2019:19,21,2 2</p> <p>imprudent 1665:18 1675:19,21 1677:3,20 1690:19 1692:21</p>	<p>1697:20 1699:2,4 1708:7,8,10, 11,14 1711:16 1713:7,21 1716:10,13 1721:4 1722:22 1723:4 1733:14 1734:2,5 1753:9 1762:5 1802:7 1982:10 1987:24</p> <p>imprudently 1713:12 1761:17</p> <p>inability 1733:2</p> <p>inappropriate 1728:2 1760:10</p> <p>in-camera 1788:10,14,1 6 1793:16 1798:10,13 1817:24 1818:1 1878:4,7 1882:7,9,11 1890:9,20,24 1891:1 1908:20,22 1909:1,4 1930:21,23 1938:8 1974:4 2001:25 2026:22,25 2040:10,11,1 2,13,14,15,1 6,17,18,22</p> <p>incident 1814:7 1877:3,4,21</p> <p>include 1665:21 1667:9 1697:3,4 1711:2,16 1991:6 2018:7</p> <p>included 1666:2</p>	<p>1667:6,15 1668:17,22 1688:23 1702:24 1718:19 1720:7 1721:17 1723:7 1728:2,4,20 1729:7,20 1733:3 1741:13 1745:16 1752:17 1792:15 1807:13 1810:23 1874:21 1888:19 1889:4 1907:21 1987:25 2037:10</p> <p>includes 1738:9 1804:11 1987:22 2014:12 2021:23</p> <p>including 1874:1</p> <p>incorporated 1778:14 1894:23</p> <p>incorrect 1726:9,17 1752:24,25 1774:4</p> <p>increase 1685:8,9 1700:9 1706:1 1741:20,22 1748:17 1797:20,25 1809:11</p> <p>increased 1680:18,20 1681:4 1695:16 1698:11 1714:14 1738:18 1739:10 1748:8 1762:5 1847:19,20</p>
---	--	--	--

<p>1850:8 1921:17</p> <p>increases 1699:4 1748:9 1797:21 1809:17 1810:1,6,8</p> <p>incremental 1723:12</p> <p>incumbent 1763:13 1935:9</p> <p>incur 1849:20</p> <p>incurred 1993:17</p> <p>indeed 1775:7 1855:1 1874:7 1897:8 1898:14 1906:6 1937:19 1988:2,10</p> <p>indelicate 1673:24</p> <p>Independence 1661:15</p> <p>independent 1670:8 1706:5 1768:13 1779:16 1780:18,23,24 1781:3,6,11,12,19 1783:6,19,24 1784:11,19 1785:9 1786:2,18 1787:8,10 1793:2 1803:24 1804:22 1805:24 1806:23 1807:7,15 1808:10 1810:11 1844:24 1846:14 1860:9,22 1874:18 1875:10 1887:10</p>	<p>1890:1 2026:11</p> <p>independently 1795:20</p> <p>in-depth 1668:7 1808:8</p> <p>INDEX 2041:1 2042:1</p> <p>Indiana 1767:17</p> <p>indicate 1670:25 1736:7 1750:2 2035:1</p> <p>indicated 1665:17 1674:17 2012:24 2013:2</p> <p>indicates 1723:18 1759:6 2034:22</p> <p>indicating 1672:2 1874:25</p> <p>indication 1709:24 1761:13</p> <p>indications 1683:22</p> <p>indirects 1748:22,24</p> <p>individual 1668:21 1730:20 1775:12 1807:13</p> <p>individually 1717:25</p> <p>individuals 1796:5 1809:18 1864:24 1893:21</p> <p>industry 1710:13 1759:14 1844:19,20 1876:18 1895:13</p>	<p>1983:1,13,25 1988:19 2000:11 2011:21</p> <p>industry-wide 1989:18 1990:14</p> <p>infancy 1922:1</p> <p>influence 1865:6,8,9,10,13,16 1924:16</p> <p>informal 1901:21</p> <p>information 1665:19 1666:5 1667:14,17,18 1668:25 1669:7 1670:13,20,24 1671:14,17 1700:15 1708:19 1709:22 1715:19 1734:11 1744:5 1754:14 1776:13 1777:2 1812:25 1813:12 1857:15 1864:20 1890:13 1897:10 1905:14 1973:1,4,6,14,16 1980:8,24 1985:10 1986:4 2011:4,15,23 2015:18</p> <p>informed 1715:14 1779:17</p> <p>infrequent 1888:13,15</p> <p>inherent 1885:18</p> <p>in-house 1894:13</p>	<p>initial 1670:24 1720:7 1721:13 1728:3,4 1737:14 1739:25 1740:20 1741:20 1778:7 1795:25 1816:20 1846:20,21 1847:3 1858:25 1896:21 1902:15,16,17 1970:18</p> <p>initially 1772:25 1817:11 1850:4 1903:18 1970:25</p> <p>initiated 1861:24 1901:12,18</p> <p>inject 1679:19</p> <p>in-person 1782:19 1903:5</p> <p>inquire 1757:11,14 1872:4 2013:13</p> <p>inquires 1791:8</p> <p>inquiry 1694:20</p> <p>inspected 1669:5</p> <p>inspection 1668:9 1669:19</p> <p>installation 1749:5</p> <p>instance 1703:16 1750:6 1762:13 1860:8 1874:22 1899:14 1937:8</p>
--	---	--	---

2022:24	5 1694:2,12	1992:21	1734:7
instances	1696:7,9	1993:14	issue 1670:11
1856:18	1706:8	1994:6	1723:20
1927:1	1709:2,5,7,1	1995:24	1767:23
2019:22	1,18,20,23	2009:5	1772:9
instantaneous	1714:20	2042:10	1888:22
ly 1887:22	1735:21,23,2	invoiced	1935:24,25
instead	5 1772:20	1980:17	1936:7
1682:15	1992:12	invoices	1937:3,11,12
1683:14	1996:13	1697:5,6	,25 1970:16
1685:10	interpret	1715:16,18	1971:8,9
1857:23	1690:4,6	1802:15,22	1980:15,22
1928:9	1708:19	1804:19,23	1985:13
Institute	1889:1	1807:1,3,6,9	1994:15
1876:5,8,22	interrupt	,12,13	issued
institution	1806:13	1808:9	1665:25
2025:17,24	1900:1,7	1809:20	1672:7
instructional	2036:20	1810:1,6,7	1728:1
1748:15	interviewed	1861:1	1732:25
insufficient	1741:2	1889:11	1736:13
1671:1	1779:7,9,11	1992:5	1737:7,8,21
insurance	1780:3	1996:22	1751:11
1728:23	intimate	2009:7	1924:22
insured	2010:17	invoked	1987:6
1729:12	intimately	2011:6	issues
intelligent	1853:8	involved	1676:16
1872:10	introduce	1734:19	1678:3,4
intend 1850:4	1815:19	1811:17	1690:1
intended	introduced	1814:18	1755:10
1690:6	1760:7	1888:14	1772:7
1720:2	1815:20	1899:8	1776:10
2016:10	1901:19	1922:16	1780:15
intending	introduction	1924:19	1805:4
1694:25	1767:7	1979:18	1845:23
intensive	investigation	1987:12	1846:16
1861:24	1706:13	2000:25	1856:4
interact	investigator	2036:11	1865:10,16
1702:9	1904:23,24	involvement	1867:6,14
interest	invite	1922:20	1874:13
1906:15	1865:20,24	2036:12	1888:10,23
interested	1866:8	involving	1897:14
2039:18	invited	1811:3	1898:4,6,8,1
interesting	1865:22	irrelevant	3,14,24
1697:12	invoice	1814:4	1900:24
1701:19	1714:25	island	1920:15
1767:23	1715:7,12,15	1685:14	1921:6
intermittent	1769:21,25	1700:19	1923:12
1812:22	1770:4	1729:1	1924:2
internal	1788:11	1730:21,22	1926:12,14
1683:24	1804:3	isn't 1665:24	1928:10,11
1693:18,20,2	1805:1,15	1667:1,22	1970:19
	1860:12	1669:17	1973:7,12
	1861:3,21	1671:3	1979:11,19
	1869:1,2,8	1692:6,8	1984:7
		1715:6	1985:4
			1991:7
			1992:1,13
			2000:16

2010:17 2011:11 issue-specific 1874:1 issuing 1928:2 item 1680:8 1681:18 1747:8 1753:2 1759:23 1775:1 1805:1,15,22 itemized 1804:4 items 1675:4,5 1683:6 1723:7 1725:13 1731:2,4 1735:9 1747:5 1752:5 1763:4 1805:11 1807:1 1850:3 1860:18 it's 1666:12 1667:19,20 1670:5 1672:1 1677:13 1681:9 1685:19 1686:5 1690:23 1692:16 1694:4 1698:24 1699:4,7,13 1700:19 1701:9,16 1709:7,23 1710:14 1711:7 1713:13,16 1714:24 1716:14 1719:24 1720:5 1724:13 1725:24 1726:14,24 1728:14	1729:1,11 1731:22 1732:5 1734:5,7,12, 25 1736:7 1737:7,18 1738:16,20 1740:14 1742:15,20 1743:8 1747:7 1753:25 1760:15,21 1761:15 1763:7 1766:21 1767:22 1768:1 1770:23 1771:3,22 1772:2,3,15 1773:1 1774:20 1775:10 1776:22 1778:2 1782:8 1786:24 1788:5 1793:9,11 1797:10,13 1802:7,17 1812:25 1813:10 1816:6 1845:15 1847:14 1851:1 1852:2 1854:5 1855:1,11 1856:7,24 1857:24 1863:11 1871:12 1873:6 1876:18 1886:17 1887:7 1889:9 1890:11 1905:3 1919:6 1928:1 1929:1 1935:5,9 1937:13 1971:8,14 1978:20	1981:5,13 1984:1 1985:3,9,18, 19 1986:4,5 1989:24 1990:1,16,17 ,18 1994:24 1998:2,7,8,1 7,24,25 1999:1,2 2001:13 2010:7,12 2014:3 2022:5 2023:10 2032:18 2034:16 2035:8,10 2036:24 2037:12 I've 1665:11 1666:24 1670:22 1675:2 1690:15 1710:7,8 1711:20 1715:14 1731:20 1779:16,23 1813:23 1852:21 1853:2,5,15 1854:20 1855:19 1857:16 1863:16 1872:9,10,13 1876:7,12,16 1877:12 1923:21 1972:12 1984:10 2001:19 2022:19 2026:17 2037:14 <hr/> <p style="text-align: center;">J</p> <hr/> jacket 1999:11 JACOBS 1660:14 JAIME 1664:2 James 1661:9,18 1772:22	January 1659:7 1679:2 1680:23 1681:7 1730:2,9 1736:15 1747:2,10 1748:1,14 1749:18 1753:2,3 1796:13 1807:19,20 1813:12 1992:21 Japan 2025:23 Japanese 2025:24 Jarrett 1659:19 1673:4,6 1695:6 1699:16 1706:15 1708:1 1895:25 1896:2 1900:3,8 1901:1,4 1989:3 2012:3 2040:4,13 Jay 1807:15 Jefferson 1659:8 1660:8,20,23 1661:2,12,20 1662:11,23 1663:6 1664:7,11 Jeffrey 2034:15,16 2035:24 Jenks 1870:21 1871:2,4,17, 21 1872:3,4 Jennifer 1659:23 1664:3 2039:5 Jerry 1798:1 1807:10 1808:8 1809:12 Jim 1773:5
--	---	--	--

<p>1795:5,12,15 1860:10 1888:24 1904:12 1905:2</p> <p>JLG 1877:3,4,21, 23 1878:3</p> <p>job 1693:6 1694:16 1795:25 1872:14 1876:17 1886:19 1897:15 1900:17 1985:5,8 1989:16 1998:25</p> <p>jobs 2034:3</p> <p>Joe 1875:7,8,12, 14,18,19</p> <p>John 1663:8,12,13</p> <p>join 1906:24</p> <p>joined 1871:3 1922:1</p> <p>Jonathan 1979:10,18,2 1,23 1980:13,15,2 1 1981:2</p> <p>Jones 1756:19 1774:3 1780:10 1781:6,11,19 ,23,25 1782:10,13,2 4 1783:1,4,5,8 ,9,12,13,18, 23 1784:1,9,13, 16 1785:3 1803:18 1860:11</p> <p>Joseph 1662:24</p> <p>jour 1923:12</p> <p>JR 1660:18</p> <p>judge 1659:19 1665:1 1666:15,19</p>	<p>1672:20,23 1673:3 1694:19,21,2 4 1695:3,9 1705:9 1714:2 1716:23 1717:1 1724:24 1726:10,19 1728:11 1733:7 1734:25 1742:19 1743:19,25 1744:9,12,18 ,22 1754:6 1757:13 1760:20 1764:16,20,2 2,24 1765:3 1766:2 1767:6,9,20, 21 1768:25 1769:3,9,12 1770:19 1771:18,23 1772:8 1775:17,20 1777:4,10 1786:22,25 1787:1 1788:3,7,13 1791:1 1793:7,9,13 1795:1 1796:25 1798:5,10 1802:1 1804:6 1806:8,12,18 1808:14,21,2 3 1809:1 1813:8,14 1814:2,10 1817:23 1844:1 1857:4,8,14, 21 1868:12,17,2 3 1869:23 1870:4 1878:5 1882:1,8 1885:1 1890:8,20,24 1893:1,12 1895:24 1899:25</p>	<p>1901:4 1909:2 1923:22 1926:22 1928:2,12,18 1929:7,10,14 1930:20 1935:1 1938:4,6 1970:1,14,23 1971:2,6,12, 16,20 1972:1,6,7,9 1973:23 1978:2 1981:25 1982:2 1984:14,16 1985:19 1998:13,15 2001:19,22 2009:1 2012:12,13,1 6,18 2013:13,21 2014:2,9,18, 21 2015:5 2016:13,16,2 1,24 2018:18 2019:13 2022:15 2026:13,23 2031:1 2036:19,23 2037:6 2038:8</p> <p>judged 1937:15</p> <p>judges 1923:25</p> <p>judge's 1929:1</p> <p>judging 2023:24</p> <p>judgments 1699:20</p> <p>July 1741:24 1756:12,13 1758:14 1759:9 1987:4</p> <p>June 1731:25 1737:20 1750:13 1866:20 1869:14 1923:6</p>	<p>1987:23 1993:2</p> <p>junior 1703:16</p> <p>jurisdiction 1691:2 1906:4</p> <p>justification 1668:23 1978:18</p> <p>justifications 1978:17</p> <p>Justin 1672:2</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Kansas 1659:11 1660:16,24 1661:21 1662:2,3,4,7 ,8,12,16,19 1665:25 1669:8 1671:18 1673:11,25 1674:2,10,15 1678:11 1689:10 1690:21,22 1691:4 1693:17 1694:23 1695:1 1702:6,10,12 1704:6 1705:19 1706:16 1707:5,17,22 1709:10,14 1723:15,19 1724:3,6,11 1725:1,6,10 1726:5 1727:7 1731:22 1732:4,14 1733:24 1740:11 1747:12,13 1752:18 1779:3 1803:13 1855:21 1885:17,20 1886:2 1901:11 1930:15</p>
---	---	---	--

1986:17 1987:24 2009:12 2017:6,15,19 ,23 2018:23 2032:13 2034:17 2042:7 Kansas's 1706:16 1707:4,25 KARL 1662:5 KC 1805:18 KCC 1665:24 1667:1 1672:3 1686:23 1724:12,21 1876:25 1877:17 KCC's 1724:17 KCI 1804:11 1805:4,22 KCP&L 1659:15 1665:5,25 1666:25 1670:12 1671:25 1672:10,22,2 3,24,25 1692:21 1705:22 1715:7 1719:16,22,2 5 1720:2 1727:10 1730:3 1731:21 1732:7,10,16 1733:7,8,14 1735:12 1744:10 1745:2,3 1749:12,14,1 5,19,23 1754:15 1756:25 1757:2 1759:2,8 1760:2,25 1769:24 1770:3,6,15 1774:15,21 1776:5,14,25 1778:4,10,15 1780:17,23 1781:2,9,13	1782:1,7 1783:12,14,2 0 1784:2,8 1785:2,7 1787:14,20 1791:10,15,1 7,22,25 1792:17 1795:15,23 1796:8,18 1797:10 1802:22 1806:25 1807:8,14 1808:1,6 1809:11,19 1810:2 1814:13 1815:19 1817:18 1845:20 1846:13 1848:23 1849:23,25 1850:18 1851:15 1852:3 1853:25 1856:20 1857:7 1860:9,11 1861:19,21,2 4 1864:14,22 1866:17 1868:7 1869:22 1871:13,16 1873:16 1876:25 1877:17 1887:3,10 1890:4 1893:5 1894:12,18 1903:10 1904:18 1905:20 1907:9,17,19 1908:19 1921:12,16 1922:13 1924:25 1937:3 1970:6,9,12, 20 1978:7 1979:16,17 1980:7,11,13 ,14,20,25 1981:1,4,8,2	1,22 1986:6 1988:12 1991:12 1993:14,25 1995:12 2000:20 2010:14,20 2019:25 2026:2,6,7,1 0 2031:20 2032:7 KCP&L's 1693:18 1719:17 1727:5 1759:10 1776:10 1803:2 1887:14 1888:11,20 1894:19 1896:13 1898:11 1919:17 1920:17 1978:20 1981:18 Ken 1765:12 1861:4 1889:7 1980:17 Kenneth 1765:9 1791:3 1795:3 1802:3 1844:3 1862:18 1882:3 1885:4 1893:3 1919:1 1935:2 1972:14 2009:3 2040:8 2041:7,9,11, 13,16,18,20, 22 Kenney 1659:20 1666:15,17 1705:10,12 1713:24 1714:2 1715:24 1742:16,23 1798:7,11	1808:20,22 1875:2 1928:19,21 1929:3,15,17 1930:1 1935:3 1972:18 1974:1 1983:10,22 2009:17 2010:23 2040:5,15,16 Kentucky 2034:2,15 KEVIN 1659:20 1664:2 key 1750:20 1846:16 1991:16 kidding 1808:20,21 Kiewit 1676:17 1677:7 1684:3 1696:15 1719:1 1745:3,4,13 1746:13 1995:9 1996:9 kinds 1697:22 1754:5 KINDSCHUH 1663:8 Kissick 1676:17 1719:1 Kliethermes 1664:3 2019:14,16 2022:14,18 2026:12,16,2 0 2031:7 2036:19,22,2 5 2037:2,3,7 2038:6,9 2040:21,22 knew 1683:2 1699:23 1754:6,8 1755:12 1811:2 1890:23 1902:8,9,10
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<p>knowledge 1699:22 1741:12 1767:5 1782:14 1792:6 1795:13 1811:24 1859:8 1860:1 1875:25 1876:11,15 1889:18 1895:15 1982:25 2010:17,20 2016:4,5</p> <p>knowledgeable 1755:6</p> <p>known 1699:17 1701:12 1708:16 1765:10,11 1781:23 1936:2,4 1979:17</p> <p>Kris 1936:1 2011:17 2015:13,16 2041:3,5</p> <p>K-r-i-s 2015:13</p> <p>KRIS 2031:6 2040:19</p> <p>KS 1662:15,19 1663:10</p> <hr/> <p style="text-align: center;">L</p> <p>labor 1681:23 1754:20 1930:6</p> <p>lack 1681:23 1706:7 1709:21 1737:2 1921:11</p> <p>laid 1797:3 1848:14,22 1850:1,5 1991:1,13</p> <p>Lane 1663:2</p> <p>language 1717:17 1719:9</p>	<p>large 1759:17 1786:14 1848:1 1875:3</p> <p>largely 1677:8 1715:16,19</p> <p>larger 1717:5 1746:9 1812:21</p> <p>LARRY 1661:18</p> <p>last 1670:11 1677:17 1681:17 1697:25 1703:7 1717:9 1731:25 1734:14,18 1761:10 1808:17 1864:1 1869:1 1870:12 1893:7 1899:3,4 1926:16 1984:12 2010:19 2021:4</p> <p>late 1679:16 1736:18 1814:18 1886:7 1906:25 1971:13 1994:24 2017:13 2034:11,14</p> <p>late-filed 1926:20</p> <p>lately 1855:18</p> <p>latently 2026:18</p> <p>later 1728:1 1737:21 1766:5 1807:23 1898:17 1921:19 2014:23</p> <p>latitude 1710:23 1757:11</p>	<p>laugh 1850:25</p> <p>Laura 1667:2 1669:4 1672:3,6 2041:24 2042:3</p> <p>law 1659:19 1660:2,6,10, 14,15,18,22 1661:1,5,9,1 0,14,18 1662:1,5,6,1 0,14,18,22 1663:1,5,8,1 2 1695:1 1769:18 1773:15 1862:21 1936:13 1937:3,11 1996:1 1997:4 2025:14 2026:7</p> <p>lawfully 2032:22</p> <p>lawyer 1713:23 1908:5</p> <p>lawyers 1905:8</p> <p>lay 1725:25</p> <p>laying 1771:8,10 1772:24</p> <p>layperson 1722:8,12</p> <p>lead 1734:22 1861:4</p> <p>learn 1759:7,10</p> <p>learned 1682:17 1707:16 1732:23,24 1737:1</p> <p>learning 1707:20</p> <p>least 1751:18 1758:16 1796:20 1803:3 1810:5 1853:5</p>	<p>1936:13 1970:10</p> <p>leave 1816:1,4,5 1867:7 1886:13 2011:8</p> <p>leaving 1737:23</p> <p>lectures 1877:8</p> <p>led 1690:17 1695:16 1935:24</p> <p>Lee's 1661:3</p> <p>legal 1664:2,3,4,5 1671:8 1686:22 1725:17 1727:2,16 1769:20,24 1770:4,5 1771:11 1773:17,19,2 0,21,24,25 1774:11,15,1 7,21 1775:7 1778:3,10,15 1798:9 1845:24 1846:3,6,10 1848:5 1894:11,18,2 0,23 1903:17,19,2 2 1904:8,11,16 ,18,25 1905:1 1907:23 1930:18 1936:12 1989:14 1992:7 1997:8 2001:16 2011:11</p> <p>legitimate 1729:15 1906:15</p> <p>Leibach 1659:23 2039:5</p> <p>length 1762:8</p>
---	--	---	---

<p>lengthy 1779:6 1899:20</p> <p>less 1679:17 1682:15 1759:12 1895:7,19 1983:17</p> <p>let's 1686:2 1692:1 1698:14 1723:21 1728:21 1744:14 1747:8 1757:16,21 1762:22 1798:10 1886:24 1888:4 1929:7 1936:21 1982:7 1983:11 1985:12 1988:18 1997:2 2020:20</p> <p>letter 1745:4 1756:7,12,16 ,21 1757:1 1758:23 1759:3 1760:5,14,15 ,16 1782:17 1797:3,7,18 1802:20 1848:11,24 1903:8,12</p> <p>letters 1667:24 1668:8,22 1669:18 1706:3 1848:13</p> <p>level 1677:18 1691:1,18 1714:9,14 1740:24 1850:7 1855:11 1863:8 1896:10 1996:17 2011:3 2036:3,11</p> <p>Lewis 1661:5</p>	<p>1664:9</p> <p>liability 1894:8 1992:3</p> <p>liable 1722:20</p> <p>liberal 1905:14</p> <p>license 2025:14,16</p> <p>licensed 1729:1,11 1809:21 2025:11,23</p> <p>licenses 2025:13</p> <p>licensing 2025:25</p> <p>light 1659:11 1661:21 1662:2,4,8,1 2,16 1767:12 1814:2 1901:11 1986:17 1987:25</p> <p>lighting 1731:6</p> <p>likely 1689:22 1761:11 1993:15</p> <p>limited 1667:10 1703:3 1710:17 1743:16</p> <p>limiting 1704:24</p> <p>limits 1704:10,12,1 3</p> <p>line 1732:15 1736:3 1739:10,17 1747:5,8 1775:1 1781:23 1805:1,11,14 1807:1 1851:11 1885:6 1887:8,12 1986:6</p>	<p>1987:2 1992:15,16 2014:5</p> <p>lines 1887:6 1888:8 1986:3 2013:17</p> <p>link 1690:21 1698:13 1731:12</p> <p>linked 1684:5 1716:10</p> <p>liquidated 1817:17 1937:24 1938:1</p> <p>list 1669:9 1703:8,19 1751:22 1753:25 1754:1,9 1759:8,11,12 ,14,16,19 1852:2 1894:9 1970:11,12,2 1 1971:1,3 1992:3,5</p> <p>listed 1667:10 1729:24 1898:8 1970:11 2010:4 2035:3 2038:2</p> <p>listened 1865:14</p> <p>listing 1805:3,9,21 1894:5 2037:12,18</p> <p>lists 1666:8 1667:6 1668:4,5 1669:15 1754:25 1756:4,9 1848:24</p> <p>literally 1682:24 1862:10 1902:9 1903:24 1922:25</p>	<p>litigation 1897:14 1898:3 1989:22 2001:5,7,11</p> <p>little 1668:14 1678:16 1706:2 1707:20,24 1710:3 1712:20 1730:15 1737:8 1765:2 1766:4 1811:11 1972:8 1982:2 1997:20 1998:2 2009:25 2010:24 2011:3 2015:7</p> <p>live 1703:5</p> <p>lived 2010:18</p> <p>LLC 1659:24 1660:13 1662:14 1663:13</p> <p>LLP 1661:5 1662:6,10 1663:9 1986:7</p> <p>to 1685:25</p> <p>load 1700:4</p> <p>loaded 1895:9</p> <p>local 1877:6,8,11</p> <p>Locals 1662:20</p> <p>located 1788:1 1795:6 1875:11</p> <p>locations 1997:9</p> <p>locked 1682:3 1730:6</p> <p>lodging 1868:1,4</p> <p>logs 1666:4,8</p>
---	---	---	---

<p>1668:13,16,1 7 1702:16</p> <p>long 1686:25 1687:3 1694:11 1701:4,5 1703:10 1721:21 1763:3 1768:12 1804:7 1886:6 1984:2 1999:20 2033:20</p> <p>longer 1688:17 1803:9 1809:14,18 1868:13</p> <p>look-ahead 1894:9 1992:6</p> <p>loose 1686:16,19</p> <p>loosely 1677:9</p> <p>Lora 1781:8 1782:1 1784:1,23 1854:6</p> <p>loss 1691:21 1754:22</p> <p>lost 1686:8</p> <p>lot 1665:22 1675:19 1680:1 1681:19 1710:23 1748:8 1766:21 1897:9,10 1898:23 1907:8 1924:2 1997:16</p> <p>lots 1724:4</p> <p>Louis 1663:14 1855:19,22</p> <p>low 1683:5 1687:20 1688:14 1862:9 1989:23</p>	<p>1990:16,18</p> <p>Lucky 1716:14</p> <p>LUMLEY 1660:10</p> <p>Lunch 1806:9,14 1809:3,10</p> <p>Lunchroom 1696:18</p> <p>Lung 1814:20</p> <p>Lutz 1672:1,9 1703:8 2042:5</p> <p>lying 1809:23</p> <hr/> <p style="text-align: center;">M</p> <p>ma'am 1813:4 1871:12 2020:18 2024:17</p> <p>Madison 1661:19 1664:6,10</p> <p>magnitude 1990:11 1999:5</p> <p>mail 1929:22</p> <p>Maiman 1774:13 1785:11,18,2 0,23 1786:1,4,6,1 0,13,16 1803:18 1810:9,11 1811:9,12,16 1812:4,7,8,1 0,13,18,22 1813:22,24 1814:8,13 1860:11 1901:14,19 1906:23 1907:4,9,12, 21</p> <p>Maiman's 1774:19 1775:2 1810:15 1814:6</p> <p>main 1662:7 1697:4</p> <p>maintaining</p>	<p>1686:11</p> <p>maintenance 1895:13,15</p> <p>major 1676:16,20 1679:9 1810:18 1853:7 1862:20 1895:8 1896:6 1897:13 1901:15 1907:5,11 1922:24 1925:25 2001:7</p> <p>majority 1782:9 1811:12 1848:10 1861:22,23 1874:10</p> <p>Major's 1885:15</p> <p>male 1868:15</p> <p>man 1863:8 1864:13 1907:6 1919:9 1923:25</p> <p>manage 1733:14 1749:14,20</p> <p>managed 1695:23 1755:13 1923:8,22 1925:18</p> <p>management 1675:14,17,2 2 1677:3 1681:15 1682:6,7 1684:6 1685:21 1686:8 1691:5,13 1693:21 1696:15 1698:15,18,2 2 1699:23 1700:20 1706:12 1708:4,16 1709:3,6,21,</p>	<p>25 1711:10 1712:11 1713:8 1723:13 1727:6 1734:9,24 1736:24 1737:25 1738:7,17,22 1740:16 1750:3,4 1763:20,21 1764:11 1776:11 1816:17,22 1846:5,7,10, 13 1875:25 1876:5,7,11, 14,19,22 1877:6,11 1887:10,13,1 4,16,20,24 1896:13 1898:5,12 1903:10,18,2 1 1904:5,9 1905:5,22 1920:10,17,2 2 1921:3 1923:1,16,25 1924:14 1935:25 1978:6,13,20 1998:24 2011:15 2024:15 2025:18 2031:12</p> <p>manager 1749:16 1750:11 1815:24 1888:20 2036:14</p> <p>managers 1686:10 1902:10</p> <p>managing 1675:24 1733:16 1754:6 1755:9 1761:1</p> <p>Mandy 1889:25 1995:12</p> <p>MANGELSDORF 1663:5</p>
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<p>manhours 1676:21 1684:16 1999:1,6</p> <p>manner 1728:14</p> <p>man's 1767:15</p> <p>manufacturer 2035:16</p> <p>March 1751:4 1807:20 1899:15 1900:4 1992:24</p> <p>Maria 1870:21</p> <p>mark 1660:22 1661:1 1666:11 1791:10</p> <p>marked 1666:13,21 1670:23 1671:21,25 1691:20 1731:17,21 1744:5,7 1745:1 1759:2 1766:16,17,1 8,19 1770:15 1788:5 1869:2,4,11 1890:12 2015:18 2022:16 2026:14 2041:1 2042:2</p> <p>market 1680:15 1681:3 1730:8 1731:9 1905:10 1906:7</p> <p>Marks 1979:1,10,18 ,21,23 1980:13,15,2 1 1981:2</p> <p>markup 1784:3,12,15 ,22 1787:17,19,2 5 1791:5,14</p>	<p>1792:16</p> <p>Mary 1871:4</p> <p>Massachusetts 2033:17</p> <p>master 1857:17 1926:16,21 1927:1</p> <p>material 1724:14 1807:6 1855:8,9 1856:4</p> <p>materiality 1724:3</p> <p>materials 1686:5 1745:11 1751:23 1752:24 1807:12</p> <p>matter 1659:11,15 1696:13,19 1768:6,15,18 ,23 2010:13 2039:8,10,15</p> <p>matters 1746:23 1857:18 1873:14 1971:10 2012:25 2013:1 2024:19,25 2025:3,7 2037:13</p> <p>matures 1730:17</p> <p>may 1680:14 1694:19,21 1727:20 1736:14 1737:8,12 1750:24 1751:5,6,7,1 1 1757:13 1758:13 1761:9 1768:15,25 1769:1 1770:18,19 1771:20 1921:17 1926:10</p>	<p>1972:18 1998:15 2000:9 2012:14 2013:19 2014:24 2022:14,15 2026:12,13 2037:15</p> <p>maybe 1703:9 1750:8 1776:8 1850:10,11 1855:18 1862:11 1908:10 1920:4 1983:16 1985:14 1990:16,21 1999:15 2009:5</p> <p>Mc 1685:13 1688:19 1719:1 1732:10 1758:10,12 1855:23</p> <p>McAdoo 2033:23 2035:19</p> <p>McCarty 1662:11</p> <p>McCLOWERY 1664:5</p> <p>mcclowry 1716:25</p> <p>McClowry 1716:24</p> <p>McDonald 1785:5,7,8</p> <p>McDonnell 1676:17 1680:5 1681:1 1685:17,18 1701:13,15 1731:7 1756:8 1757:2 1758:17 1759:7,10 1760:1,17,18 1855:25 1856:5</p>	<p>1986:14</p> <p>McDonnell's 1760:3</p> <p>MCNEILL 1663:1</p> <p>meals 1868:1,3</p> <p>mean 1668:14 1670:16 1673:24 1674:24 1684:10 1685:1 1686:24 1692:9,19 1698:20 1701:11,13 1704:16,18 1713:16 1720:12 1723:3 1735:10 1736:2 1752:21 1754:2 1772:21 1805:2,6 1808:2 1816:13 1845:15 1852:6 1857:11 1861:23 1862:9 1871:15 1872:23 1877:22 1878:1 1885:21 1920:3 1929:1 1930:14 1979:12,13 1980:16 1990:4 1995:7 1997:23 2018:10 2035:7</p> <p>means 1667:19 1689:18 1723:5,8 1737:9</p> <p>meant 1724:22 1760:8,9 1994:23</p> <p>meantime</p>
---	---	--	---

<p>1682:17 mechanical 1748:5 1758:2 mediation 1687:4,6 1722:9 1981:4 Medina 1994:11 Medinah 1866:1,3 1868:3 meet 1700:4 1720:23 1901:14 1902:3 meeting 1674:14 1752:6 1779:14,16,1 8,21,23,25 1780:1,5,6,8 1805:5 1887:21,23 1901:21 1902:5,10,15 ,17,21 1919:4,9,11 1925:14 1980:20 1981:1 1993:10 meetings 1782:19 1899:5,8,10, 24 1903:16 1980:14 1992:1,16 1993:15 1994:4 2012:3,4,8 megawatts 1685:8 MEGHAN 1664:5 member 1667:1 1780:2 1851:15 1866:1 member-guest 1866:3 members 1779:10,14 1851:9,22,24</p>	<p>1888:1 memo 1770:25 1773:6 1844:6 memorandum 1772:16 memorialized 1796:21 memory 1788:12 1845:17 memos 1874:1 mentioned 1678:6 1684:20 1686:15 1696:6 1868:9 1920:14 1984:20 1990:20 2000:9 Mercedes 1855:14 met 1702:11 Metcalf 1663:9 method 1860:6 methodologies 1740:16 methodology 1676:15 1712:5 MEUA 1970:7 Meyer 1773:23 1778:8,13 1787:3,5,13, 14,21 1788:1 1791:6 1792:9,13 1795:9 1803:18 1804:3,15,23 1805:13,14 1807:15 1860:10,23 1875:9,15,17 ,22 1888:22 1889:2 1890:1 1893:16 1896:19 1899:16,20 1900:23</p>	<p>1905:2 1924:24 1970:8 1990:15 2009:21,22 Meyer's 1787:25 1788:4 1791:14 1792:15,20 1904:12 mic 1786:23 MICHAEL 1661:5 1662:18 mid-2000s 1812:16 mid-2007 1736:21 mid-2008 1695:19,20 mid-2010 1741:25 mid-80s 2024:13 mid-'80s 2033:25 middle 1694:16 1758:14 1806:13 Mid-July 1757:17 MIEC 1663:11 Miles 1900:12 1972:10 million 1683:3,4,5,1 3,17 1698:1,14,15 1699:4 1706:1 1714:14 1723:24 1730:22 1743:10 1746:11,18 1747:3,11,18 ,20,24 1748:1,2,6,1 3,16,19,20,2 4,25 1749:9 1847:6,7,24 1850:13</p>	<p>1861:5,9 1889:10 1924:1 1990:5 1997:25 2014:13 2018:1 millions 1687:24 1693:15 1723:6 Mills 1664:9 1714:3,4,6 1715:13 1716:21,23 1775:18,19 1900:14,15 1972:7,8,12, 16 1973:21,23 2018:19,21 2019:12,13 2040:5,16,21 mind 1681:25 1690:22 1699:1 1725:2 1735:11 1755:13 1908:23 1929:5 1985:6 1996:15 2001:6 mine 1671:13 minimal 1736:18 minimize 1670:9 minimum 1993:15 minus 1864:4 minor 1860:20 1888:14,15 minute 1751:19 1983:11 1984:20 1988:16 minutes 1680:3 1752:6 1868:18 mirror</p>
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<p>1921:21 mischaracteri ze 1702:21 mismanaged 1683:23 1694:9 mismanagement 1675:15 1684:24 1693:12 1716:8,11 misreading 2022:9 miss 1850:12,15 missed 1850:14 mission 1685:4 Mississippi 2033:18,19 Missouri 1659:2,8,15 1660:17,21 1661:7 1662:24 1663:7,15 1664:8 1669:8 1702:7 1707:12 1725:7,10 1726:4 1732:21,22 1740:13 1795:7 1809:21 1810:4 1929:20 1937:3,11 1986:21,24 1987:16 2009:12 2017:19,24 2032:13 2039:2 2040:2 Missouri's 1707:3 misstatement 1764:1 mistakes 1694:12,18 1695:16,20 1698:12,17,2</p>	<p>2 1714:15 1919:25 misunderstood 2037:16 mitigate 1704:21 1898:23 mitigated 1708:24 1898:13,15 mitigation 1923:2 MITTEN 1661:9 mix 1738:14 MJMEUC 1660:4 MO 1660:3,8,12, 16,20,23 1661:2,6,12, 20 1662:3,7,11, 23 1663:6,14 1664:7,11 model 1781:22 1782:11 modest 1853:11,24 1854:1 1855:1,5,13 modified 1707:10 1733:4 1921:17 modify 1707:11 1750:12 moment 1759:1 1768:3 1788:14 1793:13 1798:5 1817:23 1878:5 1890:21 1893:1 1909:2 1930:21 1938:6 2001:23 2026:23 money 1681:2,3 1693:8 1862:11</p>	<p>1863:6 1897:13,17 1997:21 2001:12 monitoring 1697:15 1845:22 Monroe 1660:23 1661:2 month 1682:25 1703:6,24 1704:19 1863:20 1923:12 1992:3 1993:17 monthly 1999:1 months 1669:4 1681:11 1683:9 1748:17 1750:14,24 1751:4,5 1807:22,24 1811:8 1814:12,14 1815:11 1896:24 1897:23 1898:19 1923:5 moreover 1759:11 morning 1665:1 1673:7,8 1677:18 1702:15 1705:13 1769:16,17 1886:6,15 2015:2 Morris 2026:8 Morrison 1662:10 mostly 1697:7 moth-balled 1786:12 motion 2013:16 2014:4 2032:15</p>	<p>motor 1687:17 move 1672:21 1733:5 1767:6 1814:3 1844:5 1869:21 1919:13 1995:25 2012:18 2016:13 moved 1686:12 1970:15,16,1 8 moves 1900:1 movie 1772:22 moving 1996:22 2013:9 MPSC 1805:5 multiplan 1749:15 multiple 1720:9,24 1985:3,4 1994:3 multiprime 1675:18,19,2 3 1686:9 1860:6 2035:24 2036:2 municipalitie s 1862:7 Murphy 1681:13 1737:15,19 1750:8,10,12 ,25 1815:5,9,14, 19,23 1816:1,15,17 Murphy's 1816:11 mutual 1859:16 myself 1686:23 1779:14 1863:2 1894:17</p> <hr/> <p style="text-align: center;">N</p> <hr/>
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<p>narrative 1994:25</p> <p>NARUC 2022:6 2023:18,19 2024:4,5,8</p> <p>NATHAN 1664:1</p> <p>National 1710:11 2022:7</p> <p>Natural 1663:7</p> <p>naturally 1680:22</p> <p>nature 1691:24 1757:8 1770:12 1888:21,25 1896:18 2021:22 2026:5</p> <p>necessarily 1675:21 1677:15</p> <p>necessary 1669:23 1674:15 1738:20 1802:17 1923:8</p> <p>negative 1692:14 1708:8 1716:14</p> <p>negotiate 1688:12 1904:1</p> <p>negotiated 1692:2 1717:5 1750:16</p> <p>negotiation 1989:15</p> <p>negotiations 1719:4 1745:13 1874:14 1984:2,5 1991:5,6 1999:18,20,2 2</p> <p>neither 2039:13</p>	<p>Nevada 1795:7</p> <p>newly 1700:14</p> <p>Newman 1660:22 1661:1</p> <p>news 1665:10</p> <p>Nielsen 1675:1,8,10 1689:16 1709:13 1711:23 1778:16,23 1779:7,9,11, 13,18 1780:3 1802:8 1896:19 1923:14 1937:16 1990:17 2000:14 2011:13,17,2 5 2012:17 2014:19 2015:13,16,1 7 2018:22 2019:17 2038:12 2041:3,5</p> <p>N-i-e-l-s-e-n 2015:13</p> <p>NIELSEN 2031:6 2040:19</p> <p>Nielsen's 1675:5 1709:14 1779:2 1936:1,19 1937:1,21 2011:20</p> <p>night 1670:11 1677:18 1681:17 1717:9 1734:14 1808:17 1886:7 1998:5 2014:25</p> <p>night's 1734:18</p> <p>nine 1739:11 1741:20,22 2036:24</p> <p>nobody</p>	<p>1678:20 1683:1 1895:2</p> <p>nominal 1851:25 1855:3,4,6,1 3,14,17,18</p> <p>none 1672:24 1683:11 1730:15 1733:8 1744:11 1869:24 2016:17 2031:3</p> <p>nonetheless 1715:15</p> <p>non-lawyers 1904:10</p> <p>non-legal 1778:4,6</p> <p>non-nuclear 2033:14</p> <p>Non-Proprietary 2041:4,8,12, 16,21</p> <p>non-responsive 1670:1</p> <p>non-travel 1861:14,16</p> <p>non-witnesses 1893:7</p> <p>nor 1671:12 1796:13 2039:14,17</p> <p>norm 1983:25</p> <p>normal 1677:5 1854:9 1876:17</p> <p>normally 1768:10 1848:3</p> <p>North 1660:3 1811:2 1872:12</p> <p>Nos 1673:1 1769:6 2016:19</p> <p>notch 1896:14</p> <p>note 1788:15</p>	<p>1793:15 1798:12 1817:25 1878:6 1882:10 1890:10,25 1909:3 1930:22 1938:7 1974:3 2001:24 2026:24 2037:8</p> <p>noted 1769:4</p> <p>notes 1669:19 1980:14,20 1981:1</p> <p>nothing 1668:10 1670:2 1981:24 1988:9 2038:11</p> <p>notice 1996:5</p> <p>noticed 1750:3</p> <p>notify 1807:4,8</p> <p>November 1707:18 1758:12</p> <p>NP 1767:7 1769:4</p> <p>NRC 1812:1 1813:20</p> <p>nuclear 1706:23,24 1811:5,6,18, 23 1812:9,11,19 ,25 1813:12 1814:7 1902:3 2024:14</p> <p>numerous 1791:12 1888:19 1894:9 1896:6</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>oath 1665:3 1809:7 1929:12</p>
---	--	--	--

<p>1972:4 2015:3 object 1724:2 1725:4 1734:18 1760:4,16 1771:19 1781:14 1796:23 1813:8 1850:16 objected 1980:7,11,13 objecting 1857:3 objection 1725:16 1726:12 1743:14 1744:9 1756:17 1768:2 1777:11 1793:10,12 1869:23 1980:23 objectionable 1726:4 1760:10 objections 1672:24 1733:8 1769:3 1980:25 2016:17 2031:3 objects 1767:9 1980:25 1981:4 observations 1724:11 1753:5 obtain 2032:6,10 obtained 1689:21 1723:16 obvious 1737:22 obviously 1745:15 1844:10 1859:17 1904:16</p>	<p>1908:18 2011:18 occasional 1853:11,24 1855:1 occasions 1888:9,13 occupy 1761:5 occur 1698:25 1732:18 1733:25 1861:20 occurred 1685:4 1691:25 1692:4 1694:7 1697:18 1708:12,13 1721:5 1748:10 1750:3 1805:15 1920:1 occurring 1694:6 1706:6 1985:7 1990:22 occurs 1712:2 o'clock 1808:19 1886:16 2036:24 October 1685:25 1797:2 1907:1 offer 1863:17 1995:12 offered 1672:24 1733:8 1768:6,7,14, 18 2016:17 2031:2 office 1662:14 1664:10,12 1743:9 1784:14,19 1861:6 1865:23 officer</p>	<p>1809:22 2039:7 officers 1872:11 offices 1784:4,13 1865:21 1885:20 official 1732:16 1852:19,22,2 5 1853:4 officials 1852:17,23 off-the- record 1808:25 oftentimes 1696:5 oh 1687:5,17 1708:13 1743:16 1889:24 1900:3,6 2012:2 2017:23 2034:3,18 2036:5 Ohio 2034:13 okay 1673:24 1675:11 1680:11 1685:13 1689:9 1692:1,10 1693:16 1695:5,25 1700:17 1703:21 1704:9 1705:6,14 1706:14 1707:21,24 1708:15 1709:9 1712:20 1713:24 1714:19 1715:14,23 1716:12 1723:14 1732:8,14 1736:2,5 1739:1 1743:17,25 1744:9,21</p>	<p>1746:12,19 1750:15,18 1751:1,9,12, 15 1753:4 1756:6 1758:15,19,2 1 1759:15 1761:8,13 1769:3,12 1770:14 1773:5 1780:16 1783:18 1798:5 1806:12 1808:1,12 1809:1 1844:5 1861:9 1867:21 1868:17 1869:10 1870:13 1875:17 1885:6,12 1888:4,8 1890:7,20,24 1893:1 1899:2 1901:1,17,20 1903:13 1906:19 1907:22 1908:3 1919:13,23 1920:14 1921:2,10,15 1925:4,8,15 1927:25 1928:4 1929:7 1930:2,3,12 1937:23 1971:6,16 1972:1,24 1973:7 1994:25 1995:4 1998:1,11 1999:11 2015:2 2016:9,12 2017:14,21 2018:13 2019:11 2036:16,23 2037:15,25 O'Keefe 1660:11</p>
---	--	---	---

<p>okizaki 1779:24 1780:8 1889:25 1893:15 1919:10 1992:13 1995:9 1996:2,6 old 1758:18 Omaha 1852:7 1929:21 omission 1760:1 omitted 1732:19 one-month 1894:9 1992:6 one-of-a-kind 1983:6 ones 1677:15 1718:4 1777:22 one's 1706:24 ongoing 1693:19 1875:6 onsite 1665:20 1668:3,20 1670:17 1671:11 1672:5 1696:16 1702:19 1703:1 1712:11 1738:6,9 1782:10 1815:10 1867:14 1991:21 1998:23 Ontario 1786:11 1815:16 1972:20 onus 1679:20 open 1900:25 1926:6 openly 1747:16</p>	<p>operate 1699:7 1727:19 operating 1699:7 1758:15 1781:23 1782:11 1844:22 operation 1895:13 Operations 1659:16 operator 1813:19 OPG 1786:10 1810:19,20,2 2,25 1811:5,9,12 1905:11,15,2 0 1907:5,11 1972:21 1973:4 OPG's 1811:15 opined 1936:16 opinion 1677:21 1679:18 1713:22 1781:17 1816:14 1846:11 1859:19 1871:19 1872:12 1877:21,24 1878:2 1979:24 2032:21 opinions 1768:7,16 1816:12 opportunity 1702:25 1770:14 1900:20,21 2042:8 opposed 1763:20 1771:17 1772:19 2036:8 opposite 1905:21</p>	<p>1999:23 options 1904:19 1906:2 1923:24 1926:7 1983:14 order 1666:9,10 1667:23,24 1668:21 1670:9 1672:5 1673:25 1674:3 1676:23 1677:2,12,20 1684:1 1691:17 1693:17 1704:21 1707:25 1709:16 1721:14 1724:1 1725:1,19 1726:3 1728:1 1729:16 1730:24 1738:17 1753:14 1762:24 1928:3 1929:22 1970:6,7,8,9 1987:6 2000:12 orders 1666:3,4 1668:4,5,13, 16,17 1669:15 1672:14 1676:25 1677:1 1684:1,18 1687:12,13 1701:23,24 1703:8,14 1715:21 1729:2 1738:10,25 1904:2 1991:6 organize 1665:11</p>	<p>original 1679:12,24 1680:4 1690:14 1694:1 1698:8,12 1700:10 1701:3 1715:2,22 1729:21,23 1732:25 1736:12 1749:4 1817:1 1897:22 1919:20 1920:4 1924:20,21 2034:4 originally 1684:22 1698:6 1780:16 others 1733:22 1795:19 1845:7 1849:2 1851:17 1875:20 1992:13 other's 1685:20 otherwise 1752:22 1753:11 2039:18 Ott 1664:2 1767:9 1768:4,17 1775:20,22 1777:6,14 1781:16 1786:22,24 1787:2 1788:10 1791:4 1795:4 1797:9 1798:2,8 1802:4 1804:14 1806:8,11,16 ,19 1808:12,14 1809:3,7,8 1813:10,16</p>
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<p>1814:5,11 1817:21 1844:4 1849:18 1850:22 1856:25 1857:5,10,20 ,22 1868:12,16,2 4,25 1869:6,21 1870:7,8 1878:4 1882:4 1885:5 1890:10,18 1893:4,11,14 1895:23,24 1926:23 1927:9,17,24 1928:1,5 1973:24,25 1978:4 1979:8 1980:3 1981:24,25 1982:8 1984:7 1990:21 1994:6,14,17 1999:15 2009:18 2040:9,10,11 ,12,13,17 ours 1670:8 1905:15 outcome 1708:8,9 2039:18 outlined 1720:3,10 1760:14 outlining 1775:9 outside 1693:25 1706:8 1714:10 1735:24 1858:2 1862:6 1973:9 2031:16,23 outstanding 1897:23,24 overall 1730:13</p>	<p>1738:21 1846:16 1878:2 1888:10 1894:4,18 1896:11 1922:13 1989:8 overcost 1846:24 Overland 1663:10 overrule 1724:24 1726:10,19 1735:1 1742:19 1757:13 1760:20 1772:9 1813:14 1814:10 1857:19 overruled 1769:4 1796:25 overrun 1846:19 1847:16 overruns 1690:17,18 1697:20 overseeing 1905:24 oversight 1697:14 1816:18,22 1845:14 1846:2,5,8,1 0,12 1864:17 1865:2,9,18 1873:19 1874:12,24 1887:3 1903:21 1925:20 1988:18,21 1989:10 1998:23 overtime 1754:23 2019:24 owner 1688:19 1722:15,20,2 1,22 1729:25</p>	<p>1748:24 1758:17 1849:3 1924:7,14 2000:8 owners 1758:10 owner's 1759:16 <hr/> P <hr/> P.C 1661:19 P.O 1661:11 1662:2,23 1663:5 1664:6,11 PA 1662:18 page 1667:14 1684:13 1687:3 1723:25 1725:19 1731:22 1732:2,5,12, 21 1735:17 1739:9,17 1745:24 1746:3,4,5 1750:7,23 1752:14 1755:21 1767:14 1770:23,24 1813:6 1869:10 1870:2,3 1882:5 1885:3,11 1886:24 1887:1,5 1888:4,7 1935:7 1986:2,3,13 1994:8,13 1996:2 2014:5 2020:9 2021:16 2022:3 2042:6 pages 1677:21,24 1686:25 1687:10 1690:11 1703:13</p>	<p>1718:3,13,15 ,22,24 1719:15,21,2 4 1720:1,14,15 ,21,22 1727:2,9,11, 12 1767:15 1768:19,20 1788:17 1793:17 1798:14 1818:2 1845:13 1878:8 1882:12 1891:2 1909:5 1930:24 1935:5,13,16 ,17,18 1936:13 1938:9 1974:5 1994:13,16,1 8 1995:1,6 2002:1 2027:1 paid 1688:12 1689:8 1730:22 1784:2,9 1786:2 1788:2 1866:5 2001:12,16 2019:24 panel 1810:21 1811:2 paper 1766:22 paperwork 1703:11 paragraph 1675:7 1732:20 1773:11 paragraphs 1687:7 paralegal 1908:5 paralegals 1885:8 paraphrasing 1687:7 pardon 2025:2</p>
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<p>Park 1663:10</p> <p>participants 1753:5 1926:3</p> <p>participated 1927:19 1981:12,15</p> <p>particular 1708:5,6 1724:6 1753:18 1762:13 1771:21 1862:22 1904:4 1984:13,17 1994:7 2013:25</p> <p>particularly 1757:9</p> <p>parties 1721:2 1766:5 1767:24 1905:17 2013:24 2014:6 2039:14,17</p> <p>partly 1714:15</p> <p>partner 1776:7 1861:4</p> <p>party 1671:17</p> <p>passed 1784:23</p> <p>passing 2031:18</p> <p>past 1694:7 1698:18 1787:7 1875:9 1886:16 1893:7 2000:2,6</p> <p>path 1722:18 1734:15 1735:6,8</p> <p>Paul 1898:10</p> <p>pay 1677:15 1687:18 1693:15 1694:14 1698:17,19</p>	<p>1723:6 1729:3,19 1784:8 1817:18 1860:12 1863:21 1867:25 1868:4,5 1929:20</p> <p>paying 1689:4 1721:1 1787:14</p> <p>pays 1787:21</p> <p>PC 1660:22 1661:1 1662:22</p> <p>PDR 1739:22</p> <p>Pegasus 1778:20,25 1779:1 1780:3,6 1919:4,9 2018:3,7 2020:3 2026:19 2031:16 2036:8,12 2042:13</p> <p>Pegasus's 2032:7</p> <p>penalties 1811:22</p> <p>penning 1724:17</p> <p>Pennsylvania 2033:24</p> <p>people 1671:9 1675:19 1684:15,16 1685:16 1696:15 1701:13,15 1703:16 1706:11 1738:24 1852:7 1853:15,22 1855:4 1867:13 1886:4,9,21 1899:18 1900:16 1991:21,23 1996:1,13</p> <p>per 1784:1</p>	<p>1806:24</p> <p>perceive 1771:9</p> <p>perceived 1854:14</p> <p>percent 1674:4 1679:11 1680:12,13,14,15 1681:8,10 1684:4 1690:25 1699:2 1707:7 1713:15 1732:17 1739:11,12,21 1741:20,22 1742:9 1776:9 1861:7,23 1863:18 1896:23,25 1897:4,6,22,25 1898:1,18,21,22 1923:3 1927:11,12,16 1928:7 1989:18,21 1990:1,2,7,13</p> <p>percentage 1740:18 1741:6 1861:15 1862:2,8,20 1989:8,13 1990:6,16</p> <p>percentage-wise 2010:12 2011:10</p> <p>perception 1691:24</p> <p>perfect 1699:22 1900:20</p> <p>perfectly 1677:4 1772:1</p> <p>perform 2026:10 2031:19</p> <p>performance</p>	<p>1673:22 1676:20 1682:15 1710:2,5,19,22,23 1711:1,17,21 1712:6,11 1727:23 1760:19,23 1763:1 2021:11,12,18,23 2022:1,11 2023:5,6,11,13,25</p> <p>performed 1673:11 1710:6 1785:19 1786:3,9,13 1872:14 2031:15</p> <p>performing 2031:13,22</p> <p>performs 1761:17,20,24</p> <p>perhaps 1690:20 1697:20 1730:15 1813:22</p> <p>period 1665:12 1681:12 1732:24 1733:20 1739:11,13 1740:10 1748:21,23 1750:15 1772:25 1812:17,22,23 1844:22 1858:16 1861:5 1866:11 1871:9 1889:9 1921:15 1988:4,7,9</p> <p>periodic 1873:18</p> <p>periodically 1812:17 1874:24</p>
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<p>permit 1728:24</p> <p>PERRY 1661:14</p> <p>person 1706:9 1750:18,20 1811:1 1845:6 1847:24 1870:24 1901:12</p> <p>personal 1866:13 1885:7,14 1886:1 1990:9 2036:8,12</p> <p>personality 1737:11</p> <p>personally 1889:6 2000:25 2018:11,13</p> <p>personnel 1671:7 1675:25 1676:3 1686:22 1750:2 1774:5 2036:11</p> <p>perspective 1753:17 1846:13 1850:6 1889:2 1986:11 1994:15 1997:21</p> <p>persuasive 1674:1</p> <p>pertain 2010:18</p> <p>Peterson 1660:7</p> <p>petitions 1767:16,18</p> <p>petroleum 2034:25</p> <p>petroleum-fuelled 2034:23</p> <p>phase 1970:18</p> <p>phases</p>	<p>1795:25 1985:4</p> <p>phenomenon 1753:22</p> <p>phone 1782:17,18 1867:5,8,10,12 1902:11,21</p> <p>phrased 1856:24</p> <p>picked 1678:18</p> <p>Pico 1810:24</p> <p>picture 1896:11 1984:20 1988:15,19 1991:11 1997:16</p> <p>piece 1683:7</p> <p>pieces 1731:13</p> <p>pipng 1748:6</p> <p>placed 1730:2</p> <p>places 2011:7</p> <p>plan 1659:14 1693:8 1771:2,9,11 1774:21 1780:17 1808:16 1986:16 1999:1 2014:23</p> <p>plane 1924:10</p> <p>planned 1686:9 1999:2</p> <p>planning 1685:16 1759:13</p> <p>plant 1676:9,10 1679:11 1680:13,22 1681:9 1687:15 1695:17 1697:4 1700:4,6,8,9 1717:7 1728:22</p>	<p>1729:25 1730:12,14,16,18,20 1731:16 1738:1,19 1739:5,24 1742:7 1748:7,9 1749:5,8,17 1781:23 1814:7,9 1815:1 1895:1,3 1922:13,18 2033:15,24 2034:2,10,15,16 2035:10,14,16,19,22 2036:1,5</p> <p>plants 1676:8 1678:18,21 1679:2,22 1680:11 1706:12 1740:10,15 1742:3 1815:3 1845:11 1895:5 1988:6 2033:17 2034:13,23,25 2035:2,11 2036:4,9,15</p> <p>platforms 1687:13 1721:7 1728:21,23 1729:6</p> <p>play 1865:24 1866:8 1868:2</p> <p>played 1866:2,17 1867:4 1907:4</p> <p>player 1688:6</p> <p>playing 1866:24,25 1867:2,23</p> <p>pleadings 2032:6</p> <p>please 1672:22 1735:4</p>	<p>1744:15 1765:8 1769:25 1788:14 1798:6 1817:23 1844:16 1878:5 1890:21 1893:2,13 1909:2 1930:21 1938:6 1980:18,19,23 2015:11 2026:22</p> <p>plug 1852:7</p> <p>plus 1683:3 1773:11 1784:5 1807:12 2017:25</p> <p>PMP 2025:15</p> <p>point 1669:5 1674:10 1679:15 1680:19,25 1681:4 1682:2 1683:17 1688:16,18 1690:24 1693:10 1695:24 1696:23 1697:12,18,21 1698:16 1699:9 1701:19 1703:22 1708:2,5,25 1713:10 1722:17 1730:3 1739:10 1740:7,8 1742:22 1747:21 1748:4 1755:2 1760:10 1762:12,18 1763:23 1780:22 1785:4 1787:22 1788:15 1791:7</p>
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1792:19 1793:15 1798:12 1807:10 1808:13 1817:6,25 1846:23 1878:6 1882:10 1886:12,22 1888:3 1890:25 1906:8 1908:1 1909:3 1920:17 1930:22 1938:7 1974:3 1987:13 1991:20 2001:24 2023:14 2026:24 pointed 1752:21 1936:11 pointing 1726:16 points 1707:25 1765:25 policies 1676:1 1682:7 policy 1854:7 1855:9 poor 1693:11 1698:15 1709:20,25 poorly 1723:9 portfolio 1666:3 1850:2,3 portion 1687:8 1722:14 1761:6 1764:5 1804:15 portions 1684:8 1874:19 2009:8 2013:15	2019:24 portrayed 1719:16 position 1677:11,16 1692:17 1714:16 1722:21 1724:16 1727:25 1872:8,16 positive 1696:3 1898:14 possible 1682:6 1755:10 1778:2 1809:16 2033:1 potential 1708:22 1754:21 1902:24 potentially 1776:19 1902:4 1991:8 pound 2001:4 power 1659:11 1661:21 1662:2,4,8,1 2,16 1700:6 1706:11 1717:6 1730:16,18,2 0 1731:16 1738:18 1739:24 1767:12 1786:11 1845:11 1895:1 1901:11 1986:17 1987:24 2033:12,15 practical 1920:5 practice 1759:14 1773:15 1851:24 1853:12,17,2 0	1854:5,11,24 1860:14,15 1862:17,18 1924:7 practiced 1996:1 prebill 1992:11,12,1 6 1993:7,12 1995:6,16 precede 1753:13 precise 1847:22 predecessor 2000:3 predominantly 1795:17 pre-engineered 1731:2 preference 2014:3 pre-filed 2014:16 premium 1908:10 2019:24 prep 1805:5 preparation 1782:13 prepare 1697:24 1987:8 1992:4 prepared 1680:5 1732:9 1874:24 1875:5 1998:22 preparing 1989:4 preponderance 1690:23 1707:8 pre-review 1861:25 present 1779:21,24 1893:16 1937:4	1970:4 2010:16 presentation 1745:3,18 1903:4 presented 1726:8 1756:18 1796:3 1797:5 1858:7 1874:24 1923:1 1991:12 1998:23 presenting 1707:11 president 1778:19,25 Presiding 1659:18 pressures 1720:18 presumption 1935:9,10 pretty 1684:5 1701:5 1736:11 1737:10 1739:2 1748:14,16 1854:11 1929:19 2011:21 2037:4 previous 1737:2 1741:23 1814:3 1815:10 previously 1670:9 1786:1 1792:18 1815:13 price 1681:5 1688:15 1727:10,14 1745:4 1747:10,24 1750:6,21 1761:10 1851:14,19 1852:3 1855:18
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<p>1864:24 1924:8 1926:5 1982:23 1983:2,19 prices 1683:1 1749:6 Price's 1751:13 Pricewaterhouse se 1997:11,13 PRIDGIN 1659:18 1665:1 1666:15,19 1672:20,23 1673:3 1694:21,24 1695:3,9 1705:9 1714:2 1716:23 1717:1 1724:24 1726:10,19 1728:11 1733:7 1734:25 1742:19 1743:19,25 1744:9,12,18 1757:13 1760:20 1764:16,20,24 1765:3 1767:20 1769:3,9,12 1770:19 1771:23 1772:8 1775:17,20 1777:10 1786:22 1787:1 1788:7,13 1791:1 1793:9,13 1795:1 1796:25 1798:5,10 1802:1 1804:6 1806:8,12,18 1808:14,21,23 1809:1 1813:14 1814:10</p>	<p>1817:23 1844:1 1857:4,14,21 1868:12,17,23 1869:23 1870:4 1878:5 1882:1,8 1885:1 1890:20,24 1893:1,12 1895:24 1901:4 1909:2 1926:22 1928:18 1929:7,10,14 1930:20 1935:1 1938:4,6 1970:1,14,23 1971:2,6,12,16,20 1972:1,7,9 1973:23 1978:2 1981:25 1985:19 1998:15 2001:22 2009:1 2012:13,16 2013:13,21 2014:2,18,21 2015:5 2016:16,21,24 2018:18 2019:13 2022:15 2026:13,23 2031:1 2036:19,23 2037:6 2038:8 primarily 1677:6 1845:6,10 printed 1813:11 prior 1694:18 1702:11 1736:8 1751:16 1783:7 1785:21 1786:3 1792:22 1797:6</p>	<p>1803:3 1814:6,15 1871:21 1872:16,20,21,23 1873:1,7 1903:2,8,11 1920:10,21 1922:5,15 private 1867:8 privilege 1771:20 1776:15 1777:1,5,16,19,22 1851:1 1856:24 1905:7,21 1906:6,9,12,15,17 1972:20 1973:1 1981:3,4 2010:25 2011:1,6 2013:3 privileged 1777:8 1857:15,18 1926:12 1928:11 1973:15 proactive 1900:19 probability 1680:12 1681:8 1683:11 probability/high 1683:6 probably 1677:11 1683:16 1696:11 1699:7 1703:14,24 1811:1 1852:6 1853:2,16 1854:8,16 1906:12 2034:12 problem 1676:25 1697:15 1709:20</p>	<p>1724:19 1757:2 1857:9 1989:23 problems 1676:5 1694:4,5,6 1698:5,6,25 1706:4 1737:11,14,22 1754:8,25 1755:18 1756:25 1757:4 1855:24 1906:11 1986:10 procedural 1678:2 procedure 1813:19 procedures 1676:1 1682:7 proceed 1764:20 proceeding 1712:19 1724:23 1856:10,12 1857:25 1858:2 1889:17 1928:12 2010:1 proceedings 1659:5 1788:5 1856:17 1972:20 1973:18 process 1668:24 1688:18,25 1689:13 1690:9,13 1693:19,22 1724:12 1738:24 1749:16 1776:1 1860:20,24 1863:10 1871:5 1900:25 1923:18</p>
--	---	---	--

<p>1936:6 1981:12,15,1 6,18,23 1995:8</p> <p>processes 1724:14,17</p> <p>procure 1682:5 2035:9</p> <p>procured 1679:10</p> <p>procurement 1681:16 1733:19 1734:16 1735:7,9 1747:22 1748:2 1749:2 1780:15,17,2 1 1781:9,22 1782:12,14 1785:5,7 1854:6 1868:10,11 1870:14,25 1871:8,14,18 ,20,22,24,25 1872:1,5,11, 16 1873:5,7,8,1 2,13 1981:18,23 2035:20</p> <p>produce 1873:16</p> <p>produced 1707:17 1792:13 2032:18</p> <p>product 1671:12 1683:19 1689:2 1746:14 1894:23 1981:3 1983:8,9</p> <p>production 1755:7 1756:8</p> <p>productivity 1681:24 1754:22</p> <p>professional</p>	<p>1697:16 1743:11 1750:11 1787:6 1816:13 2024:16 2025:11,13,2 0,22 2039:6</p> <p>professionals 1678:14</p> <p>profiles 1735:16</p> <p>profit 1784:24</p> <p>progress 1998:25</p> <p>progressed 1734:1</p> <p>progression 1680:2</p> <p>prohibited 1723:25</p> <p>project 1669:4 1675:24 1677:12 1678:9 1680:2,4,17 1681:13,15 1682:12 1683:22 1684:15 1686:8,12 1687:7 1689:20 1693:13,20 1695:23 1696:12,22 1698:20,21,2 4 1699:2,5 1705:24 1713:11,14,2 1 1717:13 1721:20,21 1722:4,6,11, 13,18 1723:3 1727:6,14 1729:14 1733:14,16,1 7 1734:24 1736:17 1738:19 1740:1,3,22 1741:4,12 1747:3 1749:9</p>	<p>1750:3,5 1751:7 1752:15 1754:7 1755:9,13 1756:3,25 1757:5,10,18 1763:9,21 1764:12 1768:8 1771:2 1774:6 1775:9 1778:8,9 1779:8,19 1780:13,15 1781:7 1786:3,11,13 1787:11,22 1791:8 1792:19 1795:9,12,16 1796:15 1803:20 1811:5,9,10, 23,25 1813:25 1814:13,17,2 5 1815:10,16,2 3 1816:2,5,15, 16,20,23 1845:14,18,2 2,24 1846:2,15,17 ,19 1848:18 1849:1,15 1850:19 1851:10,22 1852:14 1859:25 1861:12 1864:8,11,13 1865:7,10,18 1870:15,18 1871:3,6 1872:20 1873:1,16 1875:19,22,2 4 1876:5,7,10, 14,19,21 1877:6,11 1885:9,16,19 ,21 1887:18 1888:2,12 1894:25 1895:7,8,19</p>	<p>1896:9,13,22 ,23,25 1897:5,12,18 ,21 1898:5,16,17 ,20 1901:11,15 1902:9,10 1903:18,21 1904:6,14,19 1905:5,24 1919:24 1920:3,8,17, 22 1921:4,13,25 1922:4,6,21 1923:3,8,10, 14,15,22 1924:1 1925:18 1930:7 1972:21 1985:3 1987:13 1988:12,18,2 1 1989:9 1990:1,3,6 1991:3,7,15, 18 1997:22 1999:7 2000:13,22 2001:9 2010:19 2024:15 2025:18 2031:9,12 2035:15 2036:14</p> <p>projected 1747:10 1850:20 2001:13</p> <p>projects 1666:2 1678:9,17 1735:24 1740:25 1759:17 1768:9 1778:5 1781:24 1785:25 1786:6,8,17, 21 1811:3,18,19 ,21 1812:6,9,11, 17 1814:22 1815:8,18</p>
--	--	--	--

<p>1848:2,5,9 1849:6,8,12 1889:6 1896:7,12,18 1899:21,24 1902:8 1983:18 1988:21,25 1989:7,14,19,20 1990:9,11 2000:8 2033:13 2038:2</p> <p>promised 1719:9</p> <p>pronounce 2034:6</p> <p>pronouncing 1906:24</p> <p>proof 1674:3,6 1691:18,19 1898:14</p> <p>proper 1710:12</p> <p>properly 1675:24 1737:25 1906:12 1937:20</p> <p>proposal 1771:2 1901:25 1903:3</p> <p>propose 1849:10,13,19 2036:25</p> <p>proposed 1847:3 1850:23 1851:5</p> <p>proposing 1749:14 1848:17</p> <p>propounded 1745:10</p> <p>proprietary 1788:4</p> <p>prosecutor 1904:22,23</p> <p>protected 1906:16</p>	<p>proud 1862:4,23 1886:10,13</p> <p>prove 1936:23 1937:7</p> <p>provide 1676:14 1677:19 1690:20 1697:14 1704:1 1717:19 1720:2,16,21 1727:10,14,22 1734:11 1754:14,15 1759:8 1769:20 1773:17,20,21,24,25 1774:11,15 1778:3 1796:6 1816:17,22 1846:7 1894:20 1980:18,19 1985:10 1991:2</p> <p>provided 1667:13 1669:2,3 1673:18 1677:22 1691:2 1696:3,5 1701:1 1702:16,18 1703:7 1704:20 1708:20 1711:24 1712:17 1721:17,24 1730:7 1732:7 1745:7 1759:16 1763:17 1769:24 1776:4,13,14 1777:17,18 1778:7 1784:22 1796:2 1802:22 1806:21,25 1810:2</p>	<p>1848:23 1874:20 1887:15 1888:20 1889:11 1905:15 1907:24 1927:2,5,8 1978:7,12,19,21 1979:3,6,15 1980:24</p> <p>provider 1688:9</p> <p>provides 1668:6 1720:17 1736:3 1773:18</p> <p>providing 1738:24 1784:13 1787:10 1791:12 1865:3 1978:6 2009:23</p> <p>provision 1717:10 1980:25</p> <p>provisional 1817:2,3,7,19 1987:22 1988:1</p> <p>prudence 1673:12,17 1674:9,22 1689:21 1707:3,6,14 1711:15,20 1712:13 1713:4 1714:16,22 1716:2 1725:6,15,22 1727:5 1737:25 1738:4 1761:22 1762:1 1935:6,8,9 1936:12,24 1937:7,13 1971:1,3 2000:15 2011:2,5,14,22 2019:1</p>	<p>2020:11,12,13 2021:3,5,10,12,13,16,17,24 2022:9,10,23 2023:3,12,20,21 2024:14 2026:8,10,11 2031:15 2037:10,13,19,21 2038:4</p> <p>prudence 1906:14</p> <p>prudent 1693:21 1694:5 1700:11 1709:3,6,7 1713:5,6 1734:7,13 1738:13 1761:21,25 1797:10,14 1802:5 1878:3 1923:20 1937:14,17,22 1982:14 2000:18 2032:23 2033:2</p> <p>prudently 1740:6 1923:23</p> <p>public 1659:1 1664:5,8,10,12 1706:3 1743:10 1747:12 1766:17,18,19,20 1791:1 1795:1 1802:1 1804:6 1844:1 1882:1 1885:1 1935:1 1978:2 1986:21 2009:1 2031:2 2032:22</p> <p>publication 2024:8,11,13</p> <p>published</p>
--	--	---	---

<p>1813:10 pull 1999:21 pumps 1680:21 1747:25 punches 1999:22 purchase 1666:3,9 1667:23 1668:4,13,17 ,21 1669:15 1676:25 1677:1,19 1684:1,18 1715:20 1735:12 1851:8 1987:6 purchased 1683:18 1719:12,16 purpose 1775:23 purposely 1691:12 purposes 1707:11 1713:3 1780:4 1816:25 1856:7,12 1906:22 1920:5 2037:25 pursuant 1817:7 1981:18,22 purview 1929:1 pushback 1862:21 1993:24 pushed 1817:8,11 1862:25 puts 1724:15 1805:14 putting 1677:16 1925:6</p> <hr/> <p style="text-align: center;">Q</p> <hr/> qualification	<p>s 1873:1 1902:19 qualified 1872:7,13 quality 1675:25 1676:3 quantificatio n 1676:14 1678:4 quantified 1676:24 2019:23 quantify 1690:10 1699:11 1714:19 1716:19 quantifying 1689:14 quantities 1682:14 1686:1 quantum 1936:24 quarterly 1899:5 1979:6,14 2012:3 queries 1669:16 question 1667:2 1683:25 1685:1,22 1689:5,21 1701:20 1713:20 1719:13 1722:19 1725:4,23,24 1726:11 1727:8 1728:6,10,12 ,14 1729:19 1734:22 1735:3 1737:17,18 1742:15,20 1743:7 1760:13 1762:17,20 1770:2 1771:16 1772:12</p>	<p>1774:23,25 1776:21 1777:11,13,2 0,23 1781:15 1783:2 1784:7 1787:18 1792:4 1802:21 1806:7,17 1807:5 1808:4 1812:14 1817:5 1848:20 1849:25 1850:9 1851:21 1852:3 1855:20 1856:23 1857:12 1870:12 1871:7 1875:23 1882:7 1887:7,9,11 1890:23 1893:13 1895:9,18 1899:1 1903:9,14 1908:12 1919:3 1924:18 1926:25 1929:18 1937:10 1973:19 1978:11 1979:25 1981:19 1995:5,24 2009:17,21 2011:13 2012:10 2021:7 2032:8 2037:4 questioned 1851:18 questioning 1762:11 questions 1665:9 1673:4,6 1695:7,11,13 1702:15</p>	<p>1705:12,18 1714:1,6,8 1715:11,23,2 5 1716:25 1717:4 1725:1 1726:1,16 1734:20,23 1739:4 1743:12,15 1744:24 1746:22 1755:16,17,1 9 1756:20 1765:6 1766:25 1769:15 1775:19,22 1792:11,13 1851:12 1895:23 1896:2 1900:13,16,1 7,20 1901:3,7,9 1907:23 1908:2 1926:11 1928:17,21 1929:4,15 1930:5 1972:16,25 1974:1 1982:6 1993:23 1999:14,15 2012:7,12 2015:10,24 2017:2 2018:21 2019:12,16 2035:4 2040:4,5,13, 14,15,16 quibble 1978:15 quibbled 1752:21 quibbling 1677:17 1696:4 quick 1701:6 1737:10 1929:6,7 quickly 1682:5 1737:12</p>
---	---	---	---

<p>1742:25 1901:7 1986:12 1998:14</p> <p>quite 1683:1 1689:17,23 1691:8 1751:20 1850:10 1929:4 1988:16</p> <p>quotations 1764:6</p> <p>quote 1689:16</p> <p>quotes 2022:3</p> <p>quoting 1674:25</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R&O 1847:18 1877:2,5</p> <p>radioactive 1812:25</p> <p>rage 1990:2</p> <p>railing 1762:14</p> <p>railings 1687:12 1721:7 1728:21,22 1729:6,9,14, 15</p> <p>raise 1868:15 1900:21 1935:10 2014:4</p> <p>raised 1756:21 1765:25 1937:2,15,17, 20 1972:25 1973:7</p> <p>raises 1936:22</p> <p>ramifications 1673:16</p> <p>ran 1812:18</p> <p>range 1710:21 1783:22 1847:23 1873:24 1997:25</p>	<p>rarely 1855:9</p> <p>rate 1782:2,5,13, 23 1792:15 1793:5 1797:16,19,2 1,25 1809:11,17 1810:1,5 1848:25 1860:23 1863:4 1876:25 1877:17 1893:17 1908:13 1930:7,9,13, 15 1970:19 1971:10 1991:8 1996:25 2009:8</p> <p>rate-making 2025:7,8</p> <p>ratepayer 1722:20 1723:11</p> <p>ratepayers 1677:14 1694:8 1698:17,19 1699:10 2032:24 2033:3</p> <p>rates 1722:23 1782:23 1792:20 1802:6,15,18 ,23 1803:12 1849:23 1850:19,24 1885:10 1890:4,9,11 1896:13 1903:10 1908:5,23 1973:17 1991:24 1993:18 1996:23 1997:3,9 2031:11,16,2 3</p> <p>rather 1674:10 1689:12 1691:5</p>	<p>1693:13 1708:3,21 1756:24 1768:7 1859:15 1999:13</p> <p>RCV'D 2041:1 2042:2</p> <p>reach 1674:15</p> <p>reached 1732:17 1768:11</p> <p>reaching 1768:11</p> <p>react 1906:3</p> <p>reactor 1813:19,22</p> <p>Reactors 1813:1</p> <p>reading 1690:7 1813:9 1814:3 1984:11</p> <p>ready 1665:6 1714:22 1744:21 1764:20 1765:4 1809:7 1868:24 1929:15 1988:20,24 1995:5</p> <p>real 1682:1 1685:24 1713:18 1736:20 1998:14</p> <p>reality 1700:20</p> <p>realize 1701:6 1971:13,20 2014:24</p> <p>realized 1682:11</p> <p>really 1689:24 1703:21 1713:3 1719:14 1728:9 1731:15</p>	<p>1737:8 1751:16 1864:2 1870:12 1886:21 1898:7,24 1902:19 1924:6 1991:13</p> <p>realtime 1897:15 1921:1,22,25 1924:16 2039:7</p> <p>rearview 1921:21</p> <p>reason 1698:14 1702:23 1716:13,18 1731:7 1736:25 1763:8 1766:3 1783:11,13,1 7 1795:14 1816:14 1855:7 1859:20,22 1927:14 1996:11 1999:21</p> <p>reasonable 1678:19 1680:11 1699:9,13 1713:21 1714:21 1715:3 1729:25 1734:9,12 1988:10 2010:22 2011:16</p> <p>reasons 1726:5 1738:18 1792:23 1866:10</p> <p>rebut 1937:9</p> <p>rebuttal 1675:2 1751:21 1765:17,19,2 3 1766:3,6,17, 19 1780:4</p>
---	---	--	---

<p>1798:4 1882:5 1935:4, 5, 15, 18 1936:11 2015:17 2020:6 2032:19 2033:9 2038:3 2041:3, 5, 11, 13, 15, 18</p> <p>recall 1688:15 1706:1 1714:10 1721:12 1727:16 1745:5, 23 1746:15 1755:18 1756:11 1761:12 1762:15, 20 1775:4 1779:16 1780:6, 9 1804:21 1854:3, 21 1855:23 1860:21 1866:22 1870:10 1899:4, 13 1972:21 1997:18 2010:1 2012:9 2035:23</p> <p>recast 1925:2</p> <p>receipts 1806:21, 23 1808:5</p> <p>receive 1721:10 1770:3 1806:22 1979:22</p> <p>received 1668:4 1673:2 1685:12 1697:10 1733:10 1745:14 1747:11, 19, 2 3 1769:7 1810:4</p>	<p>1869:25 1978:10, 14 1980:5 2016:20 2031:4</p> <p>receiving 1791:15, 16, 1 7</p> <p>recent 1815:3</p> <p>recently 1796:14 1813:11 1895:14</p> <p>recess 1744:15 1808:16, 23 1868:18 2038:11</p> <p>recitation 1725:21</p> <p>recite 1873:10</p> <p>recited 1726:13 1752:24</p> <p>recognize 1886:19</p> <p>recognized 1697:19</p> <p>recollection 1688:8 1726:25 1775:10 1907:6 1919:4</p> <p>recollections 1919:6</p> <p>recommend 1856:20 1981:7, 10, 13 , 20</p> <p>recommendatio n 1925:17, 25</p> <p>recommendatio ns 1712:9</p> <p>recommended 2023:22</p> <p>recommending 1699:1, 3 1815:20 1981:17</p> <p>reconvene</p>	<p>1929:8</p> <p>record 1665:2 1726:8, 14, 17 , 18 1744:2, 16, 19 1765:8 1766:3 1777:4, 8 1809:2 1813:9 1852:20 1868:24 1929:11 1970:2, 3 2015:12</p> <p>records 1919:5</p> <p>recross 1714:3 1972:5</p> <p>Recross- Examination 1714:5 1717:3 1972:15 2040:5, 6, 16, 17</p> <p>red 1937:19 2033:16, 21 2035:14 2036:5</p> <p>redacted 1773:8, 9 1774:20 1776:13, 16, 2 0, 24 1777:2, 19, 25 1850:25 1927:20, 23 1978:22 2011:10, 24</p> <p>redactions 1926:12 1994:16, 24 1995:4</p> <p>redirect 1743:20 1744:20, 23 1982:1, 5 2040:6, 17, 18</p> <p>reduced 1716:9 1996:12 2039:12</p> <p>re-engineer</p>	<p>1719:14, 20</p> <p>refer 1853:11 1901:23 1985:2 1998:21 2020:17 2021:16</p> <p>reference 1750:1 1759:2 1770:9 1774:2 1775:11 1796:2 1797:20 1869:16 2009:7 2014:5</p> <p>referenced 1773:5 1797:17, 18 1980:19 2013:6</p> <p>references 1750:4 1773:11 1980:17 2013:19, 23 2014:12, 15</p> <p>referencing 1768:20 1813:25 1851:11</p> <p>referral 1901:18</p> <p>referred 1744:8 1786:10 1812:6 1815:23 1901:22 1984:24</p> <p>referring 1666:7 1730:12 1741:18, 19 1746:3, 5 1757:19 1791:5 1802:25 1812:1 1876:3, 13 1888:16 2012:19</p> <p>reflect 1735:16</p>
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<p>1752:7 1760:17 1777:8 1791:11 1802:6 1995:6</p> <p>reflected 1719:22 1729:4 1748:7 1802:20 1809:20 1810:8 2012:20</p> <p>reflection 1759:25</p> <p>reflects 1759:4</p> <p>reforecast 1705:22 1732:18 1734:2,6,7,1 0 1847:18,21 1897:4,7,24 1898:21 1899:17,18,2 0,22 1925:1,2,7</p> <p>reforecasting 1676:23</p> <p>reforecasts 1733:25 1874:10 1900:11</p> <p>refresh 1788:11</p> <p>refrigerate 1851:20</p> <p>regard 1935:22 1982:9 1987:21</p> <p>regarding 1672:2 1706:4 1888:16 1894:7 1978:13</p> <p>regards 1777:1 1779:8 1803:23 1808:5 1851:13 1885:9</p>	<p>2034:3</p> <p>regional 1813:20</p> <p>Registered 2039:5</p> <p>registrations 2025:21</p> <p>regular 1797:21 1863:23 1925:8</p> <p>regularly 1923:8 1925:9</p> <p>Regulation 1852:9</p> <p>regulators 1734:11</p> <p>regulatory 1659:13,19 1710:12 1712:1 1713:3,23 1767:17 1802:10 1970:17 1971:8 1986:16 2022:7</p> <p>rejected 1926:1</p> <p>relate 1776:19 1815:7 1936:7</p> <p>related 1774:8 1776:16 1780:12 1786:14 1791:14 1795:9,12 1811:23 1814:25 1845:10 1849:25 1852:3 1856:9 1859:14 1860:22,25 1861:2,10,19 1867:1 1877:2 1974:1 1979:3,22</p>	<p>1980:8,12,15 ,21 2022:4 2039:13</p> <p>relates 1802:8 1874:9 2011:11</p> <p>relationship 1713:19 1785:24 1786:5 1796:21 1816:11 1849:7 1866:13 2026:5</p> <p>relationships 1848:3</p> <p>relative 2039:16</p> <p>relatively 1694:2 1717:13 1757:9 1775:8 1888:13,14</p> <p>released 1927:21 1928:6</p> <p>relevance 1724:3</p> <p>relevant 1724:14 1768:22 1814:5</p> <p>reliable 1742:12</p> <p>relied 1768:10 1777:7,17</p> <p>relitigate 1928:9</p> <p>rely 1919:5</p> <p>remain 1767:4</p> <p>remaining 2036:21</p> <p>remedies 1722:1</p> <p>remember 1665:22 1731:24 1739:6 1743:11</p>	<p>1746:1 1756:7 1761:8 1779:22,23,2 5 1780:2 1806:3 1814:20 1846:20 1873:3 1877:10,18,2 0 1899:23 1900:9 1902:5 1919:9 1979:8 1984:8 1997:1 2024:12</p> <p>remembering 1870:12</p> <p>remind 1665:3 1972:4</p> <p>removed 1703:22</p> <p>rendered 1805:10</p> <p>renegotiations 1684:2 1745:14</p> <p>repeat 1735:3 1777:12 1851:4 1856:11 1978:11</p> <p>rephrase 1857:20</p> <p>replacement 1751:2 1785:3,6 1786:15</p> <p>report 1674:1,18,21 1680:5 1706:16,19 1711:2,7 1712:16,17 1737:13 1751:10,11 1752:18 1753:3 1864:15,16 1865:17 1874:8,21 1887:18 1925:14 1992:3</p>
---	--	--	--

2014:11,14 2032:19,20 reported 1659:23 1752:15 1808:24 1864:21 Reporter 1666:14,22 1671:22 1731:18 1869:5 2022:17 2026:15 2039:1,6,7,2 1 REPORTER'S 1788:15 1793:15 1798:12 1817:25 1878:6 1882:10 1890:25 1909:3 1930:22 1938:7 1974:3 2001:24 2026:24 reporting 1659:24 1864:19 1865:1,3 1888:12 1926:2 reports 1668:9 1669:19 1681:15 1682:24 1690:3,4,5 1697:23 1708:20 1711:7 1752:5,8,11 1754:12,16 1856:3 1865:3,9 1873:16,18,1 9,21,23,25 1874:2,3,4,6 ,7,9,11,15,1 9,21,23 1887:2,13 1888:19 1898:7,25	1920:24 1979:6,14,15 2011:23 representatio n 1797:4 representativ e 2033:14 2034:24 represented 2000:8 reputation 1983:8 request 1666:5 1667:1 1670:10 1783:4,9 1784:18 1860:19 1885:15 1894:2,7 1980:11 1981:5 1984:8 2041:24 2042:3 requested 1666:5 1670:9 1671:17 1672:9,12 1745:13 1773:2 1783:12 1792:5 1795:19,23 1807:22 1808:6,7 1925:12 requesting 1668:23 1672:4 1782:21 requests 1665:25 1670:8 1672:7 1677:23 1707:20 1721:14 1745:10,12 1791:13,15,1 7,21,25 1792:3,9,10 1797:23 1860:21	require 1673:16 1729:18 1734:10 1803:4 required 1675:14 1676:23 1722:8 1729:9 1762:23 1797:16 1852:14 1873:15,17 2032:4,5 requirement 1678:11 1722:6,10 requirements 1710:25 1711:18 requires 1690:22 requiring 1684:21 requisite 1691:18 reserved 1683:5 resides 1875:12 residue 1687:14 resisted 1747:15 resolution 1695:1 1719:4,10 1721:23 1989:16 resolve 1721:22 1897:14 1979:19 2001:17 resolved 1722:4 1723:2 1898:4,13,15 1973:13 resolving 1979:11 resort	1721:25 1722:3 resources 1663:7 1706:8,11 respect 1678:14 1709:11 1715:23 1972:21 2019:25 respective 1679:3 respond 1674:19 1688:8 1691:6 1693:23 1791:18,21 1792:13 2014:6 respondent 1720:19 responding 1763:24 1787:24 1791:12,25 1792:3,7,8,9 response 1677:23 1689:15 1715:10,25 1718:22 1720:15 1734:23 1885:15 1890:19 1980:23 1993:22 1995:11 responsibilit ies 1675:16 1785:5 1848:22 1870:25 1991:1,10,13 responsibilit y 1675:24 1686:11 1714:18 1719:17,18 1759:18 1924:12 responsible 1693:10
--	---	---	--

<p>1699:10 1723:12 1738:4 1741:3 1760:25 1763:4,6,10</p> <p>responsive 1669:24</p> <p>rest 1718:17,20 1743:21 1898:10 2036:2</p> <p>result 1692:5 1695:25 1746:13 1766:6</p> <p>resulted 1694:7 1885:22</p> <p>resulting 1676:22</p> <p>results 1689:11,19,20 1690:17 1692:14 1708:12 1711:5 1716:2,4,7,11,14,18 1723:16 1740:17</p> <p>resume 1873:10 1972:2 2015:1</p> <p>resumes 1665:5 1809:6</p> <p>retail 2032:24 2033:3</p> <p>Retailers 1660:21</p> <p>RETAILER'S 2040:2</p> <p>retained 1784:11 1986:7,14 1988:13 2017:9,12 2036:5</p> <p>retaining 1886:21</p>	<p>retake 2038:12</p> <p>retire 1700:7</p> <p>revealed 1774:18</p> <p>revealing 1745:25</p> <p>revered 1844:20</p> <p>review 1671:11,12,13 1672:5 1674:23 1702:3,17 1711:6,25 1763:17 1802:15 1804:4,23 1805:4 1807:11,17,23,25 1860:13,24 1861:25 1863:9,10 1902:7 1903:4 1926:15,17 1988:3 1990:21,24 1992:15 1993:6 1995:11 2017:25 2020:12 2021:1,17 2022:10 2032:19 2035:13</p> <p>reviewed 1686:23 1696:24 1701:24,25 1711:11 1796:12 1804:25 1853:23 1854:5,8 1926:20 1928:6</p> <p>reviewing 1676:18 1935:24 1992:14</p> <p>reviews 1853:10 2024:14</p>	<p>2037:10,19,21 2038:4</p> <p>revision 2020:23 2022:21</p> <p>rewriting 1692:15</p> <p>Reynolds 1792:22 1798:1 1806:25 1807:11,17 1808:8 1809:12,13 1860:14,19,22,25 1865:5 1903:1 1990:22 1991:17,22 1992:1,4,8,17,19 1993:9 1995:17</p> <p>RFP 1688:3,21,22 1689:1 1692:2 1720:14,16 1729:4,9</p> <p>ribbon 1810:21 1811:2</p> <p>rid 1687:13</p> <p>ride 1923:11</p> <p>Riggins 1771:14 1773:4 1792:21 1797:2,25 1803:5 1806:24 1809:12,13 1854:8,17 1860:14,19,21,24 1865:4 1886:17 1902:25 1903:7 1990:22 1991:17,22 1992:1,4,8,17,19 1993:9 1995:16</p> <p>Riggins's 1903:10</p> <p>rightfully</p>	<p>1723:7</p> <p>rights 1718:18</p> <p>riot 1696:18</p> <p>rise 1713:7</p> <p>risk 1679:7 1877:9 2025:17 2042:8</p> <p>Road 2015:14</p> <p>roadblocks 1755:7</p> <p>roadways 1731:5</p> <p>Robert 1659:20 1663:16,17</p> <p>Roberts 1678:13 1743:23 1764:21 1765:7,9,12 1766:10,21 1768:4 1769:16 1775:23 1803:11 1809:4,6,9 1812:24 1851:8 1861:4 1862:18 1869:7 1873:15 1889:5,7 1893:5,15 1896:3 1901:2 1927:19 1928:22 1929:11 1972:3,17 1980:17 1990:4 2012:14,25 2041:7,9,11,13,16,18,20,22</p> <p>Robert's 1890:11</p> <p>ROBERTS 1791:3 1795:3 1802:3 1844:3</p>
---	--	---	---

<p>1882:3 1885:4 1893:3 1919:1 1935:2 1972:14 2009:3 2040:8</p> <p>robust 1936:6</p> <p>Roger 1662:1 1894:12</p> <p>role 1780:22 1864:10,17 1871:18 1873:7 1887:11 1894:14 1907:4,10,11 1981:17 1982:9</p> <p>roles 1845:18 1848:22 1991:1,9,13</p> <p>roller 1923:10</p> <p>roll-over 1999:18</p> <p>RONALD 1659:18</p> <p>room 1700:22 1701:17 1704:2,25 1748:8 1778:18 1867:7,8,9,1 1 1875:3 1889:20 1893:6,17,18 ,24 1894:1 1984:22</p> <p>Rosa 1663:2</p> <p>roughly 1806:10,14 1817:2 2015:1</p> <p>round 1867:24</p> <p>route 1679:13</p> <p>routinely 2009:15</p> <p>Royal 2025:16</p> <p>Royals 1855:18</p> <p>rule 1852:16</p>	<p>1988:25 1989:8 2014:7</p> <p>ruled 1926:15 1984:17</p> <p>ruling 1674:12</p> <p>Ruminaf 1774:7 1844:14</p> <p>run 1906:11 1924:3 1989:17</p> <p>running 1686:14 1864:13 1920:2 1921:13 1922:18</p> <p>runs 1990:1</p> <p>RUSS 1661:9</p> <p>Ruth 1660:22 1661:1</p> <hr/> <p style="text-align: center;">s</p> <hr/> <p>sacrifice 1885:8,14 1886:1</p> <p>safe 1753:7 1763:7</p> <p>safely 1727:20</p> <p>sake 1936:21</p> <p>sand 1663:2 2001:4</p> <p>sank 1683:8</p> <p>Santa 1663:2</p> <p>SARAH 1663:5 1664:3</p> <p>sat 1679:7 1696:15 1703:20 1711:11</p> <p>satisfaction 1937:18</p> <p>satisfactory 2037:23</p> <p>satisfy 1691:18</p> <p>Saturday</p>	<p>1866:21</p> <p>save 1970:16</p> <p>saved 2001:19</p> <p>saw 1665:16 1703:17 1749:23 1859:10 1864:19 1865:15 1903:10,11</p> <p>scale 1680:24</p> <p>scale-up 1747:2</p> <p>scenario 1694:11</p> <p>Schallenberg 1858:22 1859:7,13,16 ,20</p> <p>schedule 1676:11,22 1684:16 1705:22 1752:16 1767:10 1808:17 1846:15,17 1865:4,19 1874:13 1888:24 1897:5 1898:1,20,22 1903:22 1904:6,15 1905:25 1908:4,8 1921:8,23 1924:17 1971:13,17,2 1,24 1991:4 1998:3,7,17 2001:9 2037:11 2038:2</p> <p>scheduler 1793:1</p> <p>schedules 1754:17 1767:3,10,16 1997:2 2016:6</p> <p>scheduling 1888:17 1970:3</p> <p>Scherer</p>	<p>2034:7,11 2035:22</p> <p>Schermer 1890:1 1893:16</p> <p>Schermer's 1995:12</p> <p>Schiff 1682:23 1686:2 1696:1,2 1697:4,13,22 1714:9 1755:4 1763:19 1769:18,20,2 3 1773:18 1776:7 1779:11 1780:2,24 1781:5,19 1782:3,25 1783:3,8,24 1784:4,6,10, 20 1785:17,20,2 3 1786:2,21 1787:9,11,14 ,20 1788:5 1791:12,15,2 1 1792:8,12,16 1793:4,6 1795:8,11,18 ,24 1796:6,8 1797:12,16 1798:8 1803:12,23 1804:18 1806:1,21,22 1807:5,12 1808:2,9 1809:17 1810:7,10 1811:10,25 1816:22 1846:18 1847:4,14,18 1849:6,13 1850:15 1855:24 1859:14 1860:9,25 1861:3,19 1862:2,8,17, 19 1869:7 1874:22 1875:22</p>
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1885:19	1726:12	1862:14	1988:5
1887:4,13,18	1734:18	1995:22	1990:9
,24	1739:16,19	scrutiny	selected
1889:16,19	1742:14,21	1862:21	1688:14
1890:2	1743:14	Sears 1765:10	1749:15
1893:6,23	1744:11,19,2	seats 1855:19	1758:12
1894:11	1,22,24	second	1981:16
1898:7,25	1749:10	1670:22	self-
1906:8	1756:18,22	1732:2,14	assessments
1907:13,19	1757:15	1741:23	1709:8
1919:18	1760:11,24	1770:23	selling
1922:16	1764:14,16	1813:6	1906:7
1924:13	1769:13,15	1890:6	seminars
1925:25	1770:18,22	1926:24	1877:8
1978:6	1771:23,24	2011:18	send
1979:14	1772:13	2033:19	1851:9,21,25
1980:15,17,2	1775:16,17	Secondly	1852:6
1	1796:3	1810:17	1853:19
1981:2,7,10,	1844:6	secretarial	1854:1,10,22
13,16	1927:18,25	1784:14,21	1903:2
1985:15,21	1972:5,6	section	sending
1986:7,13	2012:18	1687:2	1853:13,20
1987:10,12,1	2013:14,18,2	1717:12	1854:13
7 1988:12,17	2	1718:11,21	senior
1990:19	2014:3,8,10,	1756:3	1659:19
1993:14,25	17 2016:25	sections	1776:10
1997:7	2017:2	1726:25	1785:14
2001:12,16	2018:16,18	seeing 1669:8	1846:13
2009:7,19	2040:6,9,20	1681:11	1851:9
2010:16	science	1865:1,2,11	1887:10,13,1
2012:19,23	1684:9	1874:12	4,15,19,24
2013:1,5,12	1715:5	1924:15	1888:20
2014:12	scope 1700:2	seek 1797:16	1902:10
2031:11	1724:22	2032:9	1903:10
Schiff's	1727:9,13	seeking	1904:5
1782:23	1729:21,23	1851:19	1905:5,22
1784:13	1797:4	2010:10	1923:16,25
1809:11	1812:20	seemed	1924:14
1860:13	1845:18	1695:21	1978:6,12,20
1887:15,20	1848:21	1696:17	1998:24
1920:16	1849:4	1700:11	2011:15
1922:20	1850:7	seems 1722:12	sense
1925:13	1865:4	seen 1681:14	1680:7,10
1930:6	1894:4	1711:20	1696:3
1988:3	1902:23,24	1753:14	1700:21
1990:10	1991:24	1756:6	1802:7
1997:3	1994:2	1813:2	1864:16
Schneider	2032:1	1862:16	sensitive
1970:9	scopes	1872:13	1772:23
Schumacher	1993:16	1895:6,19	sent 1672:1
1736:12	scoured	1896:18	1700:25
1754:12	1675:2	1927:16	1703:7
Schwarz	screwed	1983:9	1797:2
1660:18	1699:5	1984:9,10	1809:21
1694:19,22,2	scribbled		1810:7
5 1695:5	2037:8		
1724:2	scrub 1860:15		
1725:16,23			

<p>1851:13,16 1852:2 1853:18 1854:4 1903:12 1993:8 sentence 1888:10 sentences 1691:8,22 separate 1745:12 1756:4 1928:12 1937:8 separately 2017:17,18 2026:1 September 1666:2 1902:23 1907:1 1925:5 sequences 1757:9 SER 1844:19 1845:11 series 1695:15 1755:16 1756:4 1999:14 2022:3 serious 1809:22 1935:10,21,2 3 1936:7,15,18 ,22 1937:2,5,9,1 4,15,19 1982:3 service 1659:1,13,17 1664:5,8 1728:24 1812:25 1863:8 1922:14 1986:21 2031:12 2032:22 services 1697:10 1698:1</p>	<p>1743:11 1763:19,20 1775:2,5,12 1778:4,6,13 1784:21,22 1787:11 1791:11 1796:1,6 1798:9 1804:13 1805:9 1812:20 1845:18,24 1846:3,6,10 1847:4 1848:5,8,21 1849:4,14,16 1850:2,3,8 1861:6 1894:21,24 1901:16 1902:24 1903:17,19,2 3 1904:16,18,2 5 1907:23 1989:17 1991:2 1993:16 2012:20 2013:6 session 1788:16 1793:16 1798:13 1818:1 1844:2 1878:7 1882:11 1885:1 1891:1 1909:4 1930:23 1938:8 1974:4 2001:25 2026:25 sets 1676:12 setting 1778:7 1904:13 1991:3 settings 1802:10 settle 1687:3 1693:14 1762:23</p>	<p>2001:1 settled 1677:11 2019:6 settlement 1677:20 1719:4 1762:24 1763:12 1817:8 1874:8 1978:17,18 1984:3 1995:10,12 1996:9 settlements 1677:7,8 1684:17 1900:18 1938:3 1978:19 1997:17 2000:17,21 settling 2000:11 seven 1678:21 1767:25 1992:24 1993:15 1997:25 several 1844:7 1845:1 1848:1 1863:20 1866:10 1895:4 1995:25 2034:3 severe 1697:20 share 1772:4,5 2012:6 SHAYLA 1663:1 sheet 1714:25 1985:24 1998:2,18 she's 1671:6,7 1870:24 1872:9,12,14 1996:12 shift 1936:23</p>	<p>ship 1683:8 shoot 1863:12 1866:4 shorter 1665:12 shorthand 1923:20 showed 1682:20 1701:7 1703:10 1984:8 1997:7 showing 1864:20 1888:3 1998:24 1999:2 shown 1995:18 shows 1667:14 1721:4 1741:24 1749:7 1804:9 shut 1814:9 shutdown 1813:19 sideways 1682:12 sign 1924:8 1982:23 signed 1758:13 1920:4 1983:1 significance 1712:24 1756:15 significant 1707:13,15 1748:16,25 1751:23,24 1755:7 1846:18 1861:17 1885:7,16 1897:17 1905:17 1988:11 2001:8,16 significantly 1740:16 1741:9</p>
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<p>1749:19 1983:24 signify 1986:4 similar 1676:10 1701:20 1755:3 1797:5 1808:17 1845:18 1896:7,18 1904:5 1937:12 1985:17 similarly 1983:1 simple 1684:11 1728:7 1775:11 2037:4 simply 1701:11 1708:13 1721:6 1724:14 1760:2 1898:16,20 2013:11,25 single 1717:10 1927:10 2012:10 2022:24 2023:14 2035:9 sink 1802:16 sins 1694:14 1698:8 1919:19,20 sir 1665:3 1666:16,19 1744:21 1764:17,24 1765:3 1769:11 1770:16,21 1774:12 1851:1 1896:8 1899:1,6 1901:24 1921:6 1924:21 1925:3</p>	<p>1928:24 1929:12,13,2 3 1930:4,11,16 1935:13 1936:8 1997:10 2016:23 2017:3 sit 1679:4 1703:11 1704:18 1707:18 1775:4,13 1778:1 1783:21 1784:25 1785:10 1786:20 1787:15 1803:21 1804:1,17 1805:23,25 1806:2 1807:21 1810:3 1811:24 1814:19 1817:14 1847:5,11,22 1852:1,18 1853:6 1854:3,20 1856:1 1860:17 1870:19 1871:8 1873:9 1876:12 1878:1 1887:22 1888:20 1893:6,23 1922:9 1925:24 1978:23 site 1669:5 1672:4 1681:13 1703:5,23,24 1706:4 1711:10 1730:25 1736:17 1779:14 1812:19 1864:20 1865:16 1867:5</p>	<p>1902:3 1903:25 1904:4 1925:19,22 2018:14,15 sites 1886:5,10,14 sitting 1761:4 1778:17 1845:16 1855:3 1894:1 1902:23 1990:4 situation 1771:25 1781:18 1813:23 1814:9 1863:2 1887:19 six 1741:22 1815:11 1886:15 1989:25 sixth 1662:15 1986:5 six-year 1739:11 size 1680:18 1685:8 1700:21 1730:6 1748:8 1849:12 1983:18 1989:14 1990:11 1991:8 1994:2 SLACK 1664:4 small 1694:2 1722:14 1730:23 2011:11 smaller 1676:18 1746:8 Smith 1661:5 Smokehouse 1929:24 smoothly 1990:1</p>	<p>SNR 1662:6 Society 2025:24 solid 1995:23 somebody 1685:1,5 1691:13 1737:11 1854:25 1863:24 somehow 1709:19 1919:8 someone 1673:21 1742:17,21 1752:15 1760:6 1778:13 1804:25 1875:8 someplace 1688:25 sometime 1807:23 somewhat 1866:13 somewhere 1853:14,20 1858:16 1873:24 1935:7 1997:24 sorry 1672:21 1691:19 1739:16 1786:24 1787:18 1805:14 1808:4 1812:15 1877:14 1882:7 1893:12 1899:25 1900:5,6,15 1970:23 1972:11 1987:5 1994:22,23 2021:17 2022:9 2023:3 2024:21 2033:19</p>
--	--	---	--

2034:18 2038:2 sort 1692:19 1714:20 1813:2 1896:11 1984:21 1988:25 sought 1809:17 2010:11 2032:10 soul 1886:13 sound 1785:15 1817:15 2011:16 sounding 1907:7 sounds 1772:21 1815:12 source 1752:2 1813:13 2023:15,17 2035:9 sources 1755:4 Southern 1660:17 1810:23 Southwest 1662:15 space 1897:19 speak 1695:3 speaking 1815:17 special 1874:7 1926:16,21 1927:1 specialists 1694:1 1697:22 specialty 1694:1 specific 1675:13 1755:18 1776:21 1781:14 1788:4 1793:8 1814:24	1851:18 1857:3 1860:23 1908:2 2013:23 specifically 1668:14 1706:8,22 1720:3,6,10 1723:20 1729:6 1732:19 1760:13 1767:14 1768:20 1781:25 1803:4,22 1856:2 1860:21 1888:19 1895:11 1920:25 specification 1719:21 1762:13 specifications 1687:1,10 1693:2,5 1701:2 1718:16 1719:23 1720:15,21 1727:21,22 1728:8,15,20 1729:13,24 1762:19 1987:8 specified 1720:1 specify 1719:24 specs 1679:6,8 1688:7 1721:16 spectrum 1990:18 speculate 1725:2 1741:10 1760:5 speculating 1724:16 1781:21 speculation	1724:13 1725:4 1760:9 1781:15 speeches 1877:12 spell 1844:16 spend 1704:13,22,2 5 1866:14 1886:6 2018:14 spent 1680:1 1681:16,21 1688:11 1689:25 1691:8 1697:8 1713:11 1885:16 1930:13 1992:13 1997:21 sponsored 2019:1,7 spot 1888:10 spotting 1888:22 spread 1984:21 spreadsheet 1667:20 1668:11 spreadsheets 1667:19,25 1669:9,14 spring 1705:21 1707:17 Springfield 1660:3 Spurlock 2034:1,4 2035:21 ss 2039:2 st 1662:24 1663:14 1855:19,22 staff 1664:2,8 1665:24 1666:6 1667:1,16	1669:2,3,11 1670:4 1671:3,6,8 1672:3 1674:7,9 1686:22 1690:24 1691:9 1701:25 1702:9,10,12 1704:8,9,19 1705:20 1707:9 1711:25 1767:9 1770:15 1776:13 1777:18 1779:17 1791:9 1809:16 1810:4 1858:23 1859:17,23 1899:5,18 1900:10,20 1926:22 1927:2 1935:10 1936:22 1970:22 1978:13 1979:3,7,8,1 5,17,20 1980:4,10 2010:10,16 2012:3 2014:11 2020:4 2032:14 staffing 1675:25 1676:2 Staff's 1701:20 1935:21 1978:9 stage 1694:20 1758:7 1760:25 1771:25 stages 1814:15 1815:9,12 1816:20 1926:2 stake 2010:13
--	--	--	---

<p>stand 1665:2 1729:8 1744:15 1767:13,18 1808:15,23 1857:16 1868:18 1895:6 1928:24 1929:11 2014:22 2038:11,12</p> <p>standard 1674:10,22 1692:19 1707:3,6,14 1725:6 1726:3 1758:20 1759:14 1876:19 1908:4,9 1935:6,8 1936:1 1997:9 2000:14 2011:21</p> <p>standards 1710:10 1726:6 1936:12 2020:22 2022:22 2023:21,24 2024:2,3</p> <p>standing 1863:17</p> <p>standpoint 1676:19</p> <p>stands 1764:25 1769:10 2015:6 2016:22</p> <p>stanley 1767:17</p> <p>start 1696:7 1703:12 1736:10 1747:8 1750:7,8,10, 24 1757:21 1887:12 1903:20 1930:17 1982:7,10 1990:25</p>	<p>2011:8 2023:18</p> <p>started 1674:2 1677:6 1678:2,22 1697:22 1733:17 1736:14 1740:3 1741:21 1750:13 1751:4,14 1844:11 1885:10 1902:23 1924:9 1984:21 1994:17</p> <p>starting 1682:1 1713:10 1737:14 1994:13,17</p> <p>starts 1740:2 1887:7</p> <p>startup 1751:8</p> <p>state 1659:2 1662:19 1765:7 1768:22 1777:6 1861:11 1924:5 1971:22 2015:11 2025:15 2031:19 2032:21 2039:2</p> <p>stated 1779:12 1806:4 1893:22 2023:8</p> <p>statement 1689:24 1691:15 1733:3 1761:12 1845:19 2032:1,2</p> <p>statements 1690:1 2013:25</p>	<p>states 1663:1 1813:20,22 1815:1,3 1862:6 1872:11 1886:9</p> <p>stating 1675:6 1814:6</p> <p>status 1750:5 1757:17 1846:14 1865:10,18 1873:16 1874:3,6,11</p> <p>statute 1725:18,20 1726:21,24</p> <p>statutes 1767:24</p> <p>statutory 1695:1</p> <p>stay 1722:6 1804:6 1983:11</p> <p>staying 1988:15</p> <p>steadily 1736:11</p> <p>steak 1851:13</p> <p>steaks 1851:13,16,2 0 1852:1,7 1853:14,22 1854:1,4 1855:12 1929:19,21</p> <p>steam 1720:18 1731:2 1747:25 1786:14</p> <p>stearley 1928:2,12 1984:14,16</p> <p>steel 1682:21 1684:21 1685:3</p> <p>Steiner 1662:1 1744:3,13 1926:19 1927:3,6,13 1928:13 1938:5</p>	<p>1970:13,14,1 5,25 1971:4,7,14, 19,25</p> <p>Steinmeier 1662:22</p> <p>step 1675:14 1764:17 2012:14</p> <p>stepped 1685:22</p> <p>steps 1679:14</p> <p>steroids 1989:25</p> <p>Steve 1664:1 1756:19 1774:3 1780:10,14 1781:23,25 1782:3,9,13, 24 1783:9,13 1784:1,9,12 1860:11</p> <p>Stinson 1662:10</p> <p>stip 1920:4</p> <p>stipulation 1986:20 1987:17</p> <p>stop 1687:6 1699:10 1722:13</p> <p>stoppage 1683:8</p> <p>story 1898:11</p> <p>strategies 1774:17</p> <p>strategy 1770:6 1771:11 1772:24 1774:21 1775:7 1782:15 1865:15 1867:1 1904:4 1906:2 1920:13 1988:3 1995:9 1996:9</p> <p>Street</p>
--	--	--	---

<p>1660:23 1661:2,6,19 1662:7,11,15 1664:6,10</p> <p>strength 1677:10</p> <p>strictly 1727:17 1782:8 1904:11</p> <p>strike 1727:11 1749:12,22 1761:14,15 1814:3 2012:19 2013:8</p> <p>striking 2014:14</p> <p>strip 1852:1 1853:14,21 1854:1 1855:12</p> <p>strong 1677:11 1718:1</p> <p>structural 1748:20</p> <p>structure 1697:17 1903:7</p> <p>structured 1678:2 1711:22</p> <p>STS 1696:8 1736:13 1737:1,20 1751:10,11</p> <p>STUART 1660:6</p> <p>studied 1796:14</p> <p>studies 1708:20 1709:8 1735:24 1997:7</p> <p>studying 1988:6</p> <p>stuff 1670:10 1683:10</p> <p>subcontractor s 1803:18 1806:20</p>	<p>1808:2,3</p> <p>subcritical 1680:19 1685:11</p> <p>subject 1710:8 1757:9 1759:5 1803:1 1927:22 1973:6</p> <p>submission 1986:25</p> <p>submissions 1862:10</p> <p>submit 1711:6 1848:4 1863:18</p> <p>submitted 1688:11 1711:13 1767:3 1875:6 1984:14 1986:21 1993:14</p> <p>submitting 1792:17</p> <p>subset 2021:6,12 2023:13</p> <p>substantial 1751:22 1764:5 1855:15 1866:23</p> <p>substantially 1742:4</p> <p>subtract 1746:2,8</p> <p>subtraction 1746:13</p> <p>successful 2019:4</p> <p>sudden 1687:23</p> <p>suffice 2038:1</p> <p>sufficient 1807:2 2011:24</p> <p>sufficiently</p>	<p>1763:5</p> <p>Sugar 1663:2</p> <p>suggest 1669:6 1691:14 1709:19 1731:14 1756:12</p> <p>suggested 1675:1,18,19 ,20 1742:8 1746:12 1889:3 1921:12</p> <p>suggesting 1680:14 1684:6 1716:9 1906:9 2013:8</p> <p>suggestion 1678:23</p> <p>suggestions 1925:20</p> <p>suggests 1691:15</p> <p>suite 1660:7,11,23 1661:2,19 1662:7 1663:9</p> <p>sum 1897:17</p> <p>summaries 1666:3 1667:22 1669:15 1752:6</p> <p>summarize 1712:8 1739:14 1990:24</p> <p>summarized 1717:18</p> <p>summary 1667:21 1669:16</p> <p>summer 1701:1 1922:19 2017:13</p> <p>Summit 1661:3</p> <p>super 1680:19 1685:10</p> <p>supervision</p>	<p>1696:4</p> <p>supervisor 1696:17</p> <p>supplemental 1765:19,23 1766:3,6,18 1935:18 1971:4 2041:15,18</p> <p>supplied 1803:2</p> <p>suppliers 1680:9 1720:9</p> <p>support 1665:14,15 1668:7 1676:17 1678:3 1684:3 1697:25 1714:10 1738:25 1756:5 1768:16 1784:14,20 1791:10 1894:18 2000:19 2013:5</p> <p>supported 1712:18</p> <p>supporting 1665:16,19 1666:1 1667:5,11,17 1669:21,22 1672:13</p> <p>suppose 1692:3</p> <p>supposed 1682:9 1687:9 1728:19 1732:25 1858:7,18 1928:2 1970:20</p> <p>supposes 1728:15</p> <p>surcharge 1792:19,22,2 3</p> <p>sure 1674:20 1687:22</p>
--	---	--	--

1689:17	2025:17	1990:15,17,1	13,24 1783:9
1690:5	SUSAN 1662:6	9 2014:14	1785:21,23
1691:16	suspect	talked 1678:8	1795:18
1718:2	1702:1	1701:17	1846:13
1764:3	1703:17	1711:12	1851:10,24
1766:7	1937:24	1712:20	1859:14
1767:22	suspenders	1717:12	1860:25
1785:6	1996:19	1725:9	1862:23
1792:4	sustain	1741:3	1865:9
1803:22	1857:4	1754:18,20	1874:17
1806:18	sw 1661:15	1762:7	1888:1,12
1813:18	Swearengen	1792:24	1895:2
1815:21	1661:9,10	1814:21	1898:12
1846:23	sworn 1764:23	1844:6	1903:10
1847:12	2014:22	1903:23	1904:7,25
1848:20	2015:4	1922:12	1906:24
1849:24	2039:10	1983:10	1923:1
1850:10	system	1987:21	1924:14,24,2
1852:18	1684:11	1997:16,17	5 1992:12
1854:11,24,2	2025:24	talking	1998:23
5 1864:2	systems	1668:6	technical
1887:25	1676:1	1670:13	1671:7
1898:12	1709:21	1693:1	1673:16
1900:1	1921:16	1701:21	1687:1
1901:13	<hr/>	1718:2,4	1718:15
1905:3	<hr/>	1727:12	1739:2
1907:25	<hr/>	1731:4,7	1778:11
1919:15	<hr/>	1737:19	1888:21,23,2
1920:12	<hr/>	1747:22	5
1922:2	<hr/>	1810:5,9	technically
1924:14	<hr/>	1849:5	1711:4
1927:13	table	1863:7	1727:21
1928:7	1690:14,15	1867:1,5,6,1	telephone
1971:21	1703:11	3,14 1869:1	1996:6
1986:13	1709:24	1926:4	temperature
1990:23	1736:3	1930:17	1680:20
1992:14	1741:24	1938:1,2	temperatures
1993:5,11	1755:23	1991:24	1685:9
surface	1999:25	tallied	1720:18
1677:4	tail-end	1889:13	ten 1699:2
surprised	1989:19	tallying	1703:9
1705:23	taking	1889:10	1706:20,25
1759:10	1665:10	target 1924:8	1748:17
surprises	1701:18	1987:22,25	1861:7
1991:17	1780:19	tasks 1991:14	1886:16
1994:1	1890:16	taxing 1791:9	1993:2
surrebuttal	1929:5	teach 1853:7	tend 1730:18
1690:16	talk 1702:13	team 1681:16	tender
1749:7	1707:24	1682:7	2016:14
1751:24	1723:21	1686:8	ten-month
1754:2	1731:3	1699:23	1748:21
1766:11,20	1757:16	1736:24	tens 1687:23
1886:25	1804:7	1779:11,15	1723:6
1888:5	1844:11	1780:5	tenure
1936:12	1899:15	1781:25	1737:22
2041:20,22	1902:12	1782:3,7,12,	
Surveyors	1935:6		
	1985:12		
	1988:18		

1811:14	1734:14	1896:5	1791:2
term	1857:11	1899:3,4	1795:2
1673:15,23	1889:17	1901:2	1802:2
1678:5	2017:15	1919:14,21	1808:14,24
1690:22	testimony	1935:4,5,8,1	1813:24
1710:9	1665:22	3 1936:17	1844:2
1718:12	1668:18	1973:2,3	1857:21
1730:19	1671:12	1984:25	1877:13
1856:9,21	1673:18	1987:20	1882:2
1857:6	1674:14	1997:1,2,5,1	1885:2
1858:3	1675:2,3,5,1	0	1886:24
1876:10,16	8 1676:6	1998:1,7,8,1	1888:7
1983:23	1690:11,14	2 2000:24	1889:15
1995:7	1691:2	2009:23	1895:4,24
2035:6	1694:23	2012:19	1900:8
terms	1702:24	2013:11,15	1901:2,5
1686:17,23	1703:23,25	2014:15	1908:20
1717:24	1707:11,14,1	2015:18,22,2	1926:8
1718:2,7	6,22	5 2016:7	1928:15,18
1763:14	1709:1,13,18	2020:2,6	1971:16
1796:10	1711:13,16,2	2022:8,11	1972:1
1797:11	0,24	2026:9	1973:23
1815:20	1712:17,18	2032:19	1978:3
1856:4	1714:13	2033:6,9	1981:7,25
1863:9	1716:15	2037:12,14	1984:19
1872:13	1717:11,15,1	2038:3	2012:2,11,13
1897:17	7,19	2039:9,10	,15,16
1922:12	1726:4,5,7	2041:3,5,7,9	2016:24
1982:22	1731:23	,11,13,15,18	2018:18
1983:14,17,2	1732:4,12,20	,20,22	2019:13,17
1 1985:10	,21 1733:4	2042:7	2034:8
1997:8	1734:19	testing	2038:9
2032:1	1735:17	1899:22	thanks
Terry 1659:19	1737:2	Thailand	1808:13
1815:5,19	1739:9	1683:7	1973:22
testified	1741:1,13	thank 1665:7	that's
1761:9	1742:8	1666:18,19	1665:23
1791:3	1749:7	1672:18,20	1667:2,12
1795:3	1751:22,25	1695:5,7	1668:5,10
1802:3	1754:2,17	1705:7,8,9	1670:18,21
1803:11	1755:22,24	1714:1,3	1672:6,8,15,
1844:3	1761:7	1716:21,23	19 1677:6
1882:3	1764:5	1717:1,2	1678:1
1885:4	1765:13,15,1	1739:19	1679:18
1893:3	7,20,23,24	1743:17,25	1681:20
1919:1	1766:1,4,11,	1744:13,22	1683:20
1935:2	13,16,22	1745:17	1684:6,7,15
1972:14	1767:10,11,1	1747:7	1688:1
2009:3,24	5	1749:11	1690:3,15
2017:5	1768:19,21,2	1759:22	1691:19
2018:23	5 1775:24	1764:3,15,16	1698:2,13
2031:6	1776:3,4,9,1	,17,19,24	1699:19
testify	2,16,18,23	1769:12	1700:9,16,18
1803:8	1777:2,7,18,	1773:2,23	1701:4,11,19
2009:25	24 1779:2,5	1775:15,17	1702:8
2013:3	1780:4	1786:25	1704:19
testifying	1876:25	1787:1	1705:6
	1877:16,23	1788:7	1706:18
	1882:6		1708:18

1711:6,17 1712:1,2,12 1713:22 1714:11,17 1715:9,12 1716:12,17,2 0,21 1718:11,12 1720:4 1721:19 1722:19,24 1725:12,23 1726:17 1729:22 1730:22 1731:1,6,11 1732:1,13 1735:15 1736:9,19 1737:17 1738:14 1739:15 1740:12,13 1742:21 1743:17 1746:15 1748:7 1750:17 1752:1 1753:1,6,20 1754:1,2,18 1755:23 1757:23 1758:8 1759:2,21 1764:1,13,14 1770:6 1773:1,9 1774:2,4 1775:16 1780:19 1781:1 1783:15 1787:11 1791:18 1793:7,11 1797:21 1803:10,15 1807:24 1808:12 1809:15 1811:6 1817:8,16 1844:6 1845:12,16 1847:8,16 1850:25 1851:7 1853:23	1854:23 1857:18 1859:10,17 1861:6 1863:5,11,12 1865:12 1867:20 1875:3 1877:15 1882:8 1889:12,13 1893:20 1895:9 1897:2,9 1898:2 1899:1,21 1900:3 1901:17 1905:1,2,21, 24 1906:5,7 1907:20 1908:15 1922:24 1923:13,19,2 1 1926:19 1927:3,15 1928:13,14 1935:6 1937:17 1971:19 1973:21 1987:11 1989:25 1990:10 1993:22 1995:14,15 2009:23 2010:5,11,16 2011:12 2014:16,17 2024:6 2032:20 themselves 1676:13 1722:21 1749:14 1755:9 thereafter 2039:12 therefore 1674:5 1675:9 1708:14 1937:21 1973:6 therein 2037:14	there's 1667:24 1670:3 1679:6 1684:9,10,15 1686:25 1691:16,20 1701:20 1703:10 1709:17 1710:16,23,2 4 1713:18 1715:5 1716:12 1728:25 1729:10 1730:23 1731:14 1738:5 1746:6 1762:4 1774:2 1782:20,22 1795:14 1797:20 1804:12 1806:17 1810:5 1850:1 1866:19 1874:22 1875:3 1887:17 1888:2 1894:6 1896:16 1908:18 1923:11 1935:9 1972:13 1988:16 1989:23 1998:2,12 2000:15 thereto 2039:17 they'd 1703:18 1705:3,4 they're 1674:25 1675:6 1682:24 1687:23 1697:11,16 1711:21 1726:22 1727:21	1735:23,24 1738:12 1768:7,14,17 1777:22 1779:6 1809:20 1853:2,3,4 1862:25 1863:1 1890:4 1894:18 1901:15 1924:15 1925:6 1984:4 2016:10 2018:1 2023:13 2026:1 2034:24 they've 1695:19 1700:2 1733:16 1757:21,24 1758:5 1855:17 1893:19 2000:7 thick 1668:1 third 1707:25 1708:2 1810:19 1897:12 1991:20 2035:24 Thomas 1660:18 1785:11 Thompson 1664:2 1741:2 thorough 1797:24 1902:7 thoroughly 1688:24 1994:3 thousand 1863:20 1922:25 thousands 1707:19 three-month 1807:11,17
--	---	---	---

<p>three-quarters 1687:2</p> <p>throughout 1701:16 1749:11 1814:23 1872:11 1873:5 1888:1 1900:16</p> <p>thumb 1989:1,8</p> <p>thunder 1890:17</p> <p>Thursday 1866:21,22 1869:20 1970:5,7 1971:24</p> <p>ticket 1855:12</p> <p>tickets 1855:16</p> <p>Ticktack 1844:21 1845:2</p> <p>Ticktacks 1774:2,6</p> <p>Ticktack's 1844:24</p> <p>TickTacks 1844:12</p> <p>tier 1897:2,9 1898:2</p> <p>tiers 1908:9</p> <p>TIGER 1659:24</p> <p>timeline 1749:24 1750:2,5 1751:10,19 1920:5 1985:15,17,2 2 1986:12</p> <p>timelines 1984:22</p> <p>timeliness 1676:4 1923:24</p> <p>timely 1676:1</p> <p>title 1780:20 1864:12</p>	<p>today 1717:12,16 1759:9 1767:1,4 1787:4 1803:8 1847:5 1852:1 1854:21 1860:17 1922:17 1979:2 1983:9</p> <p>TODD 1660:14</p> <p>Tom 1774:13,18 1775:1,2 1786:9 1813:22 1860:11 1901:14 1907:4</p> <p>tonight 1808:17 2015:25</p> <p>tools 1845:22</p> <p>top 1674:13 1747:8 1810:21 1896:14 1897:2,8 1898:2</p> <p>top-down 1680:6,10</p> <p>Topeka 1662:15 1669:7</p> <p>topic 1710:24</p> <p>Toshiba 1685:12 1701:1,14 1750:16 1757:24</p> <p>total 1677:21 1697:7 1705:25 1715:21 1747:3 1784:5 1930:13 1990:6</p> <p>totals 1746:5</p> <p>touch 1701:12 1776:23</p>	<p>1777:24</p> <p>touches 1925:6</p> <p>touchy 1710:7</p> <p>tough 1886:22</p> <p>tournament 1865:25 1866:3,6,9,1 7,20 1868:2,4 1869:18</p> <p>towards 1856:13</p> <p>Tower 1765:10,11</p> <p>track 1682:5 1722:4,6 1732:16 1742:3</p> <p>tracking 1900:11 1903:22 1998:25</p> <p>traditional 1970:19</p> <p>trailer 1670:16 1864:13</p> <p>trailers 1816:19 1865:1 1905:3 1925:19</p> <p>transcript 1659:5 1744:8 1788:17 1793:17 1798:14 1818:2 1878:8 1882:12 1891:2 1909:5 1930:24 1938:9 1974:5 2002:1 2013:16 2027:1</p> <p>transfer 1707:21 1877:9</p> <p>transferring</p>	<p>1702:7</p> <p>transformers 1731:1</p> <p>transparency 1905:22,23</p> <p>transparent 1734:11</p> <p>travel 1803:15,19 1804:11,16,2 0 1805:4,7,20, 22,25 1806:21 1807:14 1861:10,13</p> <p>traveled 1805:18 1806:4</p> <p>traveling 1803:13</p> <p>treat 1852:23 1856:15</p> <p>treated 1847:15 1863:22</p> <p>treating 1863:24</p> <p>treatment 1748:12</p> <p>tremendous 1982:21 1993:24</p> <p>tried 1735:20</p> <p>Trimble 1676:9 1678:25 1679:4 1739:6,10 1740:6,19,21 1741:7,16,21</p> <p>TRIPP 1661:5</p> <p>trouble 1809:22 1854:14 1863:5</p> <p>true 1665:24 1767:4 1899:21 1982:14 2016:3 2038:5</p> <p>truth</p>
--	---	---	--

<p>1768:6,14,18 try 1687:3 1690:4 1694:5 1704:21 1708:19 1719:3,20 1847:1 1857:20 1901:7 1924:16 1996:20 trying 1673:14 1680:1 1698:4 1699:9 1714:15,16 1739:23 1740:4 1741:8 1774:22 1782:5 1805:21 1806:2,8 1812:14 1850:12 1905:22,23 1906:20 1936:10,14 1985:10 1996:19 tubes 1731:1 turbine 1679:9 1681:19 1682:19 1685:8 1700:19,22 1701:2 1731:2,10 1747:25 1748:8 2035:17 turmoil 1681:12 turn 1728:6 1732:2 1755:21 1863:23 1937:23 2020:9 2033:8 2036:18 turning 1745:17</p>	<p>Tuxedo 1663:13 twice 1682:21 1686:1 type 1706:13 1720:19 1754:22 1810:10 1973:1 1984:2 1989:22,23 1990:11 1991:18 1993:6 types 1710:15 1775:5 1874:3 1899:7,11 1989:17 1991:2 1993:4 typewriting 2039:12 typical 1714:20 1849:2 1886:17 1990:10 2031:15 typically 1710:9 1759:16 1989:17 1990:1 1998:22</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S 1661:16 1679:22 2035:2 2036:4 Uh-huh 1750:22 1771:3 uhlig 1662:18 ultimately 1683:2 1688:14 1727:4 1922:6 1973:12 umbrella 1907:14 unable 1759:8</p>	<p>unanticipated 1721:9 unbelievably 1862:9 1990:18 uncertainties 1680:16 uncomfortable 1674:12 understand 1680:2 1689:23 1708:2 1712:24 1727:3 1738:11,18,2 3 1752:20 1770:2 1774:24 1777:20 1783:2 1784:7 1848:20 1854:12 1855:21 1908:12 1926:13,14 1928:25 1935:22 1938:1 1979:25 1999:16 2032:8 understanding 1688:20 1707:2 1738:21 1753:8 1757:12 1781:18,21 1782:8,9 1791:20 1792:2 1803:10 1809:15 1816:6 1847:14,16 1858:22 1859:17 1873:6 1885:14 1926:18 1928:1,15 1935:11,20 1937:3,11 1970:4 1971:23</p>	<p>1978:20 1995:20 understood 1971:22 1993:5,20 1994:1 undertake 2037:17 undertaking 2037:16 unduly 1981:5 uniformly 1853:23 unintended 1685:23 1692:14 Union 1660:17 unique 1886:7,16 unit 1670:5 1685:10 1686:5 1711:13,14 1712:10,13,1 5,19 1817:1,3 1847:6 1995:12 1999:8 2034:12 United 1663:1 1815:1,3 1862:5,6 1872:11 1886:8 units 1742:5 2034:10 2035:22,24 unless 1707:7 1776:20 1937:14 unrealistic 1733:15,21 unreasonable 1709:19 1713:8 1715:4 unsatisfactor y 1859:8,11 untimely 1936:4,5 updated</p>
--	--	--	--

<p>1670:25 upon 1689:25 1708:9,12 1768:10 1773:18 1776:11,12,2 4 1777:7,24 1783:4 1920:16 useful 1738:8 1985:10 usually 1862:3 1888:14 utilities 1983:3 utility 1710:13 1761:16,20 1767:17 1771:11 1786:14 1810:18,21 1811:3 1852:23 1902:13 1907:5,12 2023:25 2036:6 utilization 1676:3 utilized 1680:5 1741:14 utilizing 1673:18</p> <hr/> <p style="text-align: center;">v</p> <hr/> <p>vaguely 1877:22 valid 1679:21 valuable 2010:8 value 1678:25 1697:10,16 1851:25 1861:8 1982:18,22 1983:2 2010:20 variance 1847:2 variety</p>	<p>1921:5 various 1708:20 1731:10 1732:4 1805:4,9 1814:22 1853:6,10 1867:14 1874:3 1897:20 1900:11,18 1905:17 1922:10 1985:7 2035:11 vast 1782:9 1811:12 1861:22 1874:10 vastly 1898:25 veatch 1688:4,5,7,1 7,21 1692:2 1719:23 1721:17 1729:5,9 1987:7 vendor 1894:8 1992:2 vendors 1897:20 verbal 1873:20 1894:2 verified 1767:16,18 1806:5 1813:11 verify 1743:22 1786:23 1805:11,17 1809:16 1810:1,14 1919:5 1927:10 1992:7 versed 1895:17 version 1923:20 versions</p>	<p>1767:8 versus 1715:21 2036:12 vetted 1814:6 1894:12 vetting 1902:19 1923:18,24 1936:5 via 1980:24 vice 1810:17 vice- president 1696:13 1868:10 1870:14 view 1665:20 1677:13 1687:20 1736:4 1896:10 1903:22 viewed 1846:24 1847:1 1855:1,12,17 1900:19,24 1906:4 views 1865:14 violates 1813:19 virginia 2025:15 virtue 1733:22 visit 1672:2 volkar 1774:7 1844:14 1845:7 Volume 1659:9 1788:17 1793:17 1798:14 1818:2 1878:8 1882:12 1891:2 1909:5 1930:24 1938:9 1974:5 2002:1</p>	<p>2027:1 volume's 1930:2 voluminous 1666:9 1668:1 voluntarily 1816:4,7 vomit 1923:11 voucher 1666:4 vouchers 1667:21,22 1668:5 VP 1772:4 1871:14,18 1872:5 1873:7 VPs 1902:11</p> <hr/> <p style="text-align: center;">w</p> <hr/> <p>wagner 1663:16,17 waited 1713:14 waiting 1679:2 1747:14 waive 1777:22 1851:1 waived 1777:21 waives 1777:5 waiving 1776:25 1777:16 walk 1992:11,17 1995:16 walked 1796:4 walking 1900:10 walk-throughs 1900:22 walson 1998:22 walt 2040:3 2042:6 warning 1682:24</p>
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<p>1754:24 wars 1855:21 wash 1687:14 washes 1687:14 Washington 1661:15 2015:15 wasn't 1669:1 1703:24 1704:24 1706:7 1719:17 1722:22 1740:21 1741:11,12 1742:7,23 1784:5 1859:6 1863:24 1870:11 1885:18 1895:18 1902:16,21 1921:21 1936:1 1979:20 1993:23 waste 1706:24 watching 1852:20 1888:24 water 1680:21 1685:7 1748:12 weak 1717:11,14,1 6 1718:5,12 1721:4 1723:18 web 1813:11 we'd 1767:6 1991:24 week 1702:11 1703:9 1705:3 1893:7,8 1923:12 1984:12 1999:8 weeks 1682:25 1696:14 1707:19 1987:16</p>	<p>weisensee 1970:16 welcome 1768:4 we'll 1687:3,4,5 1743:23 1788:14 1793:13 1817:24 1864:2 1868:17,18 1882:8 1890:20 1929:8 1930:21 1995:25 2001:23 2014:15,25 well-known 1793:1 well-managed 1923:14,15 well- recognized 1688:6 well-renowned 1997:7 we're 1678:13 1682:3,4,5,6 1687:6 1693:1 1700:8 1702:6 1704:25 1720:19 1722:13 1727:17,18 1731:3,6 1744:15 1747:13 1756:24 1761:11 1764:20 1791:1 1797:17 1804:8 1808:24 1844:1 1849:23 1857:15 1882:1,6 1885:1 1886:8,21 1888:5 1890:9,24 1903:24</p>	<p>1905:21,22 1926:4 1938:1 1971:20 1986:13 1990:7 2009:1 2014:9,14 2036:23 westin 1704:18 weston 1669:8 we've 1677:17 1712:21 1723:14 1724:4 1737:10 1743:20 1752:22 1766:16,17,1 8,19 1850:1 1857:17 1862:15 1863:11 1874:9 1875:9,20 1902:8 1904:1,2,3 1921:8 1989:19 1991:12 2000:8 whatever 1703:15 1716:13 1726:24 1908:10 1919:25 whatsoever 1750:4 whenever 1670:14,20 1929:15 whereas 2025:25 wherever 1702:17 whether 1670:1 1675:15 1686:18 1688:25 1699:13,20 1701:20 1711:25 1713:5,6</p>	<p>1719:21 1722:20 1723:10 1727:17,18 1729:8,19,23 1734:12 1738:12 1760:2 1762:12 1763:7 1769:1 1777:15 1785:2 1804:21 1805:17 1845:8 1856:2 1860:5 1906:20 1923:22 1926:4 1927:15 1984:13,16 1990:23 1991:2 1996:24 2012:4 2032:4,5,21 whichever 1761:1 whoever 1711:5 whole 1686:3 1733:20 1747:14 1888:10 2017:25 2018:12 2035:10 wholly 1814:4 whom 2039:8 who's 1889:20 1894:1 whose 2039:9 wife 1814:15,20 wilcox 1688:9 1689:6 william 1662:22 1771:4 WILLIAMS 1664:1 willing 1868:15</p>
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<p>1982:23 1983:19 willis 1765:11 willy-nilly 1854:9 wilson 1773:12,13,2 0 1778:8,13 1792:20,24,2 5 1795:5,12,15 ,17,24 1803:19 1805:12 1807:15 1860:10,23 1875:4 1888:24 1905:2 wilson's 1773:5 1904:13 windows 1988:5 wipe 1919:19 wisconsin 1767:12 withdraw 1774:24,25 witness 1705:8 1725:25 1728:13 1741:3 1747:17 1757:3 1760:6,21 1764:19,23 1767:23 1770:20 1772:11 1775:25 1776:3,9 1777:12 1788:8 1797:1 1804:9 1813:15 1849:17 1850:18 1857:10,13,1 4 1859:12 1868:14 1870:3,5 1885:3</p>	<p>1890:14,16,2 2 1893:22 1900:4,9,15 1908:25 1929:5,13 1970:6,9,25 1972:11 2012:15 2015:4 2016:15 witness/es 2039:9,11 witnesses 1815:11 1970:6,8,11, 12,21,22 1971:1,3 2009:19 2010:4 wolf 1924:3,4,7,9 2010:12 woman 1872:10 women 1886:10 won 1981:17 WOODSMALL 1660:6 worded 1692:16 wording 1692:17 1693:1 word-of-mouth 1862:12 work 1670:2,19 1671:5,11,12 1676:22 1683:8 1686:20 1687:6 1702:3 1710:9 1712:4 1738:7,9 1750:24 1759:13 1774:8 1778:14 1781:6 1782:2,5,10 1785:19 1786:3,9,13 1791:9 1795:15,19,2</p>	<p>4 1811:16 1812:3,5,22 1813:24 1814:6 1844:21 1845:10,11 1848:10 1853:22 1860:10 1863:22,25 1864:7 1865:7 1866:16,23 1875:14 1886:18 1897:10 1898:23 1904:17 1905:1,12,15 1907:13 1980:17 1981:3 1990:10 1991:19,21 1992:8 1995:17 2000:4 2033:13 2036:17 worked 1669:4 1671:3,8,9 1706:11 1736:25 1759:17 1771:13 1774:6 1797:7 1802:10 1810:16 1811:6,9,19, 25 1812:7,8,10, 13,15,16 1814:1,13 1815:13 1844:25 1845:3,5 1848:1 1852:13 1853:15 1862:5,6,7 1864:18,23 1875:9,21 1887:18 1894:25 1895:2 1896:12 1898:12 1924:24</p>	<p>2036:9 working 1671:4 1672:4 1722:9,10 1758:18 1774:3 1786:4,16,17 ,21 1816:19 1845:8 1862:2 1866:10 1867:9 1873:1 1885:19,20 1886:11,21 1887:9 1895:4,8 1896:6 1905:3 1983:9,13 works 1671:7 1672:10 1795:17 1875:8 world 1863:9 worn 1937:25 worse 1813:21 1972:12 worst 1923:10 worth 1683:18 1768:19 1848:5 1861:5 wrapping 2037:25 write 1684:13 1703:23 1861:11 1863:19 1864:3 1874:15,18 write-down 1863:16 write-downs 1861:7 1992:18 1993:21 write-off 1803:16 1860:18 1861:2 write-offs 1861:6,10,18</p>
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<p>,20,23 1993:5 1995:7 writes 1692:2 write-ups 1697:23 writing 1692:20 1802:9 1803:4 1805:24 1995:18 written 1677:9 1692:13,20 1708:21 1723:9 1760:6 1804:20 1873:20,22,24,25 1874:9,22 1894:6 1928:2 1992:22,23,24,25 1993:2,3,20 2014:4 wrong 1699:6 1714:13 1854:15 1899:19 1988:9 1989:1 wrote 1679:10 1688:3,7,21 1861:5 1874:8,17 2011:2 WSI 1684:11 2019:24</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Year's 1853:21 yelling 1908:23 yellow 2024:2 yesterday 1665:13 1691:7 1736:16 1761:6 1901:22</p>	<p>yet 1726:18 1744:6 1855:5 1927:16 1937:24 1993:9 2009:24 you-guys 1901:21 1907:13 1919:5 you'll 1680:2 1711:7 1806:10 1930:20 2014:22 Young 1736:1 yours 1994:8 yourself 1677:16 1874:16 2018:8 2024:18,24 2025:2,3,6 you've 1696:24 1717:5 1730:2 1735:20 1767:22 1802:10 1806:4 1814:21,22 1815:16 1848:1 1855:3 1876:8 1889:5 1899:2 1936:16 1988:20 1989:4 1990:8,12,23 2026:9 2035:3</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero 1995:10,14,15,19 1996:3,12 Zion 1813:19 1814:1 ZOBRIST 1662:5</p>		
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