BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 26, 2011

Jefferson City, Missouri

Volume 25

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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

REPORTED BY:
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1   JUDGE PRIDGIN: Good morning, we are back

2 on the record. Dr. Nielsen is back on the stand and I

3 believe Ms. Kliethermes was in the middle of

4 cross-examining him when we adjourned for the evening

5 last night. Is there anything further from counsel

6 before she resumes her cross-examination?

7   All right. Hearing none, Dr. Nielsen,

8 you're still under oath, sir. Ms. Kliethermes, when

9 you are ready.

10   CROSS-EXAMINATION (continued)

11 QUESTIONS BY MS. KLIETHERMES:

12   Q.   Good morning, sir.

13   A.   Good morning.

14   Q.   I believe we left off on your rebuttal

15 testimony looking at your attached exhibits to that

16 testimony.

17   A.   Uh-huh, yes.

18   Q.   And do you recall the contents of your

19 Exhibit 4?

20   A.   Yes.

21   Q.   Many of those plants listed are not new

22 construction, are they?

23   A.   About half of them are.

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

25 they?

1   A.   No.

2   Q.   Many of these projects described here

3 are, in fact, outages; are they not?

4   A.   There's substantial outages that may have

5 cost --

6   Q.   A simple yes or no will suffice.

7   A.   Okay. Many of them are outages.

8   Q.   Several of them are to do with things

9 such as water inlets or other less than complete plant

10 projects, correct?

11   A.   I think two -- one of them is for water

12 inlet. That's the only one I think that's less

13 complete.

14   Q.   Is one of them for a decommissioning

15 study?

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

17   Q.   Was Diablo Canyon only for design?

18   A.   That was a design issue that was in the

19 prudence docket.

20   Q.   And if I'm correct in recalling, you

21 stated last night that you did not interview Schiff

22 Hardin in the scope of your prudence review; is that

23 correct?

24   A.   I did not. Members of my team had an

25 interview with them.

1   Q.   Who made that interview?

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

3 I recall.

4   Q.   And what are their titles?

5   A.   Chief operating officer and John was our

6 ex-chief operating officer, who's now retired.

7   Q.   Do you still have the copy of GAGAS

8 before you?

9   A.   No, I don't.

10   MS. KLIETHERMES: Does the court reporter

11 have the copy of GAGAS?

12   COURT REPORTER: I don't have it in here

13 with me. I have it in my car if you would like me to

14 run out there and get it.

15   MS. KLIETHERMES: We'll see if we can do

16 this without that.

17 BY MS. KLIETHERMES:

18   Q.   Generally is the purpose of GAGAS

19 directed at identifying issues in an ongoing project?

20   A.   Parts of it are.

21   Q.   Is the purpose of GAGAS to identify

22 issues that have gone wrong in a fully completed

23 project?

24   A.   It can.

25   Q.   Is that a stated purpose of GAGAS?

1   A.   In the performance audit sections, yes.

2   MS. KLIETHERMES: Yeah, I'm sorry, I

3 think I'm probably going to need the document.

4   JUDGE PRIDGIN: If we need to take a

5 recess for the court reporter.

6   MS. KLIETHERMES: Let me see if I have

7 enough that doesn't involve that to get us to where we

8 take a break. Frankly, it's a pretty significant

9 part. And we may need to go in HC for this next line.

10   JUDGE PRIDGIN: Okay. Just a moment,

11 please.

12   MS. KLIETHERMES: Well, I guess we'll

13 confirm with their counsel. Yes. We do need HC.

14   JUDGE PRIDGIN: Just a moment, please.

15 We'll go in-camera.

16   (REPORTER'S NOTE: It is noted later in

17 the transcript that the following portion does not

18 need to be in-camera.)

19   JUDGE PRIDGIN: We are in-camera. And if

20 you'll please let me know when we can go back to

21 public.

22   MS. KLIETHERMES: Certainly. Oh, GAGAS

23 has appeared.

24   JUDGE PRIDGIN: Don't hear that every

25 day.

 1   MS. KLIETHERMES: I will go ahead and do

 2 this in-camera portion.

 3   JUDGE PRIDGIN: So do we need to stay

 4 in-camera?

 5   MS. KLIETHERMES: Yeah, I'll do this

 6 portion, first. May I approach?

 7   THE COURT: You may.

 8   THE WITNESS: Thank you.

 9   MR. FISCHER: Do you have a copy for us

10 by chance?

11   MS. KLIETHERMES: I don't. It's your

12 invoices from the DR request.

13   MR. FISCHER: You wouldn't have an extra

14 copy of GAGAS, would you?

15   MS. KLIETHERMES: No.

16 BY MS. KLIETHERMES:

17   Q.   What document have I placed before you?

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

19   Q.   And what does it describe or what does it

20 pertain to?

21   A.   "Please provide the following: Your

22 consulting contract entered into with Pegasus Global

23 Holdings, Pegasus Global, in parens, and/or any

24 employee, principle, or representative of Vantage

25 Consulting, Inc., copies of all billing statements,

1 invoices, statement of fees or charges or similar

2 documents, however classified or entitled, submitted

3 to you by Pegasus Global or any employee, principle,

4 or representative of Pegasus Global."

5   Q.   And does it indicate that a series of

6 documents are attached in response to that, including

7 several invoices?

8   A.   "Please see attached responsive

9 documentation, attachments, Pegasus Consulting

10 agreement. Please see attached responsive

11 documentation. No invoices received for known period,

12 November 1, 2008, through February 5, 2009." And then

13 it lists a bunch of invoices.

14   Q.   And could you review those invoices and

15 indicate whether or not they are Pegasus invoices on

16 this project?

17   A.   Other than the contract that is attached,

18 they seem to be invoices.

19   Q.   And they're invoices from Pegasus related

20 to the Iatan project?

21   A.   Yes.

22   MS. KLIETHERMES: Could I have this

23 marked and I would offer it as an exhibit?

24   JUDGE PRIDGIN: We would be at 275, and

25 this is HC, Ms. Kliethermes?

1   MS. KLIETHERMES: That's my

2 understanding.

3   (KCP&L Exhibit No. 275-HC was marked for

4 identification by the court reporter.)

5   MR. FISCHER: Will Staff be making a copy

6 for the rest of us?

7   MS. KLIETHERMES: Yes.

8   JUDGE PRIDGIN: 275 has been offered, any

9 objections?

10   MR. FISCHER: Judge, I haven't seen the

11 document. I'd like to reserve an objection until

12 we've had a chance to review what they have.

13   JUDGE PRIDGIN: So noted. I will not

14 rule yet.

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

16   THE WITNESS: 266.

17 BY MS. KLIETHERMES:

18   Q.   Could you tell us briefly about road

19 shows?

20   A.   I don't understand the context.

21   Q.   Have you stated in your deposition that

22 you do road shows for investors of various investment

23 banks?

24   A.   Yes.

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

1 you -- what sort of time draw are those road shows?

2 What sort of activities do you do when on these road

3 shows?

4   A.   Well, as part of the services that were

5 retained by Deutsche Banks, which is one of the major

6 investment banks in the world, we do consulting for

7 their chief economics department, or chief economists.

8 We hold video-conferences with them every other Monday

9 morning and then approximately two to three times a

10 year, we're made available in London to go around and

11 advise or answer questions from many of their various

12 large investment funds that are investing in projects.

13   Q.   Are these all-day affairs?

14   A.   They are all-day affairs, but it depends.

15 Some -- some weeks that I'm over there, I might have

16 one meeting or two meetings a day, which maybe last

17 for an hour or two. Generally, they are very intense

18 for a couple of days and then I work like I do all the

19 time on the road.

20   MS. KLIETHERMES: I think we can probably

21 go back out of camera.

22   JUDGE PRIDGIN: Just one moment, please.

23   MS. KLIETHERMES: Judge, as that played

24 out, I don't believe any of that would need to be HC,

25 so if the record could be corrected to make that prior

1 segment public, that would be appreciated.

2   JUDGE PRIDGIN: So noted. And we are

3 back in public forum.

4 BY MS. KLIETHERMES:

5   Q.   Do you review change orders in the course

6 of your prudence audit?

7   A.   Yes.

8   MS. KLIETHERMES: May I approach?

9   JUDGE PRIDGIN: You may.

10 BY MS. KLIETHERMES:

11   Q.   What I have handed you are various

12 InterFab change orders, would you agree? Change

13 orders related to the vendor or contractor InterFab;

14 is that correct?

15   A.   Yes.

16   Q.   Did you review these change orders in the

17 course of your audit?

18   A.   As I recall, we reviewed these in some

19 detail because they're related to the aux boiler

20 issue.

21   MS. KLIETHERMES: Could I have those

22 marked?

23   JUDGE PRIDGIN: This will be 276.

24   (KCP&L Exhibit No. 276-HC was marked for

25 identification by the court reporter.)

1   MS. KLIETHERMES: At this time, I will

2 offer those as an exhibit.

3   JUDGE PRIDGIN: 276 is offered, any

4 objection?

5   MR. FISCHER: Assuming they are what

6 counsel has indicated, I don't have a problem with

7 that.

8   MR. STEINER: I think they're HC, could

9 you mark those HC, Sarah?

10   JUDGE PRIDGIN: These are marked as HC,

11 so Exhibit 276-HC is offered and admitted.

12   (KCP&L Exhibit No. 276-HC was received

13 into evidence.)

14   THE WITNESS: I should correct this.

15 There's some InterFab invoices related to the aux

16 boiler, but this isn't -- these appear to be in

17 addition to those.

18 BY MS. KLIETHERMES:

19   Q.   Did you review InterFab invoices in

20 general?

21   A.   I have reviewed some of them. I can't

22 swear that I've looked at every one.

23   Q.   And I'll try to do as much of this as I

24 can in public session. Do you see a box above the

25 signature block? I'm sorry, not a box, some text

1 above the signature block?

2   A.   Yes.

3   Q.   Could you please read that aloud? And if

4 you have difficulty --

5   A.   You've got younger eyes.

6   Q.   "It is understood that the requested

7 changes will not be undertaken until the change order

8 is approved by the parties and that the terms and

9 conditions govern all work to be performed under this

10 change order. Contractor waives any and all rights to

11 claim additional time or money under the agreement for

12 services to be performed under this change order.

13 This change order constitutes compensation in full on

14 behalf of the contractor for all costs and mark-ups

15 directly or indirectly attributable; i.e., the changes

16 ordered herein for all delays related therein and for

17 performance of the changes within the time stated."

18   To your recollection of reviewing change

19 orders, did I state that correctly?

20   A.   I don't remember.

21   Q.   Okay.

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

23   Q.   I hope I read it right. And to clarify,

24 that specific document is subject to copying and

25 printing, so it's difficult to read the text.

1   To your knowledge, is text of that nature

2   or near that nature on all Iatan change orders?

3   A.   Yes. Generally, that's a fairly common

4   language on all change orders regardless of project

5   and I -- I really don't find that unusual.

6   Q.   Is the effect of that language that work

7   should not be done prior to approval?

8   A.   That depends on how the change order

9   evolved. There might have been an emergency

10 situation. There's particular terms and conditions in

11 purchase orders and contracts that allow them to give

12 verbal authorization or maybe followed by confirmation

13 in writing when an emergency situation may be over or

14 they have some need to get the change order underway.

15 And then the contractor and the -- and the owner can

16 negotiate the final price.

17   Q.   If a change -- if work was performed

18 prior to the execution of a change order due to

19 exigent circumstances, would you expect documentation

20 of that emergency to be attached to the change order?

21   A.   It could be, yes. It depends, really, on

22 the nature.

23   Q.   Is that something you look for in

24 performing a prudence audit?

25   A.   Not for a prudence audit.

1   Q.   Is evidence of work being done prior to

2   authorization of that work, would you consider that to

3   be imprudent?

4   A.   It may be. It depends on the

5   circumstances, as I said.

6   Q.   Can you describe a circumstance in which

7   it would be prudent to not document work?

8   A.   They keep very exact records when they

9   authorize to be done on a time and material basis.

10 For example, and trying to get various types --

11 depending on the situation and how emergent the

12 situation is, they will authorize, they keep exact

13 records of time and materials. I did look at that as

14 a process. I didn't look at every change order to

15 determine whether that was a needed -- they had a need

16 to pursue that change order on a time and materials

17 basis. However, they had the processes in place. If

18 something stuck out at us like an auditor, you don't

19 look at every piece of paper on the project, so.

20   Q.   When you describe an emergency situation,

21 would you expect those sorts of document -- I'm sorry,

22 let me start over.

23   If exigent circumstances existed such

24 that there wasn't time to prepare a change order, how

25 much time is reasonable for the preparation of a

1 change order following the resolution of the emergency

2 situation?

3   A.   Depends on what the emergency is and

4 how -- how the contractor may have been authorized on

5 a T&M basis -- for an example, the T&M basis, to do

6 that. There's no set --

7   Q.   Would a year be reasonable?

8   A.   It depends if this was a change to an

9 existing contract under which they had provided

10 similar types of facilities. And it also -- the

11 change order might be executed a year later because of

12 negotiations that they have had with the contractor.

13   Q.   Do you consider KCP&L's change order

14 process to be burdensome?

15   A.   No.

16   Q.   Is it more or less rigorous than your

17 experience throughout the industry?

18   A.   It's comparable rigor.

19   Q.   In performing your audit, did you look

20 for fraud?

21   A.   I look for fraud, but not specifically.

22 You know, a prudence audit is of the decision-making

23 advance --

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

25   A.   I was just trying to explain why.

1   Q.   I'm sure your counsel will facilitate

2 that.

3   MS. KLIETHERMES: May I approach?

4   (KCP&L Exhibit No. 277 was marked for

5 identification by the court reporter.)

6 BY MS. KLIETHERMES:

7   Q.   I've handed you some data request

8 responses and I believe the numbers are 0331 and 0630.

9 Do those reflect a list provided by KCP&L of purchase

10 orders for which there was no contract and contracts

11 orders -- or I'm sorry, contracts for which there was

12 no associated purchase order? Is that correct?

13   A.   I'm reading them.

14   Q.   Oh, I'm sorry.

15   A.   I've never seen these before, so I'm

16 reading them. Now what was your question?

17   Q.   Are -- do those appear to be lists of

18 Iatan project charges where there was either no

19 purchase order or no contract?

20   A.   Well, 331 there are two lists. The

21 company has -- list number one, the company has a

22 contract with the vendor but has not issued a purchase

23 order. Company does not have a contract with the

24 vendor, payment has been made via direct pay.

25   And then DR 360, there seems to be two

1 lists again. Company has a contract with the vendor

2 but has not issued a purchase order. Company does not

3 have a contract with the vendor, payment may be a

4 direct pay.

5   Q.   So then would you agree with me that

6 these are lists of contracts -- or of charges to the

7 Iatan project where there was either not a purchase

8 order or not a contract in place?

9   A.   Yes.

10   Q.   Were you aware that there were such

11 charges?

12   A.   Yes.

13   Q.   Did you closely investigate such charges?

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

15   Q.   How familiar are you with the -- or are

16 you familiar with the Iatan change order system?

17   A.   Yes.

18   Q.   Are you aware that a change order cannot

19 be entered absent a purchase order?

20   A.   Yes.

21   MR. FISCHER: Objection, calls for facts

22 not in evidence.

23 BY MS. KLIETHERMES:

24   Q.   Can a change order be entered on a --

25 against a vendor who does not have a purchase order in

1 place?

2   A.   In general?

3   Q.   In general, yes or no?

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

5 purchase order.

6   Q.   Can a vendor be paid out in excess of the

7 purchase order through KCP&L's Iatan system?

8   A.   It depends on the circumstances, but in

9 general, the system provides that it cannot be paid

10 over the amount that's specified in the purchase

11 order.

12   Q.   So the lack of a purchase order would

13 indicate the lack of at least one cap on vendor

14 payment, correct?

15   A.   I don't understand the question.

16   Q.   I believe you just stated that an invoice

17 will not be paid that is in excess of a purchase order

18 amount, correct?

19   A.   Yes.

20   Q.   That will suffice.

21   A.   In general.

22   Q.   Are you aware that contracts were let

23 with very low-dollar value for which a very high

24 ultimate payout was expected?

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

1   MS. KLIETHERMES: If we can go in HC very

2 briefly.

3   JUDGE PRIDGIN: Just a moment, please.

4   (REPORTER'S NOTE: At this point, an

5 in-camera session was held, which is contained in

6 Volume 26, page 2067 of the transcript.)

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1 KRIS NIELSEN testified as follows:

2 BY MS. KLIETHERMES:

3   Q.   Is it your recollection that the

4 particular vendor who was just named in the HC session

5 was eventually paid significantly more than $1?

6   A.   Yes.

7   Q.   Would those changes have been -- I'm

8 sorry, would any invoices in excess of $1 have

9 appeared as change orders in the KCP&L change order

10 system?

11   A.   Yes, unless they were going through a

12 definitional process. As I recall, I believe they

13 were with Kissick, the definition process of what his

14 contract would be involved with.

15   Q.   So just looking at change orders, one

16 would not be able to tell whether work that was

17 performed was initially intended to be performed,

18 correct?

19   A.   Not for the original scope. You'd have

20 to do more documentation and look at more

21 documentation to figure that out.

22   Q.   So it's not true that just looking at

23 change orders will show you what work has been changed

24 in the scope of the Iatan project, is it?

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

1 below the K-1 report. Change orders lead you to other

2 documents that describe the process of letting of the

3 Kissick contract.

4   MS. KLIETHERMES: I believe the vendor

5 name was HC.

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

7 here.

8   JUDGE PRIDGIN: Okay. Thank you.

9 BY MS. KLIETHERMES:

10   Q.   Was it intended at --

11   MS. KLIETHERMES: To make this easy, can

12 I just use the name?

13   MR. FISCHER: Sure.

14 BY MS. KLIETHERMES:

15   Q.   When Kissick was brought on, was it

16 anticipated they would be doing more than $1 worth of

17 work?

18   A.   I believe so.

19   Q.   Was the work that it was intended that

20 they performed within the initial scope of the Iatan

21 project?

22   A.   Yes.

23   Q.   So are there --

24   A.   The scope of work, they hadn't determined

25 exactly what portion of the scope of work that Kissick

1 would do.

2   Q.   So are there change orders that show in

3 addition to the scope of work for Kissick that are

4 reflective of work that was included in the initial

5 scope of work for the project as a whole? Yes or no?

6   A.   Yes.

7   Q.   Thank you. Would you consider the

8 practice of charging to -- I'm sorry, would you

9 consider the practice of not having both contracts and

10 purchase orders in place for a vendor to need

11 improvement?

12   A.   It depends on the circumstances, but in

13 general, I would agree with that statement.

14   Q.   Did your report state that that was an

15 area that needed improvement?

16   A.   I wasn't -- the audit was not intended to

17 state what areas needed improvement. We had to do the

18 process -- or evaluate the process and the timing and

19 the date and so on.

20   MS. KLIETHERMES: Did I ever offer GAGAS

21 as an exhibit?

22   THE WITNESS: I don't believe so.

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

24 time.

25   JUDGE PRIDGIN: Do you recall which

1 number, Ms. Kliethermes?

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

3   JUDGE PRIDGIN: Very good, that's the one

4 I had missing. All right. 273 is offered, any

5 objection?

6   MR. FISCHER: We have not received that

7 exhibit either, Judge. I would reserve the

8 opportunity to look at it.

9   JUDGE PRIDGIN: All right. I'll leave

10 that pending as I am 275.

11   MS. KLIETHERMES: And just to -- well,

12 never mind.

13   MS. KLIETHERMES: And before I forget,

14 I'd also like to offer 277-HC.

15   JUDGE PRIDGIN: Any objections? Hearing

16 none --

17   MR. FISCHER: Judge, we haven't received

18 a copy of that either, so I think we'd like to reserve

19 that.

20   JUDGE PRIDGIN: Very good, I'll just hold

21 those all pending.

22   MS. KLIETHERMES: And Judge, to the

23 extent that he'll have additional foundational

24 objections later pending review of these exhibits, I'd

25 like to reserve the opportunity to lay additional

 1 | foundation. I've been dispensing with that to move

 2 | this along the best I can.

 3 | JUDGE PRIDGIN: I understand that. Thank

 4 | you.

 5 | BY MS. KLIETHERMES:

 6 | Q.   And if you'll pardon my delay, my copy of

 7 | GAGAS I had tabbed and will take me a moment to find

 8 | this.

 9 | MS. KLIETHERMES: Judge, honestly, it

10 | might be best if we take a short break so the court

11 | reporter can retrieve the other copy of GAGAS,

12 | assuming you didn't remove the tabs.

13 | COURT REPORTER: I did not.

14 | JUDGE PRIDGIN: Okay. We'll take a very

15 | brief break. We'll go in recess for about ten

16 | minutes.

17 | MS. KLIETHERMES: Thank you, my

18 | apologies.

19 | (A break was held.)

20 | JUDGE PRIDGIN: We're back on record.

21 | Ms. Kliethermes, are you ready to proceed?

22 | MS. KLIETHERMES: Yes.

23 | BY MS. KLIETHERMES:

24 | Q.   And just to clear up some of the things

25 | before we went on break so it's fresh in my mind, your

 1 testimony is your substitute for a performance audit

 2 report as described in GAGAS, correct?

 3   A.   As a subset of performance audits.

 4   Q.   I'm sorry, I don't think you answered my

 5 question, perhaps I should phrase it differently.

 6   Is your testimony a substitute for a

 7 performance audit report as described in GAGAS?

 8   A.   Yes.

 9   Q.   What objective analysis did you provide

10 to KCP&L to improve program performance and operation?

11   A.   Program performance and operation? That

12 wasn't the purpose.

13   Q.   You didn't include any?

14   A.   No. I was judging --

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

16   Did you provide any information to help

17 them reduce costs?

18   A.   No.

19   Q.   Did you provide any information to

20 facilitate decision-making by parties with

21 responsibility to oversee or initiate corrective

22 action?

23   A.   No.

24   Q.   Did you provide information to contribute

25 to public accountability?

1   A.   No.

2   Q.   Could you please turn to page 17 of

3 GAGAS?

4   A.   Yes.

5   Q.   The heading on that page is "Chapter 1,

6 Use and Application of GAGAS," correct?

7   A.   Yes.

8   Q.   The first heading under that double bar

9 is "performance audits," correct?

10   A.   Yes.

11   Q.   The first numbered section next to

12 performance audits is 1.25, correct? Could you read

13 that into the record?

14   A.   "1.25: Performance audits are defined as

15 engagements that provide assurance or conclusions

16 based on evaluation of sufficient appropriate evidence

17 against stated criteria such as specific requirements,

18 measures, or defined business practices.

19   "Performance audits provide objective

20 analysis so that management and those charged with

21 governance and oversight can use the information to

22 improve, program, performance and operations, reduce

23 costs, facilitate decision-making by parties with

24 responsibility to oversee or initiate corrective

25 action and contribute to public accountability.

1   "Reporting information without following

2   GAGAS is not a performance audit but a non-audit

3   service provided by an audit organization."

4   Q.   So you've just stated that you didn't

5   satisfy any of the objectives of a performance audit,

6   did you not?

7   A.   I did.

8   Q.   And so would you conclude that your audit

9   was not performed following GAGAS?

10   A.   My audit was performed according to

11 GAGAS.

12   Q.   All right. I think we'll just let

13 Section 1.25 speak for itself then.

14   During the break, I have an addendum to

15 Exhibit 275. This is also HC. It's the remainder of

16 the Pegasus invoices. They were lost in the shuffle.

17   MR. FISCHER: Counsel, are those the ones

18 that were filed a little later in the process? Is

19 that what you're talking about?

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

21   MR. FISCHER: Okay.

22   MS. KLIETHERMES: May I approach?

23   MR. FISCHER: Judge, just for the record,

24 I'd like to make a statement that we've been having

25 cross-examination on documents that Staff is making

 1| exhibits that have not been provided to anybody else

 2| on the counsel table. And while there's a -- we may

 3| have some of these documents, there's an awful lot of

 4| documents in this case and it's just impossible to

 5| follow. And I guess I would just ask as a matter of

 6| courtesy, if we could get copies whenever we're doing

 7| this, I'd sure appreciate it.

 8| THE COURT: Mr. Fischer, thank you.

 9| MS. KLIETHERMES: And if I may respond.

10| I would like to personally apologize for that. I

11| accepted this witness at two o'clock yesterday

12| afternoon and I have simply not had an opportunity --

13| MR. FISCHER: And I don't mean any

14| personal criticism at all.

15| THE COURT: I understand. Thank you.

16| (KCP&L Exhibit No. 278 was marked for

17| identification by the court reporter.)

18| BY MS. KLIETHERMES:

19| Q.   Have you reviewed this document before?

20| A.   It looks like a document that I've seen,

21| but I don't have a current recollection.

22| Q.   Did you review the results of the

23| employee survey for Iatan?

24| A.   I didn't personally.

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

1 performance audit?

2   A.   We did it as part of the performance

3 prudence audit, but I don't -- it wasn't part of my

4 area of responsibility, no. I take responsibility for

5 everything we did and I think I have seen this, but I

6 don't have a current recollection.

7   Q.   Was it prepared by Mr. Churchman?

8   A.   I don't know.

9   Q.   Are you aware if any follow-up was taken

10 on any of the items discussed in that document?

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

12 document.

13   Q.   Well, take a moment to review it and see

14 if any areas that are listed refresh your

15 recollection.

16   A.   It appears to be the results of the

17 survey and response. I don't know who did it or what

18 it pertains to.

19   Q.   So you don't recall identifying any

20 practices in that document that need improvement?

21   A.   I recognize some things. For instance, I

22 know that we saw some comments about blatant

23 favoritism for male employees, offered more

24 opportunities than women. And I remember and I

25 presume, according to you, that this was Churchman's

1 response. I don't know that that's the case. I feel

2 that I have been very -- that I have very qualified

3 women on my staff and on this project. If there is a

4 complaint, let me or HR know about it.

5   Q.   So as part of your audit, though, did you

6 direct any follow-up on that particular point?

7   A.   Any follow-up on this point?

8   Q.   I withdraw the question. Did you

9 document anywhere that you find the practices

10 involving male versus female employees acceptable and

11 not requiring improvement? Would you like me to state

12 that again?

13   A.   Yeah.

14   Q.   I'm sorry. Where is your documentation

15 that you find the practice you just referred to as

16 being acceptable and not requiring improvement?

17   A.   I don't have that documentation.

18   Q.   Thank you.

19   A.   We saw the documentation at the site.

20   MS. KLIETHERMES: May I approach?

21   JUDGE PRIDGIN: You may.

22   (KCP&L Exhibit No. 279-HC was marked for

23 identification by the court reporter.)

24 BY MS. KLIETHERMES:

25   Q.   Could you identify that document,

1 generally? I believe that document is HC, so I'll

2 attempt to avoid HC matters.

3   A.   It purports to be an E&Y October, 2009

4 audit, materials management review.

5   Q.   Did you review that audit in the course

6 of performing your review?

7   A.   I reviewed all of the Ernst & Young

8 audits.

9   MS. KLIETHERMES: I'll offer Exhibit

10 279-HC.

11   JUDGE PRIDGIN: Any objection?

12   MR. FISCHER: No objection.

13   JUDGE PRIDGIN: 279 is admitted --

14 279-HC, excuse me.

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

16 evidence.)

17 BY MS. KLIETHERMES:

18   Q.   When did construction start on the Iatan

19 project?

20   A.   Which unit?

21   Q.   If you could identify for each

22 subcomponent.

23   A.   Iatan 1 -- well, work actually began

24 shortly after August, 2005 with the preparation of

25 specifications for the -- the boiler contract. If you

1 mean physical construction --

2   Q.   Yes.

3   A.   Iatan 2 physical construction, I believe,

4 started in with some minor stuff in April of 2007.

5 I'd have to check that, but that's my current

6 recollection.

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

8   A.   The control budget estimate?

9   Q.   Any budgets that you find relevant.

10   A.   The control budget estimate was prepared

11 as of December, 2005.

12   Q.   When was the project schedule developed?

13   A.   Shortly before that.

14   Q.   When did the company complete its first

15 risk management plan?

16   A.   Their first risk management plan, I

17 believe, was part of the environmental assessments

18 that they had done. So that would have been 2003,

19 2004 when the project was in its early stages.

20   Q.   When were the project's policies and

21 procedures completed?

22   A.   They had policies and procedures from day

23 one. They had corporate procedures and rolled them in

24 as necessary to project-specific procedures as

25 construction began.

1   Q.   When was the project execution plan, or

2   PEP, completed?

3   A.   That document was -- the PEP that has

4   been marked as the PEP was begun, as I recall, early

5   in 2007 and completed in May, as I recall.

6   Q.   And just very briefly, what is

7   integration as used in your professional parlance?

8   A.   Well, project -- the PMBOK, or the

9   Project Management Body of Knowledge, defines nine

10 areas. There are eight areas that are integrated via

11 the integration section, which is the -- the overall

12 encompassing processes, procedures, and so on for the

13 whole project.

14   Q.   Would you agree that those items we just

15 discussed, the cost estimate, the schedule, the

16 management plan, the risk management need to be

17 integrated to be useful?

18   A.   Yes, they do, over time.

19   MS. KLIETHERMES: If I may approach?

20   JUDGE PRIDGIN: You may.

21   (KCP&L Exhibit No. 280 was marked for

22 identification by the court reporter.)

23 BY MS. KLIETHERMES:

24   Q.   If you could take a look at Data Request

25 622, which has now been marked as 280 -- excuse me,

 1 the company's response to Data Request 622. Does this

 2 refer to various questions about Nielsen and Pegasus?

 3   A.   Yes.

 4   Q.   When did you visit the Iatan site?

 5   A.   The first time I visited the Iatan site

 6 was maybe February or March, 2009.

 7   Q.   All right. And if you turn to page

 8 labeled 2 of 12 in that document, does that list the

 9 times that you visited the site?

10   A.   "Please provide a listing of dates he" --

11 meaning me -- "or his team visited the Iatan site."

12   Q.   Yes. Does that refresh your recollection

13 regarding the instances when you visited?

14   A.   No, not necessarily.

15   Q.   That would also include other individuals

16 than yourself if they were on your team?

17   A.   Yes, yes.

18   Q.   Thank you. I believe there was testimony

19 that you interviewed various Iatan individuals; is

20 that correct?

21   A.   Yes.

22   Q.   Were those in-person meetings or phone

23 meetings?

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

25   Q.   And on Iatan 2?

1   A.   Generally, I think they were all

2 in-person.

3   Q.   Would it surprise you if various people

4 who you list as interviewed don't recall being

5 interviewed?

6   A.   No.

7   MS. KLIETHERMES: I'd like to offer

8 Exhibit 280.

9   JUDGE PRIDGIN: 280 is offered. Any

10 objection?

11   MR. FISCHER: No objection.

12   JUDGE PRIDGIN: 280 is admitted.

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

14 evidence.)

15 BY MS. KLIETHERMES:

16   Q.   Do you know Mr. Thomas Maiman?

17   A.   No, I do not. I know him by reputation,

18 but I don't know him personally.

19   Q.   All right. Have you encountered

20 discovery problems on any of the prudence audits

21 you've ever performed?

22   A.   Occasionally.

23   Q.   Have you ever recommended a whole or

24 partial disallowance pending resolution of a discovery

25 problem?

 1   A.   No. Before my testimony or -- has been

 2 completed, I don't think there were any outstanding

 3 issues.

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

 5 referring to --

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

 7   Q.   If a discovery issue has not been

 8 resolved and it is time to file your testimony, would

 9 it be reasonable to recommend a whole or partial

10 disallowance pending verification of outstanding data?

11   A.   It might be.

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

13   A.   I've never encountered that situation.

14   Q.   Have you ever encountered inadequate

15 record-keeping on any case you've worked on?

16   A.   Yes, there was quite a bit of inadequate

17 record-keeping back in the 1980s, early '90s.

18   Q.   Have you ever recommended a whole or

19 partial disallowance pending provision of adequate

20 records?

21   A.   No.

22   Q.   Is it reasonable to recommend a whole or

23 partial disallowance pending provision of adequate

24 records?

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

1 situation as that would -- I would make a

2 recommendation for an interim decision.

3   Q.   Have you ever performed a prudence audit

4 of a plant where the utility had agreed to perform

5 additional record-keeping?

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

7   Q.   To a financier, to parties in a

8 regulatory proceeding, to environmental groups, to

9 anyone?

10   A.   There's certain commitments at various

11 times and various projects, such as when a project is

12 financed, they -- they -- the financiers might have

13 additional financing information requirements. I've

14 seen that happen before. I've seen commitments to

15 various stakeholders at various times in various

16 projects.

17   Q.   And what sort of consequences have you

18 seen where a utility has failed to meet those

19 record-keeping obligations?

20   A.   Where I've seen failures? These are

21 failures primarily back in the 1980s and the early

22 '90s on the base load plants. They got their hands

23 slapped by the Commission. I don't recall any

24 specific disallowance.

25   Q.   When you say they got their hands

1 slapped, could you describe to the best of your

2 recollection what that means?

3   A.   One of the examples that I remember is

4 one of the first prudence audits that's ever been done

5 on nuclear plants, that was on the Sharm plant that

6 took 16 years to construct when it had an original

7 schedule of, I think, three and a half years. And

8 over -- that was built from 1969 to 1985, I believe.

9   And over that time, there was a dearth of

10 records at the beginning of the project and the New

11 York Commission, as I recall, slapped Long Island

12 Lighting Company's hand, but the prudence

13 disallowances were for other issues. And since the

14 company couldn't carry forth the burden, the

15 stakeholders, both the Commission Staff and consumer

16 counsel in that case, had sufficiently raised a

17 question of the prudence of some decisions and there

18 was no documentation available.

19   Q.   So it's difficult to do a prudence audit

20 where there's a dearth of information, correct?

21   A.   At that time, yes.

22   Q.   Does the computer age overcome the

23 problem of a dearth of information in performing a

24 prudence audit?

25   A.   There is more data than you can imagine

1 because of the computer age.

2   Q.   In fact, does an abundance of information

3 make it difficult to perform a prudence audit?

4   A.   No, you just have to know what you're

5 doing as an auditor and what you're looking at as an

6 auditor. And if you want more information, which you

7 know is available because of the systems and

8 procedures and processes that they have in place, the

9 utility might specify that they've given you

10 sufficient information or you can find the information

11 in X, Y, and Z, and you have to go look at X, Y, and

12 Z.

13   Q.   So then you would agree that it's helpful

14 to have a clearly delineated explanation of

15 information in performing a performance audit?

16   A.   Yes.

17   Q.   Could you describe briefly how you and

18 your firm accessed information in records on Iatan 1?

19 And by that, I'm referring to whether documents were

20 sent to your office, whether you requested documents

21 to be sent, just generally?

22   A.   We -- we were provided with copies of

23 everything that was made available to the Kansas Staff

24 and Missouri Staff. And I didn't make a

25 differentiation at that time. And additional

1 information that we wanted, we requested verbally so

2 that I think we got actually disks of many of the

3 preliminary documents, such as contracts, the E&Y

4 audits, and so on.

5   And then as we went through the

6 evaluation, we requested various documents that

7 Staff's got this or Drabinski, and that was the Staff

8 consultant in Kansas, has gotten this, we want to see

9 it or we had conversations through Duane Morris that

10 they inquired if -- to what the nature of the

11 documentation was. We requested that documentation on

12 disks and it was sent to us.

13   Q.   And the same question for the Iatan 2

14 project, is it the same answer?

15   A.   No, it's not.

16   Q.   Then please provide that answer.

17   A.   Most of the -- there was more information

18 because it was a larger project and more involved

19 project, so we went to the site. After we had

20 requested various types of information to follow-up on

21 that information and follow-up with discussions or

22 interviews.

23   Q.   All right. And if you'll bear with me

24 for just one moment, that may be all I have for you.

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

1 I have for you.

2   JUDGE PRIDGIN: Thank you. Let me see if

3 we have any bench questions. Commissioner Jarrett?

4   EXAMINATION

5 QUESTIONS BY COMMISSIONER JARRETT:

6   Q.   Good morning, Dr. Nielsen.

7   A.   Good morning.

8   Q.   I'll be very brief. Now, you

9 participated in a prudence review in the Kansas case;

10 is that correct?

11   A.   Yes.

12   Q.   And I believe in that case, you

13 recommended two disallowances; is that correct?

14   A.   Yes.

15   Q.   And one of them was the engagement of

16 Welding Services, Incorporated with an associated

17 disallowance of $12,714,596?

18   A.   Yes.

19   Q.   And then number two, KCP&L's removal and

20 readdition of an auxiliary boiler to the Iatan 2

21 project with an associated disallowance of $7,754,454;

22 is that correct?

23   A.   Yes.

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

25   A.   I think it's my rebuttal.

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

2   A.   Sixteen and seventeen.

3   Q.   At the bottom of the page there, I guess

4 starting with line 19, you talk about two exceptions

5 to the reasonable prudent decisions KCP&L made.

6   A.   Yes, sir.

7   Q.   The first one deals with the Welding

8 Services, Incorporated issue. And you recommend a

9 disallowance of $12,714,596.40 --

10   A.   Yes.

11   Q.   -- is that correct? So basically the

12 same as Kansas?

13   A.   Yes, sir.

14   Q.   Then on the top of page 17, as relating

15 to the auxiliary boiler, you recommend a disallowance

16 of $5,346,049 and no cents. Why the difference

17 between the $7,754,454 in Kansas and what you're

18 recommending in Missouri of $5,346,049?

19   A.   That's actually explained in oh,

20 approximately 235, I think. And we -- the actual

21 disallowance that I recommended in Kansas had several

22 components that were estimated. When we did the

23 report this time for Missouri, they had actual

24 invoices against the estimates. So they're the same

25 categories of costs, but they actually incurred less

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

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

3   Q.   Okay. I just wanted to make sure I

4 understood that. Thank you.

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

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

7   JUDGE PRIDGIN: Commissioner Jarrett,

8 thank you. Commissioner Kenney?

9   EXAMINATION

10 QUESTIONS BY COMMISSIONER KENNEY:

11   Q.   Dr. Nielsen, thanks for your time here

12 today. I won't keep you too much longer. I want to

13 talk about those same two allowances, but I want to

14 talk about the $12 million paid to the welding

15 contractor. You were here today and last evening and

16 particularly for some of my discussion with

17 Mr. Roberts?

18   A.   Yes, sir.

19   Q.   And I asked about certain settlement

20 discussions and certain settlement decisions and

21 essentially KCP&L made certain strategic business and

22 litigation decisions to make certain settlements in

23 order to avoid future costs that they deemed to be

24 more expensive. Do you remember --

25   A.   Yes.

1   Q.   -- the essence of some of that

2   discussion? Why would that $12 million paid to the

3   welding contractor not fit within that type of

4   strategic and litigation business decision-making? It

5   seems that by paying that amount, it advantaged the

6   project along schedule and saved future costs. At

7   least I think that's the argument KCP&L was making.

8   A.   I disallowed that for that exact same

9   reason. It was the same character as the rest of the

10 settlement items and they had a very sophisticated

11 dispute resolution process and they used that very

12 effectively on the project. I agree with everything

13 that was said last night except this one, they -- I

14 didn't see any evidence that they had made that would

15 advance the project and it should have been part of

16 the settlement.

17   Q.   What evidence would you have wanted to

18 see?

19   A.   More than the -- than the testimony that

20 I saw filed in Kansas after I disallowed this. I

21 can't remember, I think it was Mr. Davis, and he gave

22 a rationale that sounded good but there was no

23 documentary evidence on the site such as the

24 give-and-take that was described by Mr. Roberts last

25 night in his memos.

1   Q.   So -- okay. So it's the absence of

2 information supporting some effort to engage the

3 settlement negotiations with respect to that specific

4 item?

5   A.   Yes, and it was very obvious that they

6 had this on their radar screen and it just fell off

7 the radar screen. I believe.

8   Q.   So what was different in the -- did

9 Mr. Roberts testify in the Kansas case?

10   A.   Yes.

11   Q.   So it was the absence of evidence?

12   A.   Yes.

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

14   A.   Yes.

15   Q.   So the testimony of a particular witness

16 with respect to the business and litigation strategic

17 processes by itself is insufficient?

18   A.   The way we do performance prudence audits

19 is to evaluate all of the records first because as you

20 may, from your litigation experience, you realize that

21 parties have various remembrances later on. So we

22 evaluate the processes, procedures, decisions that are

23 made at the time, what information they had at the

24 time, and how they executed that until the next

25 relevant decision.

1   And it was such a glaring mismatch

2 because of the excellent management they had in

3 contract administration all the way through the

4 project contract management that it was not. And I

5 asked

6 Mr. Davis about this, but --

7   Q.   And what did he say?

8   A.   And he gave me his recollections.

9   Q.   So let me -- and I appreciate your

10 response. Let me ask my question again, however. So

11 testimony justifying or explaining strategic business

12 and litigation decisions standing alone isn't

13 sufficient, in your opinion?

14   A.   If there's no documentation, that's the

15 only evidence that you would have and I just felt that

16 that wasn't a reasonable explanation.

17   Q.   Okay. That's a subtle distinction. You

18 didn't feel it was a reasonable explanation or the

19 explanation standing alone without documentary support

20 was insufficient. That's different.

21   So my question first was: Is it your

22 opinion that testimony from one of the KCP&L witnesses

23 explaining or justifying a strategic business and

24 litigation decision standing alone is insufficient?

25 That's just yes or no, generally speaking.

1   A.   I would think that would generally be

2   acceptable.

3   Q.   The testimony would be?

4   A.   Yes.

5   Q.   Okay. So it wasn't the absence, it

6   wasn't just the absence of the documentary

7   information? You felt Mr. Davis's explanation was

8   insufficient?

9   A.   Yes.

10   Q.   What was insufficient about his

11   explanation?

12   A.   That he didn't have documentation to back

13   it up and the decision really as a judgment call, is

14   kind of made up after the fact.

15   Q.   So it was the absence of documentation to

16   support his testimony?

17   A.   No, it --

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

19   obtuse.

20   A.   No, you're not being obtuse. The absence

21   of documentation that they made a conscious decision

22   to facilitate the project as a whole going forward

23   didn't, in my mind, justify the expense because they

24   had such a good documentation system in place and a

25   process in place and it wasn't supporting what Mr.

1 Davis said, although I understood what he said and

2 that's perfectly acceptable from a project management

3 standpoint. It was not from a prudence standpoint.

4   Q.   All right. I think I'm going to have to

5 just remain confused. Let me move on to something

6 else.

7   You listed a bunch of mistakes that you

8 think Staff made and I think it was -- I lost my place

9 when I flipped over to the other testimony. It's

10 beginning on page 26 of your testimony, and you

11 outline nine areas in which Staff made incorrect

12 assertions and then you move on to Mr. Drabinski.

13   I want to ask you about one particular,

14 number five under the -- on page 26. It starts on

15 page 26 and moves on to 27. So, it's beginning at

16 lines 21, and continuing on lines 1 and 2 on page 27.

17 And you indicate that you think Staff -- Staff's

18 assertion about withheld documents preventing them

19 from conducting a full prudence audit is incorrect.

20 And you note that these same documents were not

21 disclosed to Pegasus Global.

22   How can you make the assertion that

23 Staff's assertion is incorrect if you didn't see those

24 same documents? How do you know whether those

25 documents are significant or not?

1   A.   I understand, and I've been asking for

2   the redacted portions of various documents, and

3   there's not much redaction in this project. But I

4   wanted to see for myself, they asserted

5   attorney-client privilege, I believe, the special

6   master's been appointed to deal with that fairly

7   recently. But we could tell from other documents, I

8   just wanted to see if these supported our conclusions.

9   Q.   Did they?

10   A.   I don't know.

11   Q.   Because you never saw them?

12   A.   No.

13   Q.   Well, all right. So how do you know, if

14   you haven't seen the documents, whether or not they

15   were relevant to Staff's investigation?

16   A.   From a prudence standpoint, I didn't need

17   them because I had other supporting documents.

18   Q.   All right. You didn't need them for your

19   prudence audit and so therefore you determined that

20   Staff didn't need them for theirs either?

21   A.   I only criticized Staff because they

22   didn't do a prudence audit. From a financial auditing

23   standpoint, they might have needed it or they might

24   not have needed it, I don't know.

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

1 said that they didn't perform a prudence audit. And

2 you state that clearly. But then number five is

3 different because you're saying that -- I mean, it

4 almost seems as number five is what you're saying is

5 those documents are unnecessary for prudence audits.

6 So I'm trying to figure out how you can determine

7 whether the documents are necessary or not if you

8 haven't seen them.

9   A.   From my experience, normally privileged

10 and confidential documents deal with something that,

11 like attorney-client privilege --

12   Q.   Uh-huh.

13   A.   -- that doesn't go to the heart of the

14 prudence matters. But in addition, we had most of

15 what we were evaluating. All of them we were

16 evaluating, I would have liked to have seen those, but

17 it wasn't crucial and it wasn't crucial for the Kansas

18 Staff as well.

19   Q.   All right. Then let me move on to number

20 eight on page 27, the control budget estimate again.

21   A.   Yes.

22   Q.   This continues to befuddle me. What's

23 the significance of it being established at December,

24 2006 versus at some other point, in your opinion?

25   A.   Normally, from a project management

1 perspective, you have to have what's been called a

2 stake in the ground, and I use that term as well when

3 I do project management consulting. You put a stake

4 in the ground when there's sufficient definition on

5 the project that you can then measure via various

6 metrics, in other words, monitor that budget.

7   And as there are additions to the budget

8 or there are changes to the budget, you have to have a

9 system which identifies them. But you have to have

10 something to measure off of and it's normally a

11 control budget estimate. The control budget estimate,

12 as I recall, was done approximately at 25 percent

13 engineering complete.

14   Q.   Uh-huh.

15   A.   That's normal in the industry. And from

16 that point forward, prior to that, there's -- there's

17 not enough definition in the project because the

18 project -- the control budget estimate deals with that

19 other 75 percent by reasonable estimates, whether

20 range of accuracy and the risk management matrix or

21 profile of the project allows you to come up with a

22 large block of unallocated contingency and that

23 becomes the metric against which the project is

24 measured.

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

1 what a control budget estimate is. What's the

2 significance of -- well, you're saying Staff

3 incorrectly identifies the Kansas City Power & Light

4 control budget estimate at 1.465 billion. Why is that

5 incorrect?

6   A.   Because the estimated project cost

7 includes the contingency that you've allocated.

8   Q.   So at what point should Kansas City Power

9 & Light's control budget estimate be identified? If

10 it's incorrect at 1.365 billion, which is at 25

11 percent engineered, is it correct at 70 to 75 percent

12 engineered?

13   A.   No, the control budget estimate is

14 established including the contingency. That's the

15 total control budget estimate. And the 1.465 didn't

16 include the contingency.

17   Q.   So what's the correct, in your opinion?

18   A.   1.685. The budget that was approved by

19 the board of directors and given to the Staff after

20 its approval, which was in December, 2'06.

21   Q.   Okay. That's the control adjustment in

22 December, 2'06 --

23   A.   Yes.

24   Q.   -- not at this earlier point? Okay. So

25 what you're testifying to is that the December, 2006,

1 1.68 whatever, billion, that's the control budget

2 estimate?

3   A.   Yes.

4   Q.   And is it your understanding that the

5 control budget estimate and the definite estimate are

6 the same thing or used interchangeably?

7   A.   I found that they were used

8 interchangeably here. Definitive estimate is really a

9 definitive estimate normally is done at 75 percent

10 engineering complete.

11   Q.   Okay. And is it your understanding that

12 that's how it's been defined in this case?

13   A.   Not only in this case, but both

14 commissions treated the control budget estimate as --

15   Q.   As the definitive estimate?

16   A.   I don't know why they called it

17 definitive. I heard Chris Giles's testimony that they

18 were used interchangeably.

19   Q.   Okay. All right.

20   COMMISSIONER KENNEY: I don't have any

21 other questions. Thank you.

22   JUDGE PRIDGIN: Commissioner, thank you.

23 This looks to be a convenient time to take a break and

24 let me let the parties know because agenda is at noon

25 today, I'll be breaking right around noon to let the

1 Commissioners and certainly the parties as well attend

2 the agenda. And when we go back on record, we'll have

3 recross. Is there anything further from counsel

4 before we take a break?

5   MS. KLIETHERMES: I just -- did I offer

6 Exhibit 275? It's contained -- another copy of it is

7 contained in another exhibit. I just wasn't clear

8 from my notes if I had offered it or not.

9   THE COURT: I show that you did and that

10 Exhibit 273 and 277 have a potential pending

11 objection.

12   MS. KLIETHERMES: I'm sorry, I was

13 referring to Exhibit 275.

14   JUDGE PRIDGIN: That's what my notes

15 show.

16   MS. KLIETHERMES: Oh, I'm sorry, I

17 misheard your statement. All right. Thank you very

18 much. My apologies.

19   JUDGE PRIDGIN: No problem. That's all

20 right. Anything else before we go on break? All

21 right. We will stand in recess until 10:20. Thank

22 you.

23   (A break was held.)

24   JUDGE PRIDGIN: All right. We are back

25 on the record. I believe Dr. Nielsen is ready to

1 stand recross and then redirect. And again, let me

2 remind the parties, I will need to break a few minutes

3 before noon just so the Commissioners have an

4 opportunity to get to agenda on time and also I

5 suspect folks out in the audience will either be

6 participating or wanting to -- to observe agenda. And

7 so I would probably break until about 1:15 or 1:30 to

8 allow not only to participate in agenda but also get

9 some lunch. Mr. Mills?

10   MR. MILLS: I was just going to ask a

11 little bit about the resume time. Are you planning on

12 resuming at a specific time or when the agenda and the

13 USB agenda finish?

14   JUDGE PRIDGIN: I guess I missed the USB.

15 You need to attend that as well?

16   MR. MILLS: I do, although if I don't

17 attend, they won't elect me as anything.

18   MS. KLIETHERMES: I think they can,

19 actually.

20   JUDGE PRIDGIN: It's supposed to begin

21 after?

22   MR. MILLS: It's supposed to -- actually,

23 it's supposed to run right after agenda.

24   JUDGE PRIDGIN: Do you think 1:30 would

25 at least give you a reasonable shot?

1   MR. MILLS: Really, it doesn't make that

2 much difference to me, I was just trying to get an

3 idea of what your intention was.

4   JUDGE PRIDGIN: I just glanced at the

5 agenda and missed the USB, so I would say roughly, you

6 know, 1:30.

7   MR. MILLS: Okay. That's good. Thanks.

8   JUDGE PRIDGIN: Anything further before

9 we resume? All right. Dr. Nielsen, you are still

10 under oath and recross-examination, Mr. Schwarz?

11   MR. SCHWARZ: I have nothing.

12   JUDGE PRIDGIN: Mr. Mills?

13   MR. MILLS: I do have a few questions.

14   RECROSS-EXAMINATION

15 QUESTIONS BY MR. MILLS:

16   Q.   And Dr. Nielsen, I wanted to follow-up

17 with the discussion you were just having with

18 Commissioner Kenney and having to do with the control

19 budget estimate and the way that's set out. Are you

20 familiar with the control budget estimate from a high

21 level?

22   A.   Yes.

23   Q.   Okay. And specifically, I'm really going

24 to be asking you sort of general questions about the

25 $220 million contingency and the -- the total budget

1 amount of 1.685 billion as opposed to the line item

2 amount of 1.465 billion. So with respect to the

3 amounts within the 1.465 billion, there are specific

4 components of the project that if you add up all the

5 line items, that will get you to 1.465 billion; is

6 that correct?

7   A.   Yes.

8   Q.   And on top of that, there are two

9 separate contingency amounts; is that correct? 1.45

10 for owner's contingency -- 145 million for owner's

11 contingency and 75 million for a high-impact,

12 low-probability contingency; is that correct?

13   A.   Yes.

14   Q.   Okay. Now assume with me that it -- in

15 the -- in the 1.465 billion, there is a line item for

16 a particular widget in an amount of 20 million.

17   A.   Yes.

18   Q.   Are you with me on that assumption? If

19 that widget, for -- and explain to me if this makes a

20 difference, but for whatever reason, that widget

21 actually ends up costing 25 million, does that extra 5

22 million get charged to contingency or is it a cost

23 overrun?

24   A.   I hate to keep saying it depends, but.

25   Q.   Okay.

1   A.   It depends on the circumstances. If the

2 widget was a pre-engineered fixed-price purchase, then

3 I would expect there to be a five -- or $5,000 add.

4   Q.   And does that get drawn against

5 contingency or does that -- I guess let me ask the

6 question, and with that discussion in mind, let me ask

7 this question: Is there a -- does there need to be a

8 specific reason for a cost overrun in the general

9 sense to be charged to contingency or is it simply

10 recognized as a cost overrun?

11   A.   Let me try and answer it this way: Most

12 of the contingency -- and both items of the

13 contingency follow risk management practices that I

14 actually established in the 1980s. I'm credited with

15 developing those risk management matrices. So you do

16 evaluations on both a project-specific and an

17 enterprise-specific basis. Enterprise in this case

18 meaning the total project.

19   And you give discretion to the project

20 management team for one part of it and discretion for

21 whatever executive oversight. In this case, the

22 executive oversight committee. And you draw upon

23 those contingencies with items such as what you're

24 talking about.

25   Now, in regards to the specific

1 hypothetical you gave me, what I -- what I said and

2 may or may not, if it's a totally new thing, they

3 might call it out as a separate increase in the

4 overall budget and the reasons why. But generally, it

5 would be drawn out of the contingency.

6   Q.   Okay. Without regard to the reason for

7 the five-million-dollar cost overrun, it gets drawn

8 out of contingency?

9   A.   No, they have to -- with the rigorous

10 process that they have in place, they have to specify

11 the reason.

12   Q.   Okay. In the course of your review of

13 the project, did you see any amounts that -- that were

14 not charged to contingency that instead were simply

15 recognized as a cost overrun?

16   A.   Generally, on this project, they tracked

17 the contingency with a contingency log. And when they

18 made draws for that -- and that's one of the reasons

19 that they have to reevaluate the project as more

20 engineering is complete, to see that they have enough

21 contingency or they've added some things that have

22 been charged to contingency but may not have been

23 charged to contingency. But all of that is documented

24 through the contingency log.

25   Q.   And my question was: Did you see any

1 items?

2   A.   No.

3   Q.   So as far as you're aware, everything

4 that was a cost overrun was charged to contingency?

5   A.   At least that I looked at, yes.

6   Q.   Okay. Now, I believe you recognized that

7 on the control budget estimate, that there were two

8 separate levels of contingencies, the owner's

9 contingency and the high probable -- I'm sorry,

10 high-impact, low-probability contingency. Did you --

11 did you, in the course of your view, come across any

12 distinction between draws to those two contingency

13 funds?

14   A.   Not really.

15   Q.   In your opinion, say on some of the

16 hypotheticals that we were talking about where a

17 particular item was budgeted at 20 million and cost 25

18 million?

19   A.   I took it as 20,000.

20   Q.   Okay. Either way, because it's a

21 hypothetical, so it's got that five extra whatever --

22 whatever denomination. Assume with me that the reason

23 it went five over the original 20 was because of labor

24 escalations.

25   A.   Yes.

1   Q.   Something that's not terribly uncommon,

2   not unexpected. Would it be appropriate to charge

3   something like that to the 75 million high-impact,

4   low-probability contingency fund?

5   A.   This was a -- a maintenance agreement, a

6   national maintenance agreement job, which has union

7   contracts.

8   Q.   Uh-huh.

9   A.   And over the course of the job, there may

10 be an unexpectedly high labor agreement settlement.

11 And I wouldn't expect that to come out of the 145

12 million, but to come out of the 75 million.

13   Q.   Okay. Assume with me that the reason for

14 the cost overrun, then, was simply the market price of

15 steel went up. Not due to typhoons in the southeast

16 Asia whatever, just the market price from the time

17 that the control budget was -- was originally put into

18 place and a couple years later when this particular

19 widget was finally engineered and put into place, it's

20 gone up by that amount. That -- would you agree with

21 me that that is not a -- a high-probability -- a

22 low-probability type of event?

23   A.   No.

24   Q.   You think that could be a high -- a

25 low-probability event, that the cost of steel would go

1 up?

2   A.   It could be, but, you know, this -- this

3 was a very interesting time and the cyclical nature of

4 the extreme run-up and shortages of commodities and

5 then the economic conditions of the last couple of

6 years were totally unexpected.

7   Q.   Okay. So in the context of this example,

8 have you seen examples of change orders in which the

9 probability was identified as low and explained why

10 the probability was low?

11   A.   The RO logs explain the rationale. They

12 don't drive it up to that high a level.

13   Q.   What do you mean by "they don't drive it

14 up to that high a level?"

15   A.   They explain the risks and the

16 opportunities on the discreet item. They don't

17 categorize it up to the enterprise risk or the project

18 risk.

19   Q.   Okay. So in terms of cost tracking, did

20 you -- were you able to tell whether particular items

21 were charged to the owner's contingency or the other

22 contingency fund?

23   A.   No.

24   Q.   Was there an attempt through the fund to

25 track to either of those contingency amounts?

1   A.   Once the contingency --

2   Q.   That's a yes or no and then you can

3 explain.

4   A.   No, I did not.

5   Q.   Okay.

6   A.   Once the amounts of contingency are

7 established, I don't think it matters which fund it

8 comes out of.

9   Q.   Okay. It doesn't matter to whom?

10   A.   To the project.

11   Q.   Okay. So in other words, the contingency

12 could have just been established together, doesn't

13 need to be two separate contingency funds?

14   A.   The reason for the differentiation is the

15 differentiation that I gave at the beginning. Those

16 that are project management team and those that are

17 reserved for the higher-level executives. And that's

18 to establish the contingency fund in total. But the

19 -- they require at least being aware before they draw

20 out of the 75 million using that example.

21   Q.   So you've seen documentation in which it

22 takes a greater level of approval to draw on the 75

23 million as opposed to 145 million?

24   A.   I've seen some documents. And it depends

25 on the level to which they have to report to the

1 executive committee.

2   Q.   In terms of cost controls at this

3 project, are you saying that there was a different

4 process?

5   A.   No.

6   Q.   There was not a different process for the

7 two contingency levels?

8   A.   There was a process in place that

9 depending on the level of the change, they had to

10 inform the executive oversight committee.

11   Q.   When you say "level" in that sense,

12 you're talking about the dollar amount of change?

13   A.   Yes, yes.

14   Q.   Not the level of -- of anticipated

15 probability? You're simply talking about the dollar

16 amount?

17   A.   Yeah.

18   Q.   Okay. So with respect to this whole

19 discussion we've just had, then, regardless of the

20 reason for an increase in price, so long as it was

21 within the $220 million contingency, in terms of

22 dollars, regardless of the reason, it's your testimony

23 that that would not be a cost overrun; is that

24 correct? Yes or no?

25   A.   I can't answer that the way it's posed.

1   Q.   Okay. So you don't know the answer or

2 it's not possible to answer?

3   A.   As I said, it's not possible to answer as

4 it is posed, the question.

5   MR. MILLS: Okay. I have no further

6 questions.

7   JUDGE PRIDGIN: Mr. Mills, thank you.

8 Ms. Kliethermes?

9   MS. KLIETHERMES: I have none, thank you.

10   JUDGE PRIDGIN: Redirect?

11   MR. FISCHER: Thank you.

12   REDIRECT EXAMINATION

13 QUESTIONS BY MR. FISCHER:

14   Q.   Let's just start there at the back of the

15 questioning. Would you explain why it's not possible

16 to answer Mr. Mills's question?

17   A.   Risks are not set as an absolute.

18 They're a preprocess in the overall costing process of

19 the project. And so you're talking about after the

20 fact, after they've been incurred, after they've

21 gotten all of the approvals, the negotiations have

22 taken place and they've written a change order. You

23 don't go back and reevaluate necessarily the risk but

24 you do draw out of the fund that was established by

25 that risk.

1   Q.   Dr. Nielsen, just to make sure that I'm

2 clear, are you -- are you able to track cost overruns

3 using KCP&L's cost control system?

4   A.   At first, I wasn't. And I think I've

5 described that in my testimony. And that was one of

6 the things that we had to have an explanation and I

7 testified about that explanation and put that in my

8 testimony regarding Unit 1. And we talked about that

9 in April when I was here in Missouri as well.

10   Once I got an explanation from the site,

11 which I heard them do that several times in regards to

12 Mr. Drabinski, because we were on the phones most of

13 the time that they had meetings with the Staff, and he

14 had the same problem that I had at first and then once

15 he got an explanation, we both were able to track

16 through the whole system.

17   Q.   Would you explain how you do that?

18   A.   Take the K reports, which are the cost

19 variance, and then have to go down to the change

20 orders, the contingency log, the R&O log, and the

21 updates to that log and various other documents in the

22 cost control system, and then you have to track down

23 through those documents. I did the same thing that

24 Drabinski did.

25   Q.   So you were able to -- to track,

1 identify, and explain cost overruns as it related to

2 Iatan 1 and Iatan 2?

3   A.   And if we could not, we asked the

4 question.

5   Q.   Ms. Kliethermes showed you a document

6 that I think listed all the times that you were on the

7 Iatan site, which are quite a number, or at least your

8 team. Do you recall that?

9   A.   Yes.

10   Q.   Why is it important to go to the site to

11 do a prudence audit?

12   A.   Because you don't want to take 20,000

13 documents. You have to review the documents, make

14 decisions on the documents, and then ask for copies of

15 the documents that you actually want that support your

16 analysis.

17   Q.   Is it necessary or important to have

18 discussions with -- with construction personnel that

19 understand those change orders?

20   A.   Oh, yes.

21   Q.   Why would that be?

22   A.   Just like we were having trouble at first

23 finding our way through the -- the documentation, and

24 so I -- they gave me actually a presentation that they

25 had made -- I think it was to Missouri Staff, at a

1 very early stage, and how the various elements all fit

2 together and how you could figure out the

3 justification and the reasons for the cost variances.

4   Q.   I think Ms. Kliethermes asked you about

5 your expertise. Are you an engineer?

6   A.   I'm both a civil engineer and a

7 mechanical engineer.

8   Q.   Does your background as an engineer help

9 you to understand the change orders and the

10 documentation that is necessary to understand the cost

11 control system?

12   A.   Yes.

13   Q.   Why would that be?

14   A.   Costs are driven by the scope first of an

15 item, the quality of the item, and the timing of the

16 item. You have to understand all three of those from

17 a project management engineering perspective. And

18 that's why you have to start with those types of

19 documents. And those types of documents are why even

20 a construction audit, which I didn't do in this case,

21 much less a prudence audit, you have to understand

22 what you're looking at.

23   Q.   Okay. Do you isolate costs from

24 engineering decisions?

25   A.   No.

1   Q.   I'd like to go back to the discussion you

2 had for a few minutes with Commissioner Kenney

3 regarding the WSI settlement.

4   A.   Yes.

5   Q.   The WSI issue, was that one submitted to

6 the outside facilitator, Mr. Jonathan Marks, for

7 review?

8   A.   And that's why -- it was not, and that

9 was why I disallowed that as an item. What Mr. Kenney

10 and I were talking about, I asked Mr. Davis -- I

11 didn't see his testimony because I didn't have access

12 to his testimony until he actually filed it. He said

13 that we had an interim negotiation with Alstom that he

14 didn't want to claw back in the settlement process.

15 And there was no documentation regarding that

16 decision.

17   Q.   I was a little confused, though, because

18 last night, Commissioner Kenney was also talking about

19 the Alstom Unit 1 settlement and the Alstom Unit 2

20 settlement. Now --

21   MS. KLIETHERMES: Objection, exceeds the

22 scope of bench questions. Commissioner Kenney had no

23 questions for this witness last night.

24   MR. FISCHER: Well, he referenced the

25 question in his questioning today.

1   JUDGE PRIDGIN: I would agree, I'll

2 overrule.

3   MS. KLIETHERMES: All right. I'll

4 withdraw.

5 BY MR. FISCHER:

6   Q.   Can you explain the difference from your

7 perspective of the Alstom settlements compared to this

8 WSI settlement?

9   A.   As I clearly indicate from 235 -- 231 to

10 235 -- page 231 to page 235 of my rebuttal testimony,

11 it was a glaring example to me that -- of an item that

12 should have been put in the Alstom second settlement.

13 And it was -- and it was probably one of the items

14 that they would have had in that settlement. It was

15 handled outside of that settlement and -- and they

16 didn't -- KCP&L, as I read the terms and conditions,

17 paid that when I thought they had a valid claim.

18   Q.   But you understand from Mr. Davis's

19 testimony, don't you, that he has a different

20 perspective on that?

21   A.   Yes, and I agree with his perspective, I

22 just couldn't find any documentation. And the

23 perspective from a project management standpoint was

24 probably good, as I said to Commissioner Kenney. From

25 a prudence perspective, I didn't agree because you

1 make the decisions on a decision when they are first

2 made.

3   Q.   And could that be an issue where

4 reasonable people could just have a disagreement?

5   A.   Just like I said, it's reasonable for the

6 project management, not for prudence.

7   Q.   With the exception of whether the WSI

8 should have been included in one of the Alstom

9 settlements, did you have a -- did you review the

10 Alstom settlements for prudence?

11   A.   Yes, I did.

12   Q.   And what did you conclude?

13   A.   And I found all kinds of documentation on

14 the issues and how they were looked upon and what

15 KCP&L was receiving versus what they didn't have

16 before versus Alstom. I've been involved with many,

17 many large construction project claims.

18   And I can tell you that when he was

19 having that -- Commissioner Kenney was having that

20 discussion with Mr. Roberts last night, I thought the

21 process of contract administration was very solid. It

22 was actually probably one of the best instances of

23 facilitated negotiation that I've observed on these

24 large projects.

25   Q.   I'd ask you to turn to your rebuttal,

1 page 2.

2   A.   Page 2, yes, sir.

3   Q.   There you have an index of work, and I

4 don't want you to go through your rebuttal testimony,

5 but you have an index of the pages, I think, where you

6 addressed the Alstom settlement Unit 1 and Unit 2.

7   A.   Yes.

8   Q.   That's where the Commission would go to

9 understand your analysis of the Alstom Unit 1 and

10 Unit 2 settlements?

11   A.   It's primarily under scope and change

12 management, I believe. Let me check that. And it's

13 also discussed earlier.

14   Q.   Well, isn't it discussed -- isn't the

15 Alstom 1 settlement discussed on 263?

16   A.   Yes. Yes, it was. Yes.

17   Q.   And on that index, does it indicate that

18 Alstom 2 starts at 275?

19   A.   Yes.

20   Q.   Okay. There are a number of other --

21   A.   I referenced it in those detailed

22 analyses earlier in the testimony.

23   Q.   There are a number of other adjustments

24 that you discuss or you list on that index; is that

25 right?

1   A.   Yes.

2   Q.   Does that give the Commission a roadmap

3 of where to go to get your testimony about your view

4 about those adjustments?

5   A.   Yes.

6   Q.   Did you find any other -- with the

7 exception of the WSI adjustment and the -- the other

8 adjustment that you spoke with Commissioner Jarrett

9 about, did you find any other areas of imprudence in

10 Iatan 1 or Iatan 2?

11   A.   I did not.

12   Q.   Ms. Kliethermes asked you some questions

13 about your access to documents in this proceeding. Do

14 you recall those?

15   A.   Yes, sir.

16   Q.   Now, did you indicate that you had the

17 same access to documents as the Missouri Staff and the

18 Kansas Staff?

19   A.   Yes, I did.

20   Q.   Did you have to file any kind of Motion

21 to Compel to get any documents anywhere?

22   A.   No, sir.

23   Q.   Do you know if anyone in the Kansas

24 proceeding had to file a Motion to Compel?

25   A.   I seem to recall that there were none.

1   Q.   Did you have access to all cost control

2 documents or other documents that you needed to

3 conduct your prudence review here in Missouri?

4   A.   Yes.

5   Q.   Did you find that KCP&L's cost control

6 system included the documents that you needed to do

7 your prudence review in Missouri?

8   A.   Yes.

9   Q.   And did those documents identify and

10 explain cost overruns?

11   A.   They did.

12   Q.   And they were tied to the 2006 control

13 budget estimate?

14   A.   Yes, sir.

15   Q.   You were asked some questions about the

16 prudence review that you did and whether you did a

17 construction audit, I believe. Do you recall that

18 question from Commissioner -- I mean from counsel from

19 the Staff? No?

20   A.   No.

21   Q.   Okay. Well, what's the nature of a

22 prudence review?

23   A.   The prudence review, you evaluate the

24 systems, procedures, personnel, everything that's

25 involved in the project at the specific time, the data

1 that they had available, the data that they would have

2 reasonably had available from the industry

3 perspective, and the quality of the decision that they

4 actually made, and then do the implementation of that

5 decision until the decision is made that may change

6 the original decision.

7   Q.   Well, what's the standard that you would

8 apply in a prudence review like you did?

9   A.   The standard is that that's articulated

10 by Missouri in the Wolf Creek case and in Kansas by

11 some case law supplemented by their statute on nuclear

12 construction that the Commission decided was

13 applicable to the Iatan project.

14   Q.   Okay. So that's what you were referring

15 to is the standard that --

16   A.   The prudence standard, yes.

17   Q.   -- utilized in the Wolf Creek case?

18   A.   But that's consistent with what I did for

19 NARUC in the mid-'80s.

20   Q.   Does that include the use of hindsight?

21   A.   No. It is particularly a bar against

22 using hindsight.

23   Q.   Is it essentially a reasonable man

24 standard based on the circumstances that existed at

25 the time?

1   A.   Yes, sir.

2   Q.   I believe Ms. Kliethermes asked you

3 whether you were an expert in the area of cost

4 accounting.

5   A.   I think it was cost accounting or

6 accounting. I think it was accounting.

7   Q.   Okay. Accounting. I'd like to refer you

8 to your Exhibit 1 that was attached to your testimony.

9   A.   Yes, sir.

10   Q.   There you list the areas of expertise of

11 Pegasus or is that of yourself?

12   A.   I have been qualified in federal courts

13 and state courts, arbitrations.

14   Q.   Would you list the ones that are

15 particularly relevant to a prudence review and the

16 issues in this case?

17   A.   Oh, going down the left-hand side of --

18   MR. MILLS: Judge, I'm going to object to

19 this. I don't think this is responsive to any

20 cross-examination or questions from the bench. And

21 it's in his testimony. I don't know that we need to,

22 at this point in redirect, go back through Dr.

23 Nielsen's qualifications. I think it's beyond the

24 scope of any direct or bench questions.

25   MS. KLIETHERMES: And I'll join in that

1 objection.

2   MR. MILLS: Sorry, any cross or bench

3 questions.

4   MR. FISCHER: Judge, the question was

5 asked in what area he was an expert in, whether he was

6 not an expert in cost accounting. I'm now asking what

7 is he an expert in.

8   JUDGE PRIDGIN: I'll overrule.

9   THE WITNESS: There are various bullets

10 in two columns: Management consulting, corporate

11 governance, risk management, risk assessment, prudence

12 analysis and audits, performance audits, project

13 management audits, international contracting is

14 applicable in some cases. I don't think it's

15 applicable in this case. Trendy valuation and

16 analytics, industry best practices, contract

17 administration, executive management,

18 financial/investment funds, I would say financial is

19 applicable. Visibility studies and reviews,

20 compliance reviews, strategic planning, engineering

21 and construction management, project and program

22 management, project control systems, project and

23 program estimating, change management, standard of

24 care, claims prevention, claims analysis and

25 negotiation, design build, and damages.

 1| And I said fraud, abuse and waist were not part of the

 2| audit here.

 3| Q.   Okay. Thank you. I believe Mr. Mills

 4| may have asked you about whether you'd ever filed

 5| testimony or worked on behalf of consumer advocates.

 6| Do you recall that?

 7| A.   Yes.

 8| Q.   Have you ever worked on behalf of Public

 9| Service Commission staffs on prudence audits?

10| A.   Yes.

11| Q.   How many states have you worked in, do

12| you think?

13| A.   Fourteen states for Commissions and those

14| -- I can't remember all of them, but I would say the

15| Texas Commission, the Connecticut Commission, the New

16| Hampshire Commission, the Ohio Commission, the

17| Illinois Commission, the Pennsylvania Commission to

18| name a few that I can think of.

19| Q.   And how many have you done on behalf of

20| public utilities?

21| A.   Fifteen.

22| Q.   Okay. How many power plant reviews have

23| you done and conducted on separate generating units?

24| A.   It's between 90 and 100.

25| Q.   How many countries have you worked in

1 with regard to engineering and construction projects?

2   A.   Eight-four.

3   Q.   How many times have you testified in

4 proceedings related to power plants?

5   A.   That's what I was answering the 90 to 100

6 on. I've worked on additional power plants, but in

7 regards to --

8   Q.   I think in answer to one of Ms.

9 Kliethermes's questions, you referenced work at NARUC

10 during the mid-'80s.

11   A.   Yes.

12   Q.   Can you elaborate on what did you there

13 for NARUC?

14   A.   It all began on the Seebrook nuclear

15 plant and the six states of New England have a

16 governor's conference which has a subcommittee made up

17 of the chairman of their public utility commissions

18 and the executive director or the -- I think it would

19 be called a chief executive of the commission.

20   And they had us do a study and a survey

21 related to what was proper definition and standards of

22 prudence and what was the proper standards to use in

23 auditing and reviewing prudence. They then made a

24 presentation to NARUC, the national body. And NARUC

25 had us update that and I think we did a second update

1 probably in the early 90s, broadening the number of

2 commissions that had decisions or statutes on them.

3   Q.   Let's go back a little bit to your

4 discussion with Commissioner Kenney about the WSI. I

5 was a little confused by your answer regarding the

6 importance of relying on testimony, and I'd just like

7 for you to elaborate on what you were saying there.

8   A.   I saw documentary evidence of the issues

9 and the contract administration process that was in

10 place. We've evaluated the contract administration

11 change management cost control system, project

12 controls. At various times, various decisions were

13 made with respect to that, with those areas. And

14 everything told me that it had worked in the execution

15 of that very well and they made improvements over time

16 in regards to third-party or outside reviews of those

17 areas. And I've already commented on the facilitated

18 negotiation and I didn't find any written record

19 that -- of what Mr. Davis had told me.

20   Q.   Is it reasonable to rely on company

21 explanations whether it's in informal explanations or

22 in testimony, though, to understand the circumstances

23 around a particular issue?

24   A.   Yes.

25   Q.   And you weren't suggesting otherwise?

1   A.   No, I was not.

2   Q.   Okay.

3   MR. FISCHER: That's all I have. Thank

4 you very much.

5   JUDGE PRIDGIN: Mr. Fischer, thank you.

6 Dr. Nielsen, you may step down, sir. Thank you very

7 much. So Mr. Archibald is our next witness; is that

8 correct?

9   MR. HATFIELD: That's correct.

10   JUDGE PRIDGIN: If you'd come forward to

11 be sworn, please.

12   And this is a reminder we'll need to

13 break a little bit before noon so Commissioners can go

14 to agenda and audience members can get to the agenda

15 room. Is there anything before Mr. Archibald is

16 sworn? And sir, if you'll raise your right hand to be

17 sworn, please.

18   (The witness was sworn.)

19   JUDGE PRIDGIN: Thank you, sir. KCP&L,

20 when you're ready.

21   DIRECT EXAMINATION

22 QUESTIONS BY MR. HATFIELD:

23   Q.   Would you state your name and business

24 address for the record, please.

25   A.   Forrest Archibald, 1200 Main Street,

1 Kansas City, Missouri.

2   Q.   And are you the same Forrest Archibald

3 who filed rebuttal testimony in this case?

4   A.   I am.

5   Q.   Did you file any other testimony other

6 than rebuttal?

7   A.   No, I did not.

8   Q.   And did that rebuttal testimony contain

9 some exhibits?

10   A.   It did.

11   Q.   Just to be sure we're on the same page

12 here because I messed this up with another witness,

13 you have an exhibit that is Schedule 1, identified as

14 cost report summation; is that right?

15   A.   Yes.

16   Q.   You have an exhibit that is Schedule 2,

17 identified as Iatan 1 and 2 cost reforecast; is that

18 right?

19   A.   Let me get there. Yes.

20   Q.   You have an exhibit that is Schedule 3

21 identified as Iatan 1, contingency commitment

22 add-delete log; is that right?

23   A.   Yes.

24   Q.   Does it include the same thing for

25 Iatan 2 somewhere?

1   A.   It does not.

2   Q.   Okay. And then you have Schedule 4

3 identified as risk and opportunity analysis; is that

4 right?

5   A.   Yes.

6   Q.   Schedule 5 identified as Iatan 2 cost

7 reforecast validation?

8   A.   Yes.

9   Q.   Schedule 6 identified as Iatan 2

10 reforecast schedule and cost?

11   A.   Yes.

12   Q.   Schedule 7, identified as Iatan 2,

13 estimate of completion; is that right?

14   A.   Yes.

15   Q.   Schedule 8 document that says Alstom at

16 the top; is that right?

17   A.   Yes, change orders to Alstom.

18   Q.   Okay. And Schedule 9, identified as

19 meetings with PSC Staff; is that right?

20   A.   Yes.

21   Q.   Now, are all of these documents documents

22 that were maintained with KCP&L in the ordinary course

23 of business?

24   A.   Yes.

25   Q.   Do you have any changes or corrections to

1 your rebuttal testimony which has been marked as

2 Exhibit 4-HC and NP?

3   A.   I do.

4   Q.   Would you tell us what those changes are

5 by identifying the page number and line, please?

6   A.   Yes. Page 2, line 16, the year 1993

7 should read 1994.

8   Q.   All right. Any others?

9   A.   Same page, line 19, the year 2005 should

10 read 2006. And then I have one other on page 25.

11   Q.   All right.

12   A.   Line 2, the word "security" should read

13 "safety."

14   Q.   What page are we on again?

15   A.   Page 25.

16   Q.   Okay. So just to be clear, they're on

17 page 25, line 2, your testimony says, "The manager of

18 site security (Mr. Michael Hermison)," it should say

19 "The manager of site safety?"

20   A.   Correct.

21   Q.   Any other corrections?

22   A.   No.

23   MR. HATFIELD: Judge, I move the

24 admission of Exhibit 4-HC.

25   JUDGE PRIDGIN: Any objections? Hearing

1 none, Exhibit 4-NP and HC is admitted.

2   (KCP&L Exhibit No. 4-HC and NP were

3 received into evidence.)

4   MR. HATFIELD: Tender the witness for

5 cross.

6   JUDGE PRIDGIN: Mr. Hatfield, thank you.

7 Mr. Schwarz?

8   MR. SCHWARZ: Thank you.

9   CROSS-EXAMINATION

10 QUESTIONS BY MR. SCHWARZ:

11   Q.   Mr. Archibald, do you have a copy of the

12 control budge estimate with you?

13   A.   I do. I have a copy of the K report with

14 me.

15   Q.   The CBE itself?

16   A.   Yes.

17   Q.   Okay. And I just -- this is a

18 hypothetical question, so --

19   A.   Okay.

20   Q.   -- although I'm going to use a number off

21 of the CBE. There's a provision on the CBE under

22 owner's indirects for railcars, $37 million.

23   A.   Yes.

24   Q.   You got it? If the -- if the bid for

25 railcars had come in at $50 million, would the board

1 have to approve a change in order to go ahead and

2 exceed the amount on the CBE?

3   A.   I don't think I understand. Let me try

4 and rephrase and see if I understand your question.

5   Q.   I'll rephrase.

6   A.   Okay.

7   Q.   I'll rephrase. If -- okay. Is this HC?

8   MR. HATFIELD: Are you just asking about

9 railcar? I thought it was a hypothetical, so it's not

10 HC.

11 BY MR. SCHWARZ:

12   Q.   Okay. So it's a hypothetical.

13   MR. HATFIELD: If you keep saying

14 hypothetical, I might object; but at this point, it's

15 not HC.

16 BY MR. SCHWARZ:

17   Q.   If a specific item on the CBE had been

18 listed, say, for $37 million.

19   A.   Okay.

20   Q.   And it was going to cost more than that,

21 say $50 million, would you have to get authorization

22 to exceed that line item amount or could you simply

23 adjust the contingency amount?

24   A.   I think I understand what you're trying

25 to ask me. If you're asking me if a particular line

1 item within the control budget was going to be

2 exceeded or underran, if we would fund that deficit

3 or --

4   Q.   Well, let's just start with exceeded.

5   A.   If exceeded, we would fund it for

6 contingency.

7   Q.   Okay. And then your contingency would be

8 reduced by that amount?

9   A.   That is correct.

10   Q.   So that there would be a tension, as it

11 were, if one aspect of the project was exceeding the

12 CBE amounts, it would limit the ability to exceed it

13 in other areas?

14   A.   Correct. The contingency pool is a

15 balancing, reserve, if you will, a tension back and

16 forth.

17   Q.   Okay. And now let's talk about what if

18 instead of 37 million, it came in at $24 million.

19   A.   Okay.

20   Q.   Would -- would that increase the

21 contingency?

22   A.   Yes, it would.

23   Q.   Okay.

24   MR. SCHWARZ: May I approach the witness?

25   JUDGE PRIDGIN: You may.

1 BY MR. SCHWARZ:

2   Q.   I am going to hand you a schedule from

3 Mr. Meyer's testimony and I will suggest to you that

4 it is an Iatan 2 K report for November of 2007.

5   A.   Okay.

6   Q.   Is -- well, would you take a look at that

7 and see if you can confirm that that's correct?

8   A.   Yes, it's an Iatan 2 K report through the

9 period November, 2007.

10   Q.   Would you turn to the second page of

11 that?

12   A.   Okay.

13   Q.   At the bottom of that page there, in one

14 of the left-hand columns, there's a number 0170, which

15 is then identified or described as owner's legal

16 counsel. Are you with me?

17   A.   I am.

18   Q.   And what does that 0170 signify?

19   A.   Owner's legal counsel was primarily the

20 internal legal department for KCP&L.

21   Q.   Is --

22   A.   It also included some outside legal

23 counsel, if hired through the legal department.

24   Q.   So it's not a contract number, it's a --

25 just a general account identifier?

1   A.   I'm sorry, was the question what does

2 0170 stand for?

3   Q.   Signify, yes.

4   A.   That would represent a cost code.

5   Q.   Okay. It's a cost code, but it's not a

6 contract-specific item?

7   A.   No.

8   Q.   Then I think the next one down is 0181.

9   A.   Correct.

10   Q.   And that -- what's the description of

11 that?

12   A.   KCP&L audit services, Schiff Hardin and

13 Ernst & Young.

14   Q.   Okay. And if this is HC, and I suspect

15 it might be, I'd like to go in-camera.

16   JUDGE PRIDGIN: One moment, please.

17   (REPORTER'S NOTE: At this point, an

18 in-camera session was held, which is contained in

19 Volume 26, pages 2138 to 2151 of the transcript.)

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1   JUDGE PRIDGIN: We're back in public

2 forum, thank you.

3 FORREST ARCHIBALD testified as follows:

4 BY MR. MILLS:

5   Q.   Just for the purposes of the transcript,

6 I was asking you about the document that Mr. Schwarz

7 handed you that's an attachment to Mr. Meyer's

8 testimony, and the far right column is titled updated

9 control budget estimate. Do you see that column?

10   A.   I do.

11   Q.   Is it your testimony that that column is

12 incomplete, inaccurate, or both?

13   A.   It would be my testimony that this

14 document is a high-level summary. I don't know how it

15 was grouped and how it pertains to what I refer to and

16 responsible to the tracking as the control budget

17 estimate other than the bottom line number, the 1.685

18 billion ties to the number, my bottom line number.

19   Q.   Okay. So if there is a number, for

20 example, for outside management oversight in this

21 document that is different from what you consider to

22 be the control budget estimate, then you would

23 consider this document to be inaccurate; is that

24 correct?

25   A.   I would consider this document not to

1 match my control budget estimate.

2   Q.   Do you consider your control budget

3 estimate to be accurate?

4   A.   Absolutely.

5   Q.   Okay. So in that sense, this document

6 would be inaccurate, if it does not match?

7   A.   Again, all I can tell you is it wouldn't

8 match my document.

9   Q.   Okay.

10   A.   I don't know the pretense in which this

11 was presented to someone, so I can't answer that.

12   MR. SCHWARZ: If I might, the source of

13 the document we're referring to is Mr. Drabinski's, I

14 think, Schedule 2 as opposed to Mr. Meyer's.

15   MR. MILLS: Okay. Judge, may I approach?

16   JUDGE PRIDGIN: You may.

17 BY MR. MILLS:

18   Q.   Mr. Archibald, I've handed you what's

19 been marked as -- I believe it's written on there as

20 KCP&L Exhibit 251-HC, is that correct, in the bottom,

21 right-hand corner, or 261?

22   A.   Written there, 261.

23   Q.   261. Okay. That has been marked and I

24 believe admitted into the case as Exhibit 261-HC. Do

25 you recognize that document?

1   A.   No, I do not recognize the document. It

2 would appear it's the same document that -- it

3 contains the same document that I was handed earlier.

4   Q.   Okay. Were you present when the control

5 budget estimate was presented to the board of

6 directors?

7   A.   I was not.

8   Q.   Okay. Do you know whether the document

9 that you consider to be the control budget estimate

10 was actually presented to the board of directors?

11   A.   I don't know.

12   Q.   Okay.

13   MR. MILLS: That's all I have, Judge.

14 Thank you.

15   JUDGE PRIDGIN: Mr. Mills, thank you.

16 Ms. Ott?

17   CROSS-EXAMINATION

18 QUESTIONS BY MS. OTT:

19   Q.   Good morning, Mr. Archibald.

20   A.   Good morning.

21   Q.   You do not hold a degree from a higher

22 education institute, do you?

23   A.   No, I do not.

24   Q.   And you do not have any training in

25 project management?

1   A.   Can you define "training?"

2   Q.   Do you have any formal training in

3 project management?

4   A.   And I'm sorry, when you say "formal,"

5 I've taken training with previous utilities. I don't

6 know if it's considered formal.

7   Q.   Okay. Do you remember being deposed on

8 January 12, 2011?

9   A.   Oh, absolutely.

10   Q.   Do you remember being asked that question

11 during that deposition?

12   A.   Yes, I was asked if I had formal training

13 and my response to that deposition was no. I'm now

14 asking you to define the meaning, what "formal

15 training" is because throughout the proceeding of

16 these hearings, I've heard other witnesses talk about,

17 well, yeah, I've had all kinds of training at existing

18 companies. I've had the same training. It's usually

19 mandated that when you work for a company, especially

20 a utility, that they update your training. So I

21 just -- I just don't know if that's formal. That's my

22 problem.

23   Q.   Okay. But during your deposition on

24 January 12, 2011, did you -- is it now your testimony

25 today you didn't understand that question?

1   A.   I -- it's my testimony that I'm asking

2 you just to tell me what "formal" means.

3   Q.   I'm asking you: During your deposition

4 on January 12, 2011, when you were asked: "Do you

5 have any formal training in project management?" And

6 you said "No," is that not your testimony today?

7   A.   Okay. Let me restate my answer. If

8 you're defining "formal" as college or certificate

9 training, I do not have that, no.

10   Q.   I'm defining "formal" how you -- how did

11 you define -- well, you answered the question during

12 your deposition that you do not have any formal

13 training.

14   A.   Yes.

15   Q.   And is that your testimony today that you

16 do not have any formal training in project management?

17   A.   And again, I'm not trying to be combative

18 here. I just need to know what you define as

19 "formal." If you tell me that "formal" is certificate

20 or a degree, I have no formal training. If you tell

21 me, well, formal could be at another utility you took

22 training, well then yeah, I've had it.

23   Q.   During your deposition, did you ask

24 Mr. Dottheim --

25   A.   I did not.

1   Q.   -- what he meant? So you understood what

2 "formal training" meant during your deposition?

3   A.   During the deposition, I assumed it was a

4 degree or a certificate. Based on these proceedings,

5 I'm not so sure my definition was correct. If you can

6 let me know your definition of "formal," I'd be more

7 than happy to answer it.

8   Q.   Do you have any formal training in

9 project cost management? And I'm going off what your

10 understanding of "formal training" is.

11   A.   And again, I do apologize. Can we define

12 "formal," please?

13   Q.   Can you -- what is your interpretation of

14 "formal" when you answered this question?

15   A.   Okay. My interpretation of "formal"

16 would be college degree or an official certificate

17 from a recognized institution. So under those --

18 under that definition, I now understand, please ask me

19 the question.

20   Q.   So prior to your deposition, you were not

21 aware that you could have formal training that was not

22 a degree or a certificate from an institution?

23   A.   Correct.

24   Q.   Do you have any formal training in

25 project quality management?

1   A.   No.

2   Q.   Do you have any formal training in

3 project procurement management?

4   A.   No.

5   Q.   Do you have any formal training in

6 project risk management?

7   A.   No.

8   Q.   Do you have any formal training in

9 project integration?

10   A.   Yes. I've taken courses with Primavera.

11   Q.   And do you have any formal training in

12 project scope management?

13   A.   No.

14   Q.   And you do not consider yourself an

15 expert in matters of accounting?

16   A.   No.

17   Q.   And are you a professional engineer?

18   A.   No.

19   Q.   And you also did not assist in the

20 development of the project execution plan?

21   A.   That is correct, I did not.

22   Q.   Do you have a copy of your testimony with

23 you?

24   A.   I do.

25   Q.   Rebuttal testimony? I'd like to direct

1 you to page 13.

2   A.   Bear with me one second, please. Did you

3 say page 13?

4   Q.   I did.

5   A.   Okay.

6   Q.   In particular, lines 11 through 13, when

7 you directly quote Staff's report.

8   A.   Eleven through thirteen?

9   Q.   Well, actually goes through 14.

10   A.   I'm sorry, 11 through 14.

11   Q.   Do you have a copy of Staff's June 30th

12 report in which you're quoting there?

13   A.   I do not.

14   Q.   It's the November 3rd, 2010, cost report

15 based on June 30th, 2010. And I'm going to show you

16 the section of Staff's report in which you're directly

17 quoting.

18   A.   Okay.

19   Q.   And I want you to compare and see if

20 that's an accurate quote.

21   A.   No, I would tell you it's not based

22 verbatim, no.

23   Q.   So Staff's report identifies cost

24 overruns and you identify it as cost variances?

25   A.   That is correct, on line 13 of my

1 testimony, I say --

2   MR. HATFIELD: What page?

3   THE WITNESS: I'm sorry, page 13,

4 line 13. I say budget cost variances and Staff says

5 budget cost overruns.

6 BY MS. OTT:

7   Q.   Would you like to update your testimony

8 at this time to reflect Staff's accurate quote?

9   A.   Since I'm quoting them, then yes, I would

10 definitely need to update it.

11   Q.   Okay. So -- I can take the Staff's

12 report back.

13   A.   Uh-huh.

14   Q.   So just so the record's clear, on

15 line 13, you're changing cost variance to cost

16 overruns; is that correct?

17   A.   Yes.

18   Q.   Thank you. Now, R&Os stand for risk and

19 opportunity, correct?

20   A.   Absolutely, yes.

21   Q.   Okay. And the risk stands for something

22 that can potentially be over budget where opportunity

23 means there would be an opportunity to save costs. Is

24 that accurate?

25   A.   That is accurate.

1   Q.   So the R&Os are a form of a monitoring

2 table to identify opportunities to reduce costs but

3 also risk of having increased costs; would that be an

4 accurate description?

5   A.   I would describe it a little bit

6 different.

7   Q.   Okay. And how would you describe it?

8   A.   I would tell you that the R&Os are risk

9 and opportunities where items that identified both

10 under -- potential underruns and overruns to the

11 budget in a forward-looking manner.

12   Q.   Now, R&Os were used in regards to the

13 Iatan 1 project?

14   A.   Yes.

15   Q.   And they were only used for a certain

16 period of the Iatan 2 project; is that correct?

17   A.   Yes.

18   Q.   Now, in regards to the May 2nd, 2008,

19 reforecast, R&Os, they were used to explain cost

20 variances to the budget; is that correct?

21   A.   Yes.

22   Q.   Now, R&Os were -- in regards to

23 Iatan 1 -- used to create the reforecast?

24   A.   I'm sorry, could you repeat that?

25   Q.   Were R&Os used to create the current

1 budget over the control budget estimate?

2   A.   I don't think I'm quite understanding

3 what you're asking me.

4   Q.   Were the R&Os used to create or used to

5 help develop the current budget over the control

6 budget estimate?

7   A.   The R&Os were used to identify and

8 explain cost variances, whether it was an overrun or

9 underrun, against the control budget to create a new

10 budget that we tracked to. But it also gave us the

11 ability to track back to the control budget.

12   Q.   So they were used to help create the new

13 budget?

14   A.   Yes.

15   Q.   That was my question.

16   A.   Okay.

17   Q.   Now, are actual costs identified by the

18 R&Os?

19   A.   I think what you're trying to ask me is

20 can I track actual costs to my R&Os.

21   Q.   Yes.

22   A.   Okay. Absolutely not. No. Absolutely

23 not. They were never intended to do that.

24   Q.   Okay. Thank you.

25   A.   Neither were the CPs. Okay. Sorry.

1   Q.   Now, CPs stand for cost projections,

2   correct?

3   A.   Yes.

4   Q.   And a cost projection would be kind of an

5   aggregation of R&O types into one document? Would

6   that be an accurate description?

7   A.   No. And I think it would take some

8   further explanation.

9   Q.   Well, explain to me what a cost

10 projection is.

11   A.   Okay. When we transition from R&Os in

12 the May '08 reforecast to what we refer to as CP items

13 or cost projection items, what we did was we

14 streamlined the process. It was a lesson learned.

15 The R&Os identified individual tasks across many

16 items. What we did with CPs was in order to

17 streamline the process and focus management review as

18 well as party reviews and get reforecasts done sooner,

19 we group like items all together. So you can take

20 your indirects and look at all your indirects at once,

21 understand the same calculations, but you really had a

22 focus so you could pull certain people in together to

23 do the review to be more efficient.

24   Q.   So then are you saying it was -- you went

25 to the CPs because it was easier to approve --

1   A.   Oh, no, no, no.

2   Q.   -- the cost projections?

3   A.   It had nothing to do with approval. It

4 had to do with the reviewing and vetting process.

5 What it did was it allowed us to reforecast and more

6 accurately capture what we thought our costs were

7 going to be in a more timely fashion. It also reduced

8 the cost and time that it took the project to spend on

9 those reforecasts, allowing us to save budget and save

10 the ratepayers' money.

11   Q.   And these same CPs would have been used

12 to create the current budget as the R&Os were used?

13   A.   Yes.

14   Q.   And I believe when I asked the question

15 about R&Os, you were answering for the CPs, too. They

16 do not track actual costs?

17   A.   Oh, absolutely not, no.

18   Q.   So the R&Os and CPs were used to raise --

19 raise the control budget estimate to the current

20 budget?

21   A.   I would tell you that that -- if you're

22 trying to simplify it at a 20,000-foot view, that's

23 the effect they had. The R&Os and CPs identified

24 potential overruns and underruns to the control budget

25 estimate that allowed us to create a current budget.

1   Q.   Okay. So let's talk about that. It

2 goes -- it could go either way?

3   A.   Yeah.

4   Q.   So for your current -- the KCP&L budget,

5 isn't it true that the project is coming under that

6 current budget?

7   A.   Yes.

8   Q.   And that's roughly about 40 million?

9   A.   Yes.

10   Q.   Okay.

11   A.   That's our current projections, yes.

12   Q.   So essentially, then, now you'd be --

13 with the current budget, it would be considered a cost

14 underrun? Would that be a phrase to use?

15   A.   What are you using to measure against?

16 Are you using the control budget to measure against or

17 the current budget?

18   Q.   I'm talking about the current budget.

19   A.   Yes.

20   Q.   So you're coming under 40 million?

21   A.   Yes.

22   Q.   Where would you -- where would you assign

23 that 40 million not spent?

24   A.   Can you tell me what you mean by

25 "assign?"

1   Q.   Where would you track back that 40

2 million to the R&Os and CPs to the actual budget?

3   A.   Are you asking me what I would attribute

4 to coming into $40 million under the 1.988?

5   Q.   Where can you identify what areas that 40

6 million is coming in under budget?

7   A.   Well, you'd have to go to the November,

8 2010 reforecast document to see, since it's a

9 look-ahead, that information would be located within

10 that document.

11   Q.   So a budget variance is either a positive

12 or a negative effect towards the budget, correct?

13 It's any change, whether it be --

14   A.   Yes.

15   Q.   -- a savings or an extra expenditure?

16   A.   Whether it's an overrun or an underrun,

17 it's still a variance.

18   Q.   Now, a cost overrun, though, would be a

19 cost that is above the budget and above the

20 contingency reserve?

21   A.   Are you asking me?

22   Q.   I'm asking you if that's correct.

23   A.   This is going to take some explanation in

24 order for me to answer your question.

25   Q.   So is a cost overrun, then, not a cost

1 that is above and beyond the control budget estimate

2 including -- including the contingency fund contained

3 within?

4   MR. HATFIELD: I'm going to object to the

5 question being ambiguous, whether she's asking for his

6 understanding or some general definition of the term.

7   JUDGE PRIDGIN: I'll overrule and I'll

8 let him answer, if he can. If he doesn't understand

9 the question, he can say so.

10   THE WITNESS: The way you're asking the

11 question, I can't answer it with a yes or no is my

12 problem.

13 BY MS. OTT:

14   Q.   So you don't (sic) have a budget and then

15 you have a contingency on top of the budget?

16   A.   Uh-huh.

17   Q.   And then anything above that contingency

18 that is expended is a cost overrun; is that not true?

19   A.   That would be one of many definitions of

20 cost overrun.

21   Q.   Do you know what the stipulation and how

22 the stipulation and agreement defines cost overruns?

23   A.   I believe the S&A agreement, according to

24 Mr. Giles's and Blanc's testimony, does not define

25 what a cost overrun is. I can tell you from my

 1 perspective of working in the industry for over 13

 2 years what I would interpret a cost overrun to be, but

 3 I haven't heard you ask me that.

 4   JUDGE PRIDGIN: I hate to interrupt, but

 5 we're getting close to noon and I assume you're going

 6 to have quite a bit more cross.

 7   MS. OTT: I have a little bit more. We

 8 can break.

 9   JUDGE PRIDGIN: Okay. That's fine.

10 Let's stand in recess until 1:30. Is there anything

11 further from counsel before we go off the record?

12   MS. OTT: I believe Mr. Dearmont has

13 something he would like to address.

14   JUDGE PRIDGIN: Okay. Does that need to

15 be on or off the record?

16   MR. DEARMONT: It can probably be off the

17 record right now, Judge.

18   JUDGE PRIDGIN: Okay. Thank you. We'll

19 stand in recess until 1:30.

20   (A break was held.)

21   JUDGE PRIDGIN: All right. Good

22 afternoon, we are back on the record. I believe

23 Ms. Ott was cross-examining Mr. Archibald when we

24 broke for agenda and for lunch. And depending on how

25 long agenda runs and how long USB meeting runs, it's

1 possible that we would have Commissioners down here

2 that would want to examine Mr. Archibald but not be

3 present. If that happens, I would want to alert the

4 parties he would likely not be excused at least until

5 I verify with the bench that they had any examination

6 of the witness. And if indeed they do, I would allow

7 for recross and redirect based on those questions.

8   MR. FISCHER: I have -- I know

9 Dr. Nielsen has a plane out of St. Louis this

10 afternoon, is it okay to release him?

11   JUDGE PRIDGIN: I see no reason why not.

12 We had Commissioners here on the bench and nobody has

13 requested him to stay.

14   MR. FISCHER: Thank you.

15   JUDGE PRIDGIN: Anything further before

16 Ms. Ott resumes cross-examination? All right.

17 Mr. Archibald, you are still under oath, sir.

18   THE WITNESS: Understood.

19 BY MS. OTT:

20   Q.   Mr. Archibald, before we broke for lunch,

21 we were discussing cost overruns in relationship to

22 control budget estimate and the contingency. Is your

23 definition of "cost overruns" anything above the

24 billion six eighty five?

25   A.   I believe what you're reading from is my

1 deposition, which I said when asked my definition, I

2 said anything above the CBE, or control budget

3 estimate. What I was trying to convey earlier is that

4 there are many definitions. I personally have several

5 because I'm held to a higher standard than what is in

6 the S&A agreement itself.

7   Q.   So is your definition of "cost overrun"

8 anything above the control budget estimate?

9   A.   That is one of my definitions, yes.

10   Q.   Is that your definition that you're using

11 in this matter today?

12   A.   Are you asking my opinion on how many

13 definitions there are?

14   Q.   No, I'm asking if your definition of a

15 cost overrun in this matter relating to the prudency

16 review --

17   A.   Uh-huh.

18   Q.   -- is anything above the control budget

19 estimate.

20   A.   I think it will take a little

21 explanation, if you'd allow me.

22   Q.   It's a yes-or-no question.

23   A.   That is one of them, yes.

24   Q.   Mr. Archibald, after your deposition, who

25 did you speak with in regards to -- in relationship to

1 that deposition?

2   A.   When you say who did I speak to --

3   Q.   Did you have any conversations regarding

4 post the deposition to discuss your answers during the

5 deposition?

6   A.   I did a debrief with my attorney.

7   Q.   And that was Mr. Hatfield?

8   A.   Yes.

9   Q.   Did you have any discussions before

10 coming here today in which you would have compared

11 your deposition to when you were doing any witness

12 prep?

13   A.   I'm sorry, can you re-ask that?

14   Q.   When preparing for the hearing today --

15   A.   Yes.

16   Q.   -- did you do any witness prep?

17   A.   Oh, absolutely.

18   Q.   And who did you do witness prep with?

19   A.   Myself.

20   Q.   Did you have any coaching or anyone

21 assisting you asking you questions to prepare for

22 today?

23   A.   No, I was just reading through my

24 documents and my notes.

25   Q.   So you didn't have?

1   A.   I picked up on a lot of questions that

2   Staff and the other attorneys have asked and the

3   Commissioners themselves have asked different

4   witnesses before me.

5   Q.   So you did not speak with an attorney or

6   one of your co-workers in preparation for the hearing

7   today?

8   A.   Well I mean, I spoke with my lawyer this

9   morning asking my opinion on what I think I'm going to

10 be asked and how things are going to go. That type of

11 stuff.

12   Q.   Well, you seem to have changed some of

13 your answers since your deposition or trying to expand

14 upon them here now. And I'm just confused as to when

15 you were asked questions during your deposition, what

16 has changed between your deposition on January 12th,

17 2011, and today that you're now having different

18 answers or you didn't fully understand those questions

19 during the deposition.

20   MR. HATFIELD: Nevermind. If she wants

21 him to explain, okay.

22   THE WITNESS: I think time has evolved,

23 time has passed. And what I mean by that is when

24 you're sitting in a deposition that was done by

25 telephone and you're not seeing the people that you're

1 talking to, and you have to make assumptions on what

2 some of the definitions are. As I've sat through

3 these hearings and we sit here today, I've heard a lot

4 of questions that each party has asked each of our

5 witnesses, which helps me gather information on the

6 types of question and information you-guys are

7 seeking.

8 BY MS. OTT:

9   Q.   Did Mr. Dottheim, during that deposition,

10 not inform you if you didn't understand a question

11 that you should ask for clarification?

12   A.   Oh, yes, absolutely.

13   Q.   Okay. And you didn't ask for

14 clarification on some of these questions that I've

15 been asking you today that you answered in your

16 deposition?

17   A.   I did, yes. I'm sorry, I did ask for

18 clarification on some of the things that Mr. Dottheim

19 asked me during my deposition, yes. Was that your

20 question?

21   Q.   Yes, but in regards to the "formal

22 training," your deposition transcript doesn't indicate

23 you asked what the word "formal" meant. And today,

24 you suddenly have a different definition of "formal,"

25 so --

1   A.   And I think as I've tried to say --

2   MR. HATFIELD: Judge, I'm going to

3 object. That's just argumentative. There's actually

4 no question on the table, but if she's just making

5 statements to try to get a reaction, it's the

6 definition of argumentative.

7   MS. OTT: I'm asking questions to try to

8 figure out what has happened in two weeks to suddenly

9 change the witness's sworn testimony.

10   JUDGE PRIDGIN: I'll overrule. I'll let

11 you try to get to that.

12   THE WITNESS: What has changed is again

13 what --

14   MR. HATFIELD: Judge, can we read back

15 the question?

16   JUDGE PRIDGIN: That will be fine, or

17 Ms. Ott, if you'd like to -- or Ms. Ott, if you want

18 to ask it again, whichever you prefer.

19 BY MS. OTT:

20   Q.   What has changed since your deposition on

21 January 12th in regards to your definition of "cost

22 overrun" until today?

23   A.   Okay. When I answered the question in my

24 deposition, and that's what I tried to explain

25 earlier. Cost overrun has many meanings, okay? I

1 wasn't asked to list them all out, I was asking to

2 define what a cost overrun meant to me. One -- one

3 aspect of that is anything over the CBE.

4   My day-to-day life, my everyday in the

5 trenches tracking costs on this project for the last

6 five years, I've been held to a higher standard. A

7 cost overrun or a cost underrun helped create budget

8 variances.

9   I'm -- I'm hired to explain every cost

10 variance to the CBE. And when I say "CBE," I'm

11 talking to the base 1,468,5. That's what the site

12 tracks to. Now, you're asking me in a broad sense

13 what's a "cost overrun," well I tried to say earlier

14 there's several definitions.

15   Q.   So is your definition of "cost variance"

16 the same as a "cost overrun?"

17   A.   My definition of a "cost variance" is

18 either an overrun or an underrun. It's a variance.

19   Q.   Okay. So your definition of a "cost

20 overrun" would only be an overrun, not an underrun?

21   A.   I'm sorry, did you say that my

22 definition --

23   Q.   Would your definition of "cost overrun"

24 only be something above and not anything under? As a

25 variance can go both ways, an overrun can only go one?

1   A.   Yes, I would agree.

2   Q.   Now, the contingency budget was to cover

3 cost variances, correct?

4   A.   Yes.

5   Q.   And for Iatan 2, that was 220 million?

6   A.   That is correct.

7   Q.   Now, I think when you were talking with

8 Mr. Schwarz earlier, that you indicated that if there

9 was a cost underrun on a particular item, then that --

10 that amount of money would dump into the contingency

11 budget, correct?

12   A.   Correct.

13   Q.   So the contingency budget doesn't cover

14 cost overruns?

15   A.   Well, it would depend on your definition

16 of "cost overrun." Again, if you're on the site, yes,

17 the contingency covers your cost overrun because the

18 overrun is anything over the 1,468,5.

19   If you're trying to take the definition

20 and apply it to the S&A based on what I've read on all

21 these depositions and the audit findings, a cost

22 overrun's been limited to anything above the 1,685. I

23 don't care where you define a cost overrun. Our

24 system allows you to track through every dollar that's

25 spent from cradle to grave and understand where it was

 1| spent and wherever the overrun occurred.

 2| Q.   Okay. For Iatan 2, what is the actual

 3| amount of cost overruns over the definitive estimate?

 4| A.   Using whose definition of "overrun?"

 5| Using above the 1,468,5 or using above the 1,685.

 6| Q.   The 1,685.

 7| A.   Okay. Will you please re-ask your

 8| question?

 9| Q.   What is the actual amount of cost

10| overruns above the definitive estimate?

11| A.   Through what point in time?

12| Q.   Through June 30th, 2010.

13| A.   I will pull a June 30, 2010 K report.

14| What would you like me to look at for the cost

15| variance?

16| Q.   I said what is the actual amount of --

17| not variances, cost overruns above the definitive

18| estimate?

19| A.   What would you like me to compare the

20| data to?

21| Q.   What is the actual amount of cost

22| overruns for June 30th, 2010, above the definitive

23| estimate?

24| A.   Okay. I'm going to try this a different

25| way. Are you asking me on actual cost basis or are

1 you asking me on a committed basis, are you asking me

2 on a forecasted basis?

3   Q.   I believe I asked you the actual cost

4 overruns.

5   A.   Okay. Thank you. The actual cost

6 overruns against the 1,685 during that time period

7 would have been approximately $130 million.

8   Q.   Now, if you'd reconciled this $130

9 million cost overrun with the definitive estimate?

10   A.   Can you -- I'm sorry, "reconcile," what

11 do you mean?

12   Q.   Do you identify each and every cost

13 overrun with the definitive estimate?

14   A.   Well, yeah. The K report does that.

15   Q.   So the K report is a reconciliation of

16 cost overruns compared to the definitive estimate?

17   A.   Yeah, the K report itself, the nice thing

18 about the K report is that not only does it maintain

19 the original CBE or the --

20   Q.   I believe I asked you the K report is a

21 reconciliation?

22   A.   Yes.

23   Q.   Where in the K report does the cost

24 overruns relate to the contingency?

25   A.   Well, there would be a total contingency

1 line on the K report itself.

2   Q.   Does that show all of the contingency

3 items?

4   A.   It has a cumulative contingency bucket

5 that remains. Is that what you're asking me?

6   Q.   So it's a cumulative, it doesn't identify

7 each and every thing that created that contingency?

8   A.   No, the K report itself would not. You'd

9 have to go to the contingency log.

10   Q.   So I want to kind of give you, like, a

11 hypothetical to try to understand something.

12   A.   Okay.

13   Q.   Let's say you have a budget for $10 for a

14 particular item, and it actually costs 18. How do you

15 decide what the 18 goes into a contingency and what

16 becomes a cost overrun?

17   MR. HATFIELD: I'm going to object. The

18 question is ambiguous as to -- I'm afraid we're going

19 to get into a discussion again about what this means.

20 I don't understand who she means.

21   MS. OTT: It's a hypothetical and he's

22 sitting up here as the cost witness.

23   MR. HATFIELD: I'm not objecting to the

24 form of the question, I'm objecting to its ambiguity.

25   JUDGE PRIDGIN: I'll overrule and the

 1 witness seems capable of stating if he doesn't

 2 understand the question. If he doesn't understand,

 3 you can re-ask the question.

 4   THE WITNESS: Can you re-ask the

 5 question, please?

 6 BY MS. OTT:

 7   Q.   Okay. You have an item that costs $10 --

 8 that you budgeted $10 for.

 9   A.   Okay.

10   Q.   And it ends up costing 18. Now, how do

11 you decide if that is going to be a cost overrun or if

12 it's going to go into the contingency?

13   A.   Well, I think what we're talking about

14 here is budgeting 101. So let me try and answer what

15 I think we're talking about. If I have a budget for

16 any item, whether it's $10 or $100, and it's for a

17 scope of work, I have that budget, okay? And I know

18 what defined scope of work it's for. I would then

19 release a source document, an authorization to work,

20 whether it's a purchase order or change order or

21 something to that affect, engagement letter, whatever

22 it may be, to authorize the vendor to go to work.

23   I would then have a commitment. Okay?

24 If the scope was completely done and identified so if

25 I had a $10 budget and my scope was eight bucks, then

1 $2 of that would be returned back into contingency.

2 Okay? Now, if you go the other way, and I had a $10

3 budget and it came in at $18, I would have to draw $8

4 out of contingency to pay for that.

5   Q.   So what if the contingency was used up?

6   A.   I guess I don't understand the question.

7   Q.   So then it would be a cost overrun?

8   A.   According to how the second definition of

9 cost overrun I've given, yes. I mean, based on what

10 I've read here and read through all the testimonies

11 and read in the audit filing, what we're defining

12 "cost overrun" as is anything above the base estimate

13 plus the 220, which is anything above the 1,685.

14   That's -- that seems to be the heart of

15 the matter here. I mean, the problem that I'm seeing,

16 and again, I think it's come out, is that no one ever

17 defined what "cost overrun" means. In my day-to-day

18 job and all my experience tracking costs, a cost

19 overrun management is anything above your base budget.

20 That's what we've got to explain.

21   Q.   So if you don't know what the definition

22 of "cost overrun" is, how do you know how to track it?

23   MR. HATFIELD: Judge, I'm going to

24 object, that assumes facts not in evidence. He does

25 know what the definition of "cost overrun" is, she

1 just doesn't like the one he's giving.

2   MS. OTT: He says he doesn't know --

3 nobody's defined what "cost overruns" is.

4   JUDGE PRIDGIN: I understand the

5 question. I'll overrule. The witness seems quite

6 capable of saying his definition or definitions of the

7 term.

8   THE WITNESS: I've given two definitions

9 to cost overrun. The definition that I use in

10 day-to-day life, the definition that has come about

11 because of this S&A agreement. I don't care which

12 definition you use. Our system will do it, okay? The

13 system identifies every dollar we spent. Doesn't

14 matter if it was in budget, out of budget,

15 contingency, not contingency, underrun, overrun.

16 Every dollar we spent on this project, we have

17 documentation and explanation as to why we spent it.

18 BY MS. OTT:

19   Q.   So do the CPs track cost overruns?

20   A.   I'm sorry?

21   Q.   Do the CPs track cost overruns?

22   A.   Are you saying Charlie Prenger Echo or

23 Charlie --

24   Q.   CPs, cost projections.

25   A.   CPs, do the CPs track cost overruns?

1   Q.   Yes.

2   A.   They're a budgeting tool. They help you

3 look into the future.

4   MS. OTT: Judge, I asked a yes-or-no

5 question, can you please instruct the witness to

6 answer my question?

7   JUDGE PRIDGIN: I will, and if you're --

8 if you can answer that question, I mean, I believe

9 it's a yes-or-no question and if you don't know,

10 you're free to say so.

11   THE WITNESS: The way you're asking the

12 question, I don't know. Are you asking me do the CPs

13 track actual costs?

14 BY MS. OTT:

15   Q.   Do the CPs track cost overruns? So a

16 cost overrun would have to be an actual cost if you're

17 getting into an overrun.

18   A.   Okay. Thank you. That's what I needed.

19 So based on that, no. The CPs would not. The CPs do

20 not track the actuals.

21   Q.   No?

22   A.   They're never intended to.

23   Q.   And would that be the same to R&Os, that

24 they do not track cost overruns?

25   A.   That is correct.

1   Q.   So what tracks the cost overruns? The

2 CPs and the R&Os do not track cost overruns.

3   A.   The CPs and R&Os were budgeting tools.

4 What we used to track costs --

5   Q.   Okay.

6   A.   What we used to track costs are purchase

7 orders, change orders, and invoices. Those are what

8 actual costs go to.

9   Q.   How many change orders were there for

10 Iatan 1?

11   A.   For Iatan 1?

12   Q.   Yes.

13   A.   Through what point in time?

14   Q.   Through today.

15   A.   I don't know that I have those facts in

16 front of me through today.

17   Q.   Do you have an estimate of how many

18 change orders for Iatan 1 has gone through today?

19   A.   If you'd bear with me, I may have a note

20 here. No, I don't have any notations on Unit 1.

21   Q.   Do you have a notation on how many R&Os

22 have gone through for Iatan 2 today -- I meant change

23 orders.

24   A.   Are you asking me how many change orders

25 on Unit 2?

1   Q.   Yes.

2   A.   Okay. And I'm going to use

3   approximation; 27, 2,800 change orders.

4   Q.   Around 2,800?

5   A.   Somewhere between that.

6   Q.   Do you have an estimation of how many

7   purchase orders have gone through Iatan 1?

8   A.   No, I don't.

9   Q.   Do you have an idea on Iatan 2 how many

10 purchase orders?

11   A.   I don't. I can give you a guesstimate on

12 both projects together.

13   Q.   And what would that estimate be?

14   A.   I would guess somewhere between, I don't

15 know, 1,500, 1,600 POs. And that would be -- that's a

16 guesstimate.

17   Q.   Now how many invoices have there been for

18 Iatan 1?

19   A.   I don't know that.

20   Q.   Do you have an estimate?

21   A.   Thousands. I mean, I don't know how many

22 there would be.

23   Q.   And how about for Iatan 2?

24   A.   The same.

25   Q.   Just thousands or tens of thousands?

1   A.   If I had to guess, I'd probably -- I

2 would guess it would be in the tens of thousands,

3 absolutely.

4   Q.   Okay.

5   A.   Again, that's a complete guess on my

6 part.

7   Q.   Now, did you ever prepare an explanation

8 of cost overruns for senior management?

9   A.   Did I ever prepare a what? I'm sorry.

10   Q.   Explanation of cost overruns for senior

11 management.

12   A.   Yes.

13   Q.   Do you know if Staff ever received a copy

14 of your explanation of cost overruns for senior

15 management?

16   A.   Yes, they did.

17   Q.   And what documentation was that?

18   A.   That would be the purchase orders, change

19 orders, RTAs, reforecast documents, the K reports, the

20 contingency logs and the transfer logs.

21   Q.   Now, can you trace the actual costs to

22 the common facilities for the Iatan project to actual

23 invoices?

24   A.   To actual invoices? No.

25   Q.   Can you trace the actual costs of the

1 common facilities of the Iatan project to the actual

2 budget?

3   A.   To Unit 1 and Unit 2's budget? Yes.

4   Q.   Is it -- is it based on estimates or is

5 it based on actual numbers?

6   A.   It was based -- the value for common was

7 based on estimates.

8   Q.   Okay. Now, have you ever seen Staff Data

9 Request 970?

10   A.   I've seen a lot of data requests. I

11 don't particularly know what 970 is. If you could

12 hand it to me, I could probably tell you.

13   Q.   I'm going to hand it to you and then the

14 response.

15   A.   Okay.

16   Q.   And I don't think I'm going to get into

17 highly confidential information, so -- even though the

18 data request is. So Data Request 970, Staff asked:

19 "For Iatan 2, please provide a list of all cost

20 overruns from KCP&L's original definitive estimate,

21 control budget estimate through April, 2010, the

22 amount for each cost overrun, a detailed description

23 of the overrun and why each cost overrun was incurred

24 and the charge to the project and how the cost overrun

25 was mitigated, if it was mitigated."

1   Now, your illustration that you attached

2 to the -- this data request, did you respond to this

3 data request?

4   A.   I did.

5   Q.   You're talking about variances.

6   A.   Yep.

7   Q.   And I thought we established earlier that

8 variances are not the same thing as cost overruns.

9   A.   I don't think we established that at all.

10 I thought, from my recollection, what we established

11 according to me is that cost variances are made up of

12 overruns and underruns and depending if you're talking

13 to the people at site on where I track costs

14 day-to-day, that's what we defined and what we did.

15   Now, if we're moving the line here and

16 saying cost overruns or anything above the 1,685 or

17 the CBE, which is what's happened, essentially. I'm

18 okay with that, but that's not what we did when we

19 talked about cost variances.

20   Q.   Now, did you answer this DR based on the

21 definitive estimate?

22   A.   Yeah, the control budget and the

23 definitive estimate are one in the same.

24   Q.   And -- but you have answered this DR

25 based on cost overruns or cost variances?

1   A.   It was based on cost variances. It

2 showed both overruns and underruns. And I would also,

3 as I read through this, like to point out at the

4 bottom of this says, "Mr. Archibald has walked through

5 this portfolio in previous meetings and would be able

6 to provide assistance again, if needed."

7   Q.   Thank you for pointing that out.

8   Now, have you seen Risk and Opportunity

9 Information Sheet 237, which is related to Schiff

10 Hardin, E & Young, and KCP&L internal audit?

11   A.   I have.

12   Q.   I'm going to hand you a copy of it.

13   A.   Okay.

14   Q.   If you want to look over it for a second.

15 Now, have you had a chance to look at it?

16   A.   Yeah, I believe so.

17   Q.   Okay. And looking at the analysis, is

18 this under the analysis, where you would find the

19 explanation for the cost overrun?

20   A.   This would be the explanation.

21   Q.   For the cost overrun?

22   A.   Yes.

23   Q.   Now how do we know if this is going into

24 the contingency or if it's going into the cost

25 overrun?

1   A.   Okay. So I think what you're asking me

2 is how do you know if this dollar amount was just

3 within the base estimate or it used some of the

4 original control budget estimate, part of the 220?

5   Q.   Yes.

6   A.   Okay. You would go to the contingency

7 log.

8   Q.   But can you tell from this document

9 whether or not this is going to go into the

10 contingency budget or be a cost overrun?

11   A.   What this document represents was

12 anything --

13   MS. OTT: Judge, that's not my question.

14   JUDGE PRIDGIN: Are you able to answer

15 her question?

16   THE WITNESS: As a yes or no?

17   JUDGE PRIDGIN: I think that's what she

18 wants.

19   THE WITNESS: I think it's a process

20 question. No.

21 BY MS. OTT:

22   Q.   So does the contingency log reference

23 this R&O?

24   A.   No.

25   Q.   So how can you tell if this R&O is in the

1 contingency log or if it is a cost overrun?

2   A.   I don't think I understand what you're

3 asking me.

4   Q.   Well, if you can't tell from this R&O

5 whether it's a cost overrun --

6   A.   Uh-huh.

7   Q.   -- or if it's a contingency, and the

8 contingency log doesn't reference this R&O, how can

9 you tell it's part of the contingency?

10   A.   The contingency log is a log from cradle

11 to grave on how all the contingency was allocated into

12 the base estimate. All you have to do is go to the

13 contingency log, sort on the cost code, get a

14 cumulative total of that contingency through a point

15 in time when the $220 million was exhausted, which

16 would have been sometime April/May time frame, and you

17 can see how much contingency of the original 220 was

18 applied back to the base estimate.

19   Q.   But it doesn't -- it doesn't direct you

20 back to this particular -- to an R&O.

21   MR. HATFIELD: It's been asked and

22 answered, Judge.

23   JUDGE PRIDGIN: I'll overrule.

24   THE WITNESS: No, it wouldn't.

25 BY MS. OTT:

1   Q.   So under this analysis, is this -- well,

2 first, is Schiff Hardin a cost overrun?

3   A.   Yes.

4   Q.   So is this the explanation of why Schiff

5 Hardin is a cost overrun?

6   A.   I'd like to clarify. When I say "yes," I

7 don't care how you define cost overrun, whether it's

8 the site view or the Staff's view, Schiff Hardin's a

9 cost overrun. Okay?

10   I'm sorry, what was your question?

11   Q.   So is this where you would go to

12 determine whether Schiff Hardin was a cost overrun?

13 Is this the explanation of Schiff Hardin's cost

14 overrun?

15   A.   I would tell you it is part of the

16 explanation, yes.

17   Q.   Just part?

18   A.   Yes.

19   Q.   So where's the other part?

20   A.   I would tell you in order to get a full

21 understanding of the cost overrun, I would do a

22 comparative of the control budget estimate, understand

23 how the contingency was used, and then look at the

24 actual dollars spent. Once you've identified that,

25 you can use this R&O package and if you wanted to go

1 deeper into what I would refer to as a level four or

2 level three or four granularity, you can go to the

3 invoices as well.

4   Q.   So is that how KCP&L explains its cost

5 overruns?

6   A.   Explains them to who?

7   Q.   Explains them pursuant to the stipulation

8 and agreement.

9   A.   I guess I'm having a problem here.

10   Q.   I mean, there's parties to the

11 stipulation and agreement, are there not?

12   A.   Oh, yes, there are.

13   Q.   And you're supposed to identify and

14 explain? So I'm asking what you just said, is that

15 correct, how KCP&L explains their cost overruns?

16   A.   And I may have said this before, KCP&L

17 uses the RTAs, the purchase orders, the change orders,

18 the reforecast documents, all this information to

19 explain the cost overruns and underruns.

20   Q.   So besides this R&O as part of the

21 example for the Schiff overrun, where's the other part

22 of Schiff's explanation for their cost overrun?

23   A.   I would tell you on -- if you're trying

24 Schiff out, I would tell you to look at all the

25 reforecast documentation and then if you wanted

1 further analysis, I mean, I personally go into the

2 invoices and pull the invoices and you can get further

3 detail than what was in here.

4   MR. SCHWARZ: Judge, at this stage, I

5 would just like to remind the Commission that I have

6 an objection pending to the assertion that any Schiff

7 Hardin is in the CBE.

8   JUDGE PRIDGIN: Thank you.

9 BY MS. OTT:

10   Q.   Mr. Archibald, do you still have the

11 document in which I believe both Mr. Schwarz and

12 Mr. Mills had you look at earlier that have the

13 December, 2006 updated control budget estimate in

14 front of you?

15   A.   I do not.

16   MR. HATFIELD: 251, that's the one he

17 said he had never seen before.

18   MS. OTT: Well, he just saw it with

19 Mr. Mills, so he at least saw it two hours ago.

20   THE WITNESS: Thank you.

21 BY MS. OTT:

22   Q.   Now, if this were the budget in which the

23 board approved? In particular the Schiff Hardin

24 amount that's -- this document does not appear to be

25 HC, is it?

1   MR. HATFIELD: What?

2   MS. OTT: I mean, I don't have HC on it.

3   THE WITNESS: I think the one Mr. Schwarz

4   had on it had HC on it.

5   MS. OTT: So just for one question, go

6   in-camera.

7   JUDGE PRIDGIN: Okay. Just one moment,

8   please.

9   (REPORTER'S NOTE: At this point, an

10   in-camera session was held, which is contained in

11   Volume 26, pages 2196 to 2197 of the transcript.)

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1   JUDGE PRIDGIN: We're back in public

2 forum. Ms. Ott, when you're ready.

3 FORREST ARCHIBALD testified as follows:

4 BY MS. OTT:

5   Q.   I don't think we've established yet,

6 what's your job title?

7   A.   Cost manager senior.

8   Q.   How many years were you in charge of cost

9 controls prior to the Iatan project?

10   A.   When you say "in charge," I've had 13

11 years of experience in the construction industry.

12 I've dealt with costs -- I may -- it may help to give

13 some background on --

14   Q.   How many years were you a lineman or a

15 worker during those 13 years?

16   A.   Are you asking me how many years I was a

17 craft worker?

18   Q.   Yes.

19   A.   Okay. So I was -- I started my career

20 from the ground up. I started as an ironworker. I

21 spent roughly about a year as an ironworker where I

22 learned the fundamentals of construction.

23   Q.   So you were only one year as a craftsman?

24   A.   Yes.

25   Q.   So prior to becoming the -- I believe --

1 what did you say your title was, a cost?

2   A.   Cost manager senior.

3   Q.   Cost manager -- were you a cost manager

4 prior to this project?

5   A.   Yes.

6   Q.   And how long were you the cost manager?

7   A.   I don't know how long I was technically a

8 cost manager. I tracked costs for one of the largest

9 utilities in the nation for about three years,

10 American Electric Power. I've done over a dozen

11 retrofit projects.

12   Q.   So you were the cost manager for three

13 years?

14   A.   I tracked costs, I don't know how many

15 years I was manager of the department. I don't know

16 that.

17   Q.   Were you ever manager of the department?

18   A.   Yes.

19   Q.   At AEP?

20   A.   Yes.

21   Q.   And you have no indication of how long

22 you maintained the title of cost manager at AEPC?

23   A.   No. I tracked costs for about three

24 years for them on over a dozen retrofit projects.

25   Q.   You might have tracked costs, but were

1 you the manager?

2   A.   Yes, but I don't know out of the three

3 years, how many I was the manager. If I had to guess,

4 I would say roughly half, but I mean, that's a guess.

5   Q.   What's your salary, Mr. Archibald?

6   MR. HATFIELD: Judge, I object, it's

7 irrelevant.

8   MS. OTT: It's based on his experience.

9   MR. HATFIELD: It needs to be in HC.

10   JUDGE PRIDGIN: It may be relevant, I

11 think it probably does need to be in HC.

12   MR. FISCHER: Judge, I would request even

13 though we're in HC that this kind of information is

14 employee-specific, is sensitive information. I would

15 ask that even my company's representatives leave the

16 room so we could discuss this if this has to go on.

17   I think this is just -- it's not known

18 throughout the company what everybody else makes.

19 It's not known what your pensions are. It's not known

20 what your -- what your performance appraisals are.

21 And just because we're in HC does not make it

22 appropriate to go invade someone's privacy in this

23 way. And I would just request at your indulgence that

24 we -- we clear the room.

25   JUDGE PRIDGIN: Okay. Ms. Ott, can you

1 tell me how this is relevant?

2   MS. OTT: His compensation is charged to

3 the project.

4   JUDGE PRIDGIN: All right. Do you need a

5 moment, Mr. Fisher?

6   MR. SCHWARZ: But it's not at issue, it's

7 not material.

8   MS. OTT: I think it's also relevant to

9 his experience.

10   JUDGE PRIDGIN: Has it not been elicited

11 anywhere else?

12   MR. HATFIELD: I don't believe so, Judge.

13 It wasn't asked in his deposition.

14   MR. FISCHER: Judge, clearly this

15 information is in the cost of service as is every

16 other employee in the company.

17   JUDGE PRIDGIN: Agreed.

18   MR. FISCHER: That's not the issue. The

19 issue is really whether in this Commission hearing

20 room we need to go through this kind of information.

21 It's not relevant to the particular issue that's in

22 front of the Commission about the cost control and

23 it's just -- we've seen several instances in this

24 hearing where we've gone through very personal

25 information without an apparent purpose and I would

1 request that we be given the opportunity to limit the

2 damage to this person.

3   JUDGE PRIDGIN: I'm going to sustain. I

4 mean, if everyone's salary is in cost of service, you

5 know, everyone's salary is in cost of service. I'm

6 going to sustain.

7   MR. HATFIELD: Just to be clear, for the

8 record, then, the objection that the company made was

9 not only that it's wholly irrelevant to the question,

10 but also that it's duplicative because the information

11 is already contained in the record to this Commission,

12 just to make sure our record's clear in case anyone

13 has an issue with it later.

14   MS. OTT: I don't believe it's in the

15 record yet, just for clarification, and I don't think

16 individual-specific are in the record later on in the

17 hearing. I think it's an overall number.

18   MR. SCHWARZ: But it's not material to

19 any issue in the case. No one is suggesting that

20 Mr. Archibald's salary is inappropriate. As far as I

21 know, no one has challenged the capital expense

22 allocations of Mr. Archibald's salary. His salary is

23 simply not at issue.

24   JUDGE PRIDGIN: I agree. I've sustained.

25   MS. OTT: Just a second.

1 BY MS. OTT:

2   Q.   Have you seen Staff Data Request 455 and

3 455-A?

4   A.   I'm not sure, if you could hand me a

5 copy, I could tell you.

6   Q.   And if you could read the question and

7 then the answer.

8   A.   "445: Please provide all Iatan 1

9 reporting documentation that states that the Iatan 1

10 cost overruns are related to labor productivity and

11 availability. Availability of qualified personnel,

12 rapid increases in commodity prices, and scarcity of

13 materials and qualified vendors.

14   "The response: The Iatan 1 environmental

15 upgrade project has not incurred cost overruns. The

16 current control budget estimate of 484 million has not

17 been exceeded and management does not believe it will

18 be exceeded. Response provided by construction

19 project, project controls."

20   Q.   And that was dated February 3rd, 2009?

21   A.   Yes, it was.

22   Q.   And do you agree with that?

23   A.   Do I agree that the current control

24 budget of 484 has not been exceeded and management

25 does not believe it will be exceeded and that the

1 environmental upgrade project has not incurred cost

2 overruns?

3   Q.   Yes.

4   A.   I do not agree with the first statement

5 on we have not incurred cost overruns, no.

6   Q.   So you --

7   A.   I do agree that the current control

8 budget estimate of 484 has not been exceeded, nor do

9 we believe it will.

10   Q.   Now, if you go to the next page, the

11 supplement.

12   A.   Okay. "445-A, please provide all Iatan 1

13 reporting documentation that states the Iatan 1 cost

14 overruns are related to labor productivity and

15 availability, availability of qualified personnel,

16 rapid increases in commodity prices and scarcity of

17 materials and qualified vendors.

18   "Response: All variances from the

19 control budget estimate are captured in and reported

20 from the cost control system. In each of these

21 projects' cost reforecasts, the project team has made

22 certain assessments of these variances. KCP&L has

23 made all cost reforecast work papers, including these

24 assessments, available for review by Staff." And then

25 it has an attachment.

1   Q.   And do you agree with that response as

2 well?

3   A.   Yeah, I would say that in the cost

4 reforecast, we made certain assessments of the

5 variances in there. It was a forward-looking

6 exercise, yes. And I would agree we provided all that

7 information to Staff.

8   MS. OTT: I have nothing further. Thank

9 you.

10   JUDGE PRIDGIN: All right. Thank you. I

11 do want to move on to redirect and then point out I

12 believe the Commissioners are in agenda. I don't know

13 if they'll have questions for Mr. Archibald or not, so

14 to try to keep the hearing moving, I'd like to go to

15 redirect with the caveat that he may be recalled for

16 bench questions. And if that's the case, I'll permit

17 recross and redirect.

18   MR. HATFIELD: So we're ready for

19 redirect?

20   JUDGE PRIDGIN: Yes, sir.

21   REDIRECT EXAMINATION

22 QUESTIONS BY MR. HATFIELD:

23   Q.   Mr. Archibald, first of all, do you need

24 a break or anything?

25   A.   I wouldn't mind a bathroom break.

1   MR. HATFIELD: Judge, would you mind?

2   JUDGE PRIDGIN: That will be fine. We'll

3 stand in recess until 2:30.

4   MR. HATFIELD: Thank you.

5   (A break was held.)

6   JUDGE PRIDGIN: All right. We are back

7 on the record. We are to redirect of Mr. Archibald

8 and depending on what I hear from the Commission, he

9 may or may not be released from redirect. I will give

10 the parties as much notice as I can. So Mr. Hatfield,

11 when you're ready, sir.

12   MR. HATFIELD: Thank you, Judge.

13 BY MR. HATFIELD:

14   Q.   Mr. Archibald, let me start with the

15 definition of "cost overruns." We had a lot of back

16 and forth on that.

17   A.   Yes, we did.

18   Q.   So -- and let me start here. In your --

19 when you were working on the -- when the project was

20 in full throws, I guess we should say, where were you

21 physically located?

22   A.   At the Iatan site.

23   Q.   And did you occasionally get questions

24 about Forrest, do we have an overrun in this area or

25 that area?

1   A.   Yes.

2   Q.   And when people would ask you that, did

3 it have different definitions to different people?

4   A.   Yeah, absolutely. And let me give you an

5 example. When I was onsite and day-to-day operation,

6 a cost overrun or a cost underrun or cost variances,

7 as we call them, Brent Davis or Bob Bell or someone

8 may come in my office, even contract managers would

9 come in and say, hey, where's my contract at, where's

10 my budget at, where's my overrun, where's my overrun.

11 And they would be talking against the 1,468,5 where we

12 had a stake in the ground to measure them against and

13 make them get approval for every contingency draw that

14 we spent.

15   Now, if I got the same question from an

16 executive like Mr. Downey or someone at that level,

17 they weren't in the trenches day-to-day monitoring

18 those items. They were looking at the global picture,

19 so a cost overrun to them would be different. A cost

20 overrun to them would be at the 1,685 level.

21   Q.   Okay. So, but let me just -- I think

22 that explains it, but let me ask you a couple of

23 questions to make sure I understand. So Mr. Davis, we

24 already talked about this, but what was his role from

25 your perspective?

1   A.   Mr. Davis was the project director.

2   Q.   Day-to-day project management?

3   A.   Absolutely.

4   Q.   And when he said a cost overrun, you were

5   explaining to him whether he was -- I'm going to say

6   it this way, you tell me if this is fair, whether he

7   was going into contingency or not?

8   A.   That is correct.

9   Q.   And if he was a dollar into contingency,

10 he had an overrun?

11   A.   Absolutely right.

12   Q.   And when Mr. Downey, for example, would

13 ask you about an overrun, he wasn't asking you whether

14 you were into the contingency?

15   A.   Correct.

16   Q.   He was comparing it to the definitive

17 estimate or the control budget estimate, the 1,468,5

18 number?

19   A.   That's correct.

20   Q.   And so when he asked you that, you knew

21 that's what he meant and you'd explain an overrun?

22   A.   Absolutely right.

23   Q.   And in that instance, an overrun would be

24 are we going to go over contingency?

25   A.   Yes.

1   Q.   And is that the context by which you were

2 attempting to answer Ms. Ott's question about what's

3 an overrun, what's not?

4   A.   It is.

5   Q.   All right. And now, sitting through this

6 hearing, and let me ask you, you've reviewed the

7 stipulation and agreement, right?

8   A.   Yes.

9   Q.   And -- and you said it's not defined in

10 there and it says whatever it says?

11   A.   Correct.

12   Q.   But in answering questions for Ms. Ott or

13 for me or for the Commission, are you willing to

14 assume that an overrun is everything above the control

15 budget estimate in 2006, the 1.685?

16   A.   Yes, I'm okay with that.

17   Q.   And you can track overruns to that

18 number?

19   A.   I can track underruns and overruns to any

20 number you want that's within that K report.

21   Q.   So you can track an overrun or a

22 variance, an underrun, you can track that to the

23 1.685, which control as contingencies?

24   A.   The 1,468,5?

25   Q.   The 1,468,5, you can track to that?

1   A.   Yes.

2   Q.   The 1.685 control budget estimate, you

3 can track to that?

4   A.   Yes.

5   Q.   Can -- now was there a reforecasted

6 budget at one point?

7   A.   Yes.

8   Q.   And what was the first reforecasted

9 number?

10   A.   It was a billion nine zero one.

11   Q.   And can you track variances to that

12 number?

13   A.   Yes.

14   Q.   Can you track -- so I assume you can

15 track overruns to that number?

16   A.   Yes.

17   Q.   And don't give me the number, but was

18 there another reforecast after that?

19   A.   Yes.

20   Q.   Can you track variances to that number?

21   A.   Yes.

22   Q.   Overruns, underruns?

23   A.   Yes.

24   Q.   You can track them both. All right.

25 Now, you also had discussion about an exhibit folks

1 were showing you -- Judge, I'm just going to stand up

2 here and look over Mr. Mills's shoulder, Exhibit

3 261-HC, which was some board minutes. Do you recall

4 that discussion?

5 　　　　A.　　I do.

6 　　　　Q.　　And I understand you weren't at the board

7 meeting; is that right?

8 　　　　A.　　That is correct.

9 　　　　Q.　　So let me just ask you: In your work on

10 the project, had you ever heard of the board approving

11 a specific cost line item?

12 　　　　A.　　No.

13 　　　　Q.　　What was your understanding of the budget

14 that went to the board level?

15 　　　　A.　　My understanding of --

16 　　　　　　MR. SCHWARZ: Objection, calls for

17 speculation.

18 　　　　　　MR. HATFIELD: Just his understanding, he

19 doesn't have to speculate on that.

20 　　　　　　JUDGE PRIDGIN: I'll overrule. If he

21 doesn't know, he can say so.

22 　　　　　　THE WITNESS: My understanding, and

23 again, I wasn't there, but my understanding was the

24 budget was approved at the 1.685 level.

25 BY MR. HATFIELD:

1   Q.   And that's how you managed it, assuming

2 that the 1.685 level?

3   A.   Yes.

4   Q.   Not on a line-by-line basis?

5   A.   Actually, I do manage it on a

6 line-by-line basis.

7   Q.   Right, but you managed it assuming the

8 board hasn't approved it on a line-by-line basis?

9   A.   Yes.

10   Q.   Now I'm just going to go kind of back

11 through this in order. Now, Ms. Ott asked you about

12 an error in your testimony. And let's go talk about

13 that for just a minute. Page 13 of your only

14 testimony filed here.

15   A.   Yes.

16   Q.   Line 12. And now that we've made that

17 correction, I want to make sure that we understand

18 what we're correcting. You are there in your

19 testimony quoting from Staff's report; is that right?

20   A.   I am.

21   Q.   And Ms. Ott showed you Staff's report; is

22 that correct?

23   A.   Yep.

24   Q.   And you went through and you reverified

25 for her each word in Staff's report, right?

1   A.   I did.

2   Q.   And you needed to change one which was

3   change the word "variances" to "overruns," correct?

4   A.   Correct.

5   Q.   So that now your testimony directly

6   quoting from Staff's report reads as follows: "It is

7   clear that KCP&L has the capability to track,

8   identify, and explain control budget cost overruns."

9   Is that your testimony?

10   A.   Yes.

11   Q.   And let me ask you: Do you agree with

12 that? Does KCP&L have the ability to track, identify,

13 and explain control budget cost overruns?

14   A.   Yes.

15   Q.   And have you already discussed with

16 Ms. Ott all of the ways in which you can do that?

17   A.   Yes, I have.

18   Q.   And is that through your cost control

19 system?

20   A.   Yes. The cost control system and the

21 documents that make up the cost control system.

22   Q.   All right. Now, several counsel talked

23 to you a little bit about contingency log.

24   A.   Uh-huh.

25   Q.   And I think at one point, you directed

1 Ms. Ott toward the contingency log in order to

2 track -- if you wanted to track a variance by a cost

3 code line.

4   A.   Yes.

5   Q.   And is that -- if you wanted to track a

6 variance by a cost code line would a contingency log

7 be used?

8   A.   Yeah, what you would do, the contingency

9 logs are a cumulative log of every contingency log

10 that's taken place. Whether it was a draw, deposit,

11 it's a record of any time we touched contingency. So

12 no matter what it was, a purchase order, a change

13 order, an invoice itself, or a forecast adjustment

14 based on the reforecast, you can go back and see that

15 history. It doesn't matter if you change the

16 contingency and reset it or developed a new

17 contingency. We still maintained all the historical

18 data in there. We also maintained the log on an

19 ongoing basis.

20   Q.   So if you start with a budget line item

21 of a hundred dollars --

22   A.   Yep.

23   Q.   -- and then you would -- later you would

24 increase that budget through reforecast process or

25 whatever?

1   A.   Yes, ma'am (sic).

2   Q.   The contingency log would still track any

3   draws back to that original hundred dollars?

4   A.   Well, I believe what Ms. Ott was

5   referring to when she was discussing with me is the

6   Staff seems to have a problem understanding how the

7   $220 million worth of the control budget contingency

8   was allocated.

9   Q.   Yep.

10   A.   If you went to that log, you could easily

11 see by cost code how it was distributed above the

12 line. So you could go, for instance, to -- and I'm

13 going to use hypotheticals because I don't have

14 numbers in front of me, but you could go to cost code

15 1210, see what the control budget was, the base budget

16 that ties to the 1,468,5, and then you would be able

17 to see how much of that original $220 million of

18 contingency was allocated to that line. Anyone can do

19 it. You can pick it up. What it would tell you is

20 roughly $190 million of the 220 went to the directs

21 and $30 million went to the indirects.

22   Q.   Okay.

23   A.   Anyone who picks up the documents, if

24 they understand what they're looking at, could do the

25 analysis.

1   Q.   And do you know whether Staff was

2 provided with all of the contingency logs?

3   A.   Staff was. We had recurring DRs, if I

4 believe, and I'm going from memory, 622 and then there

5 were subsequent DRs where Staff asked specifically

6 just for the contingency logs. On top of that, there

7 were -- there were several meetings I've had with

8 Staff where I've walked through the process and walked

9 through the contingency log themself, so they could

10 understand.

11   In fact, to go a step further, my

12 management -- and when I say my management, KCP&L

13 management -- directed me around the third quarter of

14 2009 that I was to make myself available every Friday

15 in case Staff had questions. That was communicated to

16 Staff by me and by my management that I would be

17 available. All they had to do was pick up the phone,

18 tell me what time to be there and I would be there.

19   Q.   And that commitment was made when now? I

20 didn't get the year.

21   A.   Third quarter, 2009.

22   Q.   2009. And have you been, in fact,

23 available every Friday in order to answer any

24 questions Staff might have?

25   A.   I would not say every Friday because I'm

1 sure I ended up taking a day or two off, but I would

2 tell you out of the last year -- the last 60-plus

3 Fridays, I've been available at least 90, 95 percent

4 of the time.

5   Q.   And how many times did they take you up

6 on that offer?

7   A.   I could count it on one hand.

8   Q.   Okay. All right. Now, on -- now, there

9 was also some discussion about reforecasts and CPEs

10 and I guess I just want to help give you an

11 opportunity to clear this up a bit. I think you

12 touched on it with Ms. Ott. When you're doing a

13 reforecast, is it a -- is it documenting historical

14 evidence?

15   A.   No, absolutely not.

16   Q.   What is a reforecast attempting to do?

17   A.   When you do a reforecast, you're looking

18 forward in time. You're trying to project where your

19 costs are going to end up so you have an accurate

20 estimate of completion. If you take a look at our

21 reforecast in May of 2008, and you've really got to

22 back it up before that first reforecast because if you

23 look at our cost control system, it was about the

24 second or third quarter, 2007, we identified that our

25 budgets were going to be challenged. We saw the

1 problem before it happened.

2   At the end of '09, we locked the books

3 down and began the reforecast. In May of '08, it was

4 approved. At that time, we were able to predict where

5 we were going to be on costs within two percent of

6 where we're going to be now.

7   Q.   So now let me ask you about that for a

8 minute. When you engaged in the reforecasting process

9 that you just referred to in '08, had you exceeded the

10 1.68 control budget estimate?

11   A.   No.

12   Q.   So the process was trying to predict,

13 what, whether you would?

14   A.   Correct. It was trying to predict

15 whether we were going to exceed that budget or not.

16 And if we were, what the drivers and explanations

17 were. And from sitting in these hearings and granted,

18 Wolf Creek's way before my time in the business, but

19 my opinion is what they did at Wolf Creek was an

20 after-a-fact forensic accounting analysis on how these

21 cost overruns occurred.

22   Q.   Okay.

23   A.   Based on everyone's testimony, I think

24 that's what everyone was trying to avoid here in this

25 S&A agreement.

1   Q.   Right.

2   A.   We did that. We looked forward in time

3 and said these budgets aren't sufficient, we're going

4 to have overruns, and here's why, okay? Now after the

5 fact, when we're done, it's almost like we're being

6 asked to do the same thing. Hey, we want you to go do

7 these forensic analyses and create some packages and

8 tell us where the overruns were. Well, all that

9 documentation exists.

10   If all we needed to do was an

11 after-the-fact analysis, then why did we do all these

12 forward projections? It's because we wanted to

13 control the costs, we wanted to know where we were and

14 we wanted to be able to explain those overruns. We

15 wanted to get the budget, we wanted to get it right

16 and control the costs for not only the company but

17 also for the ratepayers.

18   Q.   All right. I want to ask you about that

19 process for a minute, and we may want to go to some of

20 your exhibits that are in the record. But before we

21 do that, Ms. Ott showed you a risk and opportunity

22 analysis sheet and I think I may have taken yours.

23   MR. HATFIELD: So Judge, can I approach?

24   JUDGE PRIDGIN: You may.

25 BY MR. HATFIELD:

1   Q.   And this is the -- I think she identified

2   it and maybe you agreed it's the -- it includes the

3   Schiff Hardin risk and opportunity analysis, right?

4   A.   Yes.

5   Q.   Now, is that -- maybe you know, is that

6   attached to your system somewhere, that same R&O?

7   A.   I don't think it is, no. No, it's not.

8   Q.   Okay. So walk us through for a minute

9   here. There is a -- how do we tell what the

10   reforecast cost is on this R&O?

11   A.   Well, what it would tell you is if you

12   look on the fourth line down as a reforecasted cost of

13   an -- are we in HC?

14   MR. HATFIELD: I guess we need to be.

15   Sorry.

16   JUDGE PRIDGIN: That's all right. One

17   moment, please.

18   (REPORTER'S NOTE: At this point, an

19   in-camera session was held, which is contained in

20   Volume 26, pages 2221 to 2222 of the transcript.)

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1   JUDGE PRIDGIN: All right. Thank you.

2 We're back in public forum.

3 FORREST ARCHIBALD testified as follows:

4 BY MR. HATFIELD:

5   Q.   So using a definition of "cost overruns"

6 that is amounts over the control budget estimate, is

7 that what number appears here?

8   A.   Yes.

9   Q.   All right. And on the sheet we were just

10 looking at, R&O Number 237. So is that how we would

11 identify what the predicted cost overrun will be --

12   A.   Yes.

13   Q.   -- using that definition we just went

14 through?

15   A.   Yes.

16   Q.   All right. And then in the analysis --

17   MR. SCHWARZ: Judge, I just want to make

18 sure that my prior objection as to the contents of the

19 CBE is noted. Thank you.

20   JUDGE PRIDGIN: It is noted, thank you.

21 BY MR. HATFIELD:

22   Q.   And then there's an analysis section; is

23 that right?

24   A.   Yes.

25   Q.   And I think you already talked about

 1 this, but is this where an explanation is supposed to

 2 go?

 3   A.   Yes.

 4   Q.   So in this case, it says "S-H," which is

 5 defined as Schiff Hardin --

 6   A.   Yes.

 7   Q.   -- "has had four full-time personnel at

 8 the project site and this level of participation is

 9 expected to continue for the duration of the project."

10   A.   Yes.

11   Q.   So -- and then it says, "Additional

12 Schiff Hardin resources are periodically engaged as

13 necessary."

14   So does that mean -- does that mean that

15 based on some sort of current run rate, you think the

16 costs are going to be more given the existing staffing

17 levels?

18   A.   Yeah. What it -- what we were trying to

19 convey here is that based on the current run rate and

20 the expected scope that Schiff Hardin was engaging in,

21 that when you trended it out and compared it to the

22 budget, there wasn't sufficient budget. We needed

23 more.

24   Q.   Okay. Now, this particular R&O -- well,

25 let's finish up with it. And then it says for E&Y,

1 I'm skipping a sentence, "The scope and frequency of

2 these audits is greater than originally anticipated --

3   A.   Correct.

4   Q.   -- due to project complexity and

5 increased audit scopes."

6   A.   Yes.

7   Q.   So is that attempting to explain why we

8 need more money for E&Y?

9   A.   Yes.

10   Q.   And these are documents, if we go to the

11 next page, mine's copied front to back. For every one

12 of these, was there -- these R&Os, was there an

13 identification of who prepared it?

14   A.   Yes.

15   Q.   So you could go talk to that person if

16 you needed to one -- anyone could go talk to that

17 person if they needed to for additional explanation?

18   A.   Yes.

19   Q.   And then somebody reviewed it?

20   A.   Correct.

21   Q.   And that would be, in this case, you?

22   A.   Correct.

23   Q.   And then somebody had to approve it,

24 right?

25   A.   Yes.

1   Q.   And those -- could those be the same

2 people? In other words, could Forrest Archibald

3 prepare, review, and approve one?

4   A.   They shouldn't be, no.

5   Q.   All right. Yeah, so then once an R&O was

6 completed, what were they used -- what was done next

7 with an R&O?

8   A.   Well, once -- are you asking me after the

9 reforecast was approved or during the process?

10   Q.   No, sorry, I'm way before that.

11   A.   Okay.

12   Q.   So Mr. Davis maybe would prepare an R&O.

13 That probably happened on this project?

14   A.   Yeah, the way the process would work is

15 someone would identify an R&O item. The R&O item

16 would be investigated and vetted by that person. Once

17 they thought they had sufficient justification, they'd

18 bring it in front of my team and then we would have a

19 meeting to review that.

20   We would then have a subsequent meeting

21 with the Schiff Hardin team, review it as well, find

22 out if we needed additional documentation or if there

23 was stuff lacking at this point. It may pass, it may

24 get withdrawn, or it may get better information and

25 revise it. And then it would be compiled into an

1 overall list for final vetting by the leadership team.

2 Once they signed off on it, we would move up the

3 ladder to senior management.

4   Q.   Okay. So -- and then once senior

5 management had it -- did it take a different form when

6 it went to senior management?

7   A.   Yeah, when we took it to senior

8 management, we maintained the original list, but we

9 tried to summarize it into an executive summary, if

10 you would, to where we could explain it on a high

11 level as to what was driving the costs up, so we could

12 identify and explain is what we tried to do.

13   Q.   So did the project management team have

14 to -- this is my words, so you tell me if it is

15 wrong -- approve an R&O before it went on up?

16   A.   Yes.

17   Q.   And then once you got all those R&Os

18 together, was that the reforecast that was presented

19 to executive leadership?

20   A.   Yes.

21   Q.   All right. So were there R&Os that were

22 created that were not approved by the project

23 leadership team?

24   A.   Absolutely.

25   Q.   Can you give us a magnitude of just

1 approximately, in your experience, how many R&Os were

2 prepared that never made it past project leadership

3 team?

4   A.   And I'm going from memory here.

5   Q.   Right.

6   A.   I think there's over 200 R&Os, at

7 least -- I would guess probably half or a third of

8 that never made it.

9   Q.   Okay. So they didn't get recommended on

10 up for some of the reasons you -- they didn't make it

11 through the process you described?

12   A.   Correct.

13   Q.   And every R&O that gets created has a

14 number on it?

15   A.   Yes, it does.

16   Q.   And did CPs work in a similar way?

17   A.   Yes, they do.

18   Q.   Can you just describe that process? You

19 don't need -- if it's the same as R&Os, just tell me

20 now.

21   A.   It's the basic same process but what we

22 did was try to streamline it. We grouped like costs

23 together so they could be investigated and reviewed

24 together and so that we knew once we closed a certain

25 number of accounts, we wouldn't have to look at those

1 again, there wouldn't be double-dips, so it really

2 streamlined the process.

3   Q.   So still identified by dollar amount, how

4 much more you would need over the current budget?

5   A.   Yes.

6   Q.   Still included in an explanation of why?

7   A.   Yes.

8   Q.   Still required preparation overview

9 approval?

10   A.   Yes.

11   Q.   Still had to be vetted through the

12 project team?

13   A.   Yes.

14   Q.   Still had to be approved by the project

15 team before they would go to executive leadership?

16   A.   Correct.

17   Q.   All of them were still maintained and

18 available for review whether or not they were approved

19 by the project leadership team?

20   A.   Yes.

21   Q.   And they're all available today?

22   A.   Yes.

23   Q.   Were they all --

24   A.   I'm sorry, will you re-ask your question?

25   Q.   Are they all available today?

1   A.   What was your one before that?

2   Q.   I don't remember. I bet your answer was

3 yes.

4   A.   I just want to make sure I heard what you

5 asked.

6   Q.   I'm just going to ask another question.

7 Is that all right? Were the R&Os given to Staff?

8   A.   Yes.

9   Q.   Were the CPs given to Staff?

10   A.   Yes.

11   Q.   All right. A couple of more questions.

12   MS. OTT: Before we move on from the

13 R&Os, you did a lot of discussion on the R&O that I

14 handed Mr. Archibald earlier, I'd like to have it

15 marked as an exhibit because I think you only read a

16 portion of it, and that way for clarity.

17   MR. HATFIELD: Yeah, that's a good idea,

18 whatever number we're on, Judge.

19   JUDGE PRIDGIN: This would be a Staff

20 exhibit.

21   MS. OTT: I move for it to be admitted,

22 281-HC.

23   (KCP&L Exhibit No. 281-HC was marked for

24 identification by the court reporter.)

25   JUDGE PRIDGIN: Label this as 281-HC, it

1 has been offered, any objection?

2   MR. HATFIELD: Judge, I don't think I

3 have an objection, I just want to make our record

4 clear because we've been throwing a lot of documents

5 around. 281-HC is also known as R&O Item Number 237?

6 Is that right, Ms. Ott?

7   MS. OTT: Yes.

8   MR. HATFIELD: I have absolutely no

9 objection.

10   JUDGE PRIDGIN: 281-HC is admitted.

11   (KCP&L Exhibit No. 281-HC was received

12 into evidence.)

13   MR. HATFIELD: All right. Thank you.

14 BY MR. HATFIELD:

15   Q.   Mr. Archibald, Ms. Ott asked you a series

16 of questions about how many documents there are. If I

17 asked you to find a particular invoice, I want a

18 Schiff Hardin invoice for whatever month, could you do

19 it?

20   A.   Yes.

21   Q.   About how long would it take you?

22   A.   I'm guessing it depends on how long it

23 takes the system to boot up, but maybe five minutes.

24   Q.   So of the thousands, many tens of

25 thousands, if I tell you which one I want, five

1 minutes?

2   A.   Yeah.

3   Q.   Same would be true with change orders?

4   A.   Yes.

5   Q.   Purchase orders?

6   A.   Absolutely.

7   Q.   And you maintained all of those documents

8 throughout the project; is that right?

9   A.   Yes.

10   MR. HATFIELD: That's all I have for this

11 witness, Judge.

12   JUDGE PRIDGIN: Mr. Hatfield, thank you.

13 Mr. Archibald, thank you very much. You may step

14 down. Are we ready for Mr. Meyer?

15   (A recess was taken.)

16   (Change of court reporters.)

17   JUDGE PRIDGIN: All right. We are back

18 on the record. Before I administer the oath to

19 Mr. Meyer, let me verify with counsel the plan for

20 tomorrow. And I understood that we would be taking

21 Dr. Hadaway tomorrow out of order. And that -- after

22 conferring with parties, I understand that at least

23 some of the parties want to give mini openings on cost

24 of capital tomorrow and that's certainly fine with me.

25 I just want to verify on the record that that would be

1 the plan tomorrow. And that's largely so I can inform

2 the Commission.

3   MR. STEINER: Yes, that's the plan.

4   JUDGE PRIDGIN: All right. Would that be

5 only KCP&L or --

6   MR. STEINER: I believe it's all parties

7 that have a witness.

8   JUDGE PRIDGIN: All parties. And that's

9 perfectly fine on that issue.

10   MR. STEINER: Yeah, on that ROE, cost of

11 capital issue.

12   JUDGE PRIDGIN: Understood. And that's

13 just so I can keep the Commissioners abreast of what's

14 going on. So is that everyone's understanding or at

15 least do we have any objection to that?

16   MR. STEINER: No objection.

17   JUDGE PRIDGIN: That's what I'll let the

18 Commissioners know we'll be doing roughly 8:30 in the

19 morning. We'll be going like we've been doing the

20 last couple nights. We'll probably take a break here

21 in about an hour or so, take a dinner break roughly

22 around 6:00 and then go roughly until about

23 nine o'clock or so just so you can plan the rest of

24 your day.

25   Okay. Anything further from counsel

1 before Mr. Meyer is sworn? All right. Mr. Meyer, if

2 you would raise your right hand, please.

3   (Witness sworn.)

4   JUDGE PRIDGIN: Thank you, very much,

5 sir. And any direct before he stands cross?

6   MR. HATFIELD: Yes, Your Honor.

7   JUDGE PRIDGIN: When you're ready,

8 Mr. Hatfield.

9   MR. HATFIELD: Thank you, Judge.

10 DANIEL MEYER, having been sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. HATFIELD:

12   Q.   Would you state your name and address for

13 the record, please.

14   A.   Daniel F. Meyer, M-e-y-e-r. 30 Sequoia,

15 Lake Forest, two words, Illinois.

16   Q.   And are you the same Daniel F. Meyer who

17 caused to be filed in this case direct, rebuttal and

18 supplemental rebuttal testimony?

19   A.   I am.

20   Q.   And did those filings also include

21 schedules for exhibits?

22   A.   Yes, they did.

23   MR. HATFIELD: And, Judge, just for the

24 record, supplemental testimonies -- or supplemental

25 rebuttal for the same reasons as we discussed earlier,

1 response to Mr. Drabinski's late-filed testimony all

2 by agreement.

3 BY MR. HATFIELD:

4   Q.   Mr. Meyer, do you have any changes or

5 corrections to any of the testimony you filed?

6   A.   Not that I'm aware of.

7   Q.   We've marked that testimony as

8 Exhibits 43 -- 43, 44 and 45 for direct, rebuttal and

9 surrebuttal. And Mr. Meyer, do the schedules and

10 exhibits you've attached depict information discussed

11 in your testimony?

12   A.   Yes, they do.

13   Q.   Do you have any corrections? Did I

14 already ask you that? Do you have any corrections to

15 your testimony?

16   A.   You asked me, but not that I'm aware of.

17   MR. HATFIELD: Judge, we'd move the

18 admission of those three exhibits.

19   JUDGE PRIDGIN: All right. Exhibits 43,

20 44 and 45, all NP and HC, have been offered. Any

21 objection?

22   Hearing no objection, Exhibits 43, 44,

23 45, both NP and HC, are admitted.

24   (KCP&L Exhibit Nos. 43-NP, 43-HC, 44-NP,

25 44-HC, 45-NP and 45-HC were received into evidence.)

 1   MR. HATFIELD: Tender the witness for

 2 cross.

 3   JUDGE PRIDGIN: Mr. Hatfield, thank you.

 4 Mr. Schwarz?

 5 CROSS-EXAMINATION BY MR. SCHWARZ:

 6   Q.   Mr. Meyer, when -- what -- what was the

 7 last coal-fired based generating plant that you worked

 8 on in a construction management capacity?

 9   A.   The -- as part of the Schiff oversight, I

10 believe it was Nipsco in Indiana. I was on the Schiff

11 team on that project.

12   Q.   And you had direct field responsibility?

13   A.   No.

14   Q.   When was the last time you -- you had

15 direct field responsibility in a construction

16 management capacity on a base load coal unit?

17   A.   I haven't.

18   Q.   Okay. Did Morrison Knudsen do that kind

19 of work?

20   A.   Yes, they did.

21   Q.   You just weren't assigned to that group?

22   A.   That's correct.

23   Q.   Okay. You cite an article by Mr. Rowe

24 concerning contingencies. Do you recall that?

25   A.   Yes, I do.

1   Q.   That article dealt with transit systems,

2   did it not?

3   A.   Yes, it did. Let me correct the answer I

4   just gave you. I cited the Rowe article for the

5   purposes of the wisdom of making periodic cost

6   projections.

7   Q.   Excuse me. This is not -- this is not

8   responsive.

9   JUDGE PRIDGIN: All right. Thank you.

10 And I'll -- if you can try to answer just the question

11 that's being asked, please.

12   THE WITNESS: Could you give me the

13 question again, please?

14 BY MR. SCHWARZ:

15   Q.   Actually you've asked and answered so

16 we're good. How many times have you testified on

17 prudence before a state public service or corporation

18 commission?

19   A.   This is my first.

20   Q.   on pages 21 and 22 of your supplemental

21 surrebuttal you discuss labor costs in Kentucky. Do

22 you recall that?

23   A.   Yes.

24   Q.   Did you provide any analysis on those two

25 pages to support the statements that you made there?

1   A.   Let me -- could I get that out?

2   Q.   Sure. Absolutely.

3   A.   That's in --

4   Q.   The supplemental rebuttal. I may have

5   said surrebuttal, but it's rebuttal.

6   A.   And again, I'm sorry. What page?

7   Q.   21 and 22.

8   A.   Okay. I've just looked at it. Your

9   question is?

10   Q.   My question is, did you provide any

11   analysis to support the statements you made there?

12   A.   Well, I'm not sure which ones that you're

13   referencing. I've worked in Kentucky. I didn't --

14   I'm representing to you that I've worked on projects

15   in Kentucky and I'm doing that right now, but I don't

16   know whether you consider that an analysis or not.

17   Q.   Are you aware that both Burns and

18   McDonnell and Schiff Hardin made labor differential

19   estimates in their calculations for union versus open

20   shop with respect to Iatan costs?

21   A.   The Iatan was -- the Iatan costs were

22   figured on a union basis.

23   Q.   Do you know what a bottom up/top down

24   estimate refers to?

25   A.   There's a lot of variability in the

1 industry with respect to terminology like that, but

2 generally it -- a bottom down -- I mean a top

3 down/bottom up is -- you come from the top and you go

4 down and you come from the bottom and you go up and

5 meet someplace in the middle and do whatever it is you

6 want to do with those results.

7   Q.   Would you agree that at least the top

8 down analysis uses general industry information like

9 dollars per kilowatt adjusted for location and

10 technology and so forth?

11   A.   Not necessarily.

12   Q.   What would a top down analysis involve?

13   A.   Well, it depends on who's doing the

14 analysis and for what purpose. If you could give me

15 a --

16   Q.   Well, let's say that you were going to do

17 a top done analysis of what it might cost to build a

18 coal-fired plant in Weston, Missouri.

19   A.   Well, there could be several different

20 ways to do it depending on who was doing it. If you

21 were a contractor, you would look at your own

22 individual experience in doing that type of work. If

23 you were an engineer, you might also look at your own

24 particular experience in doing that type of work. If

25 you were neither, you might look at industry, you

1 might look at a -- you would talk to other people.

2 You could hire estimates for that type of service.

3   Q.   But hiring -- let's not talk about

4 hiring. So as -- would you, for instance, refer to

5 generally available data sources?

6   A.   You might.

7   Q.   And -- well, let's talk -- what's a

8 bottom up estimate?

9   A.   Well, again, that depends upon the -- you

10 know, the person doing the estimate. Again, I'll take

11 you through the scenario. If you're a contractor, you

12 would look at your detailed cost and productivity

13 information on prior or similar plants. If you were

14 an owner, you would look at your lowest level of

15 detail, whatever that was with respect to the costs of

16 those plants.

17   And so it really depends upon the -- the

18 person doing -- or the persons performing the estimate

19 exactly what data they would use. It would generally

20 be like I just enumerated for you.

21   Q.   Would that involve, for instance,

22 estimating that you'd need so many yards of concrete

23 at so much per yard and you'd need a boiler and you'd

24 need a turbine? I mean you'd -- that's basically a

25 components kind of -- of -- you know, materials and

1 labor and -- and components built up from that --

2   A.   Are you talking --

3   Q.   -- bottom?

4   A.   -- about a bottom's up estimate?

5   Q.   Yes, sir. Yes, sir.

6   A.   Yeah, it might -- it might contain those

7 parameters, yes.

8   Q.   Okay. And didn't Burns and McDonnell use

9 both a bottom up and top down estimate, for instance,

10 in estimating the costs of the Iatan project for

11 KCP&L?

12   A.   Yes. It's my recollection that -- that

13 that's how Burns and McDonnell looked at their

14 estimate, yes.

15   Q.   Did you review the Monte Carlos

16 approaches that Burns and McDonnell applied to its

17 estimation process?

18   A.   Which Monte Carlos are you referencing?

19   Q.   Whatever -- what -- the one that Burns

20 and Mc-- Burns and McDonnell -- are you aware that

21 Burns and McDonnell did a Monte Carlos analysis of its

22 cost estimates?

23   A.   They -- they did a type of Monte Carlos.

24 They did what they call the excel something.

25   Q.   Okay. Do you have -- do you take issue

1 with the method that they used?

2   A.   Yes.

3   Q.   Okay. And what might your differences be

4 with Burns and McDonnell?

5   A.   Well, our differences were on several

6 levels. I'm not sure --

7   Q.   What are your differences with the Monte

8 Carlos analysis that Burns and McDonnell applied to

9 the Iatan cost estimates?

10   A.   Well, if you take the -- the Monte Carlos

11 that they performed with respect to the 2004 PDR, we

12 didn't think much of it because the underlying

13 estimate hadn't been properly vetted. And to do a

14 very complex analysis like a Monte Carlos on a base

15 estimate that hadn't been vetted was kind of -- it

16 imparted a impression of specificity and accurateness

17 which it just didn't deserve because the base upon

18 which they did the Monte Carlos hadn't been vetted.

19   Q.   Okay. But the analysis -- the Monte

20 Carlos analysis itself, the -- the way they applied

21 it, it's -- wasn't problematic, it was the underlying

22 data to which it was applied if I -- do I understand

23 your answer correctly?

24   A.   You don't understand my answer. And we

25 also took issue with the way that they actually

1 performed the Monte Carlos.

2   Q.   Okay. And that's what my question was.

3 What specifically with the Monte Carlos analysis do

4 you take issue?

5   A.   It was how they formulated the questions.

6   Q.   Can you give me two examples, if you

7 would?

8   A.   Well, the Monte Carlos basically is a

9 random number generator and the number that you pick

10 at random would be this line item of costs is going to

11 overrun by 2 percent and another random number picked,

12 it may underrun by 6 percent. And then you go do that

13 5,000 times and you get an average, quote, end quote,

14 answer.

15   Q.   Okay. Is it -- is that -- am I to

16 understand that's one or that's two examples of --

17   A.   Well, that would be two, but --

18   Q.   You're aware that -- and I don't know if

19 this is HC.

20   MR. HATFIELD: I don't either. What are

21 you going to ask him?

22   MR. SCHWARZ: The turbine building costs.

23   MR. STEINER: Sizing?

24   MR. SCHWARZ: Basically the bids and

25 structures.

1   MR. STEINER: I don't think so.

2 BY MR. SCHWARZ:

3   Q.   Okay. You're -- you're aware that there

4 was a cost bust on the quantities and costs related to

5 the turbine building?

6   A.   I'm aware of the turbine building as an

7 issue as the job was being designed, yes.

8   Q.   Are you aware that the company and Burns

9 and McDonnell were alerted to the problem when they

10 got bids for the structural steel on the building?

11   A.   I -- I -- yes.

12   Q.   Okay. Can you -- can you draw a

13 conclusion for me about -- concerning the -- strike

14 that. Strike that. I'm sorry.

15   Can you -- can you comment on the process

16 of vetting the cost and quantities by Burns and

17 McDonnell and KCPL given the -- that the -- that they

18 were only alerted to the problem by the -- receiving

19 bids?

20   A.   Could you give me your question again?

21 I --

22   Q.   What -- what can you -- what conclusions

23 can you draw about the process for vetting costs and

24 quantities by Burns and McDonnell and KCPL by the fact

25 that they were only alerted to problems by reception

1 of bids?

2   A.   Well, that -- the driver behind the cost

3 adjustments that were ultimately made associated with

4 the turbine building really drove off of the drawings.

5 So the -- and that was -- and people have been using

6 this term periodically during the hearing, but that's

7 a prime example of design maturation.

8   And as the engineers, you know, move

9 their engineering calculations along and move their

10 drawings along, they came up with a set of -- set of

11 drawings for the turbine building and then they sent

12 those out for bid.

13   What you're referencing is when the

14 contractors came back in with a detailed tonnage

15 take-off. That -- that's -- that's was one sign. But

16 when those drawings went out, it was clear that -- I

17 think it was relatively clear that there was going to

18 be some adjustment necessary.

19   Q.   But the cost people on -- on the project

20 were surprised at the -- the cost people were alerted

21 by the increase in costs, were they not?

22   A.   Oh, yeah. That -- that was one of the

23 flags that went up, sure.

24   Q.   Is it safe to say then that the cost

25 people hadn't examined the drawings that went out to

1 make sure that they had costed the RFP properly?

2   A.   You -- you wouldn't do what you suggested

3 at that point in time. You would -- you wouldn't do

4 that.

5   Q.   So it's your understanding that -- that

6 you don't form estimates before you send anything out

7 for bid?

8   A.   Per-- periodically you do, yes.

9   Q.   What was -- what was the size of this

10 contract -- of this RFP?

11   A.   The RFP for the steel erection?

12   Q.   For -- for the turbine building and

13 for -- for the -- yeah, the bid that went out.

14   A.   The turbine building was part of the

15 balance of plant. It was a component of the balance

16 of plant work. So it was -- it was not one number

17 that went to a steel erector.

18   Q.   Do you have your rebuttal testimony?

19   A.   I do.

20   Q.   Would you turn to page 38, please?

21   A.   Okay.

22   Q.   Let me make sure I'm in the right place.

23 At pages -- at lines 22 and continuing over to the

24 next page, you -- you discuss that productivity

25 problems that can be an issue in multi-prime

1 contracts; is that correct?

2   A.   I'm sorry. I'm at page 38. Is that

3 where I should be?

4   Q.   I think so. Let me -- I'm sorry. I'm

5 sorry. I'm sorry.

6   MR. HATFIELD: Are you in the right one?

7   MR. SCHWARZ: I'm not in the right one.

8 Christ.

9   THE WITNESS: Where shall I go?

10 BY MR. SCHWARZ:

11   Q.   You should stay right where you are. I,

12 on the other hand, should proceed to where I directed

13 you. You -- you -- and I'm sorry. On lines 12

14 through 22 you talk -- are you with me?

15   A.   I am.

16   Q.   You talk about examples of design

17 maturation at unit 2, but I -- do you have any

18 analysis of any of those items in your testimony?

19   A.   I'm sorry. I'm in my supplemental

20 rebuttal.

21   Q.   No, no. Just rebuttal.

22   A.   Oh, I'm sorry.

23   Q.   Now you can try to find out where I am.

24   A.   Page 38 in the rebuttal.

25   Q.   Rebuttal.

1   A.   Sorry. And lines 12 to 22?

2   Q.   Through 22, yeah. You list --

3   A.   Let me just look at it for a second, if

4 you would, please.

5   Q.   Oh, I'm sorry. Sure.

6   A.   Okay. I've looked at it.

7   Q.   Okay. Do you have any analysis in your

8 testimony of those items?

9   A.   I'm not sure what you mean by "analysis."

10 What I've done there is explain the types of design

11 maturation surrounding, you know, the balance of

12 plant.

13   Q.   You've -- I would say you have provided a

14 litany of individual items. I don't see any analysis

15 as to how those may have changed from one point in

16 time to another.

17   A.   Those are the ones that did change. And

18 if you pull the change orders out, they're all change

19 orders associated with those items that I listed. I

20 just didn't list them by change order number.

21   Q.   Well, and you -- you didn't provide any

22 analysis as to why steam turbine generator handrail

23 issues were a design maturation as opposed to some

24 other kind of contract issue.

25   A.   Well, when I looked at the -- at the

1 handrail, for example, that they -- well, let me back

2 up and answer your question fully. I looked at the

3 change orders as support for this paragraph in my

4 report. And as part of looking at those change

5 orders, the change order form had a description of the

6 work, it had a reason why you were doing it, it had

7 amounts of money, it had all kinds of things on it.

8   This particular change order that you

9 mention, the handrail, was a case of design maturation

10 because as time passed, the company had to interface

11 with Platte County inspectors and those types of

12 people and they had codes that were different. And,

13 you know, they -- they laid the law down on what the

14 code's going to be and boom, you got to go do it. And

15 that's what drove that particular one. And that

16 information is contained typically in all of those

17 change orders that would explain those costs.

18   Q.   And Mr. Drabinski has been pummeled by

19 various witnesses for not including analysis in his

20 testimony, but that's the same kind of reference that

21 you make in yours, is it not?

22   A.   I don't think I make many references

23 similar to Mr. Drabinski.

24   Q.   No, no, no. But I mean the analysis for

25 your -- for your listed items is contained in

1 schedules and other places. It's not written out word

2 for word. The explanation you just gave me does not

3 appear on page 38, does it?

4   A.   I believe it's in one of my schedules.

5   Q.   It -- does it appear on page 38?

6   A.   The what appear on page 38?

7   Q.   The analysis to cause steam turbine

8 generator, quote, STG, closed, handrail issues. The

9 analysis --

10   A.   The results of my analysis place it in

11 that paragraph. The change order itself isn't on this

12 page. I agree with you.

13   Q.   Very good. Very -- and thank you. I'm

14 not suggesting it doesn't exist somewhere else either,

15 but it's not on this page?

16   A.   No.

17   Q.   Would you turn to page 41 of the same

18 testimony?

19   A.   Okay.

20   Q.   And again, lines 4 to 12.

21   A.   Okay. That's -- I've looked at those

22 quickly.

23   Q.   Are -- are you there?

24   A.   I'm sorry. I thought I told you I looked

25 at it quickly.

1   Q.   And as before, the actual analysis that

2   it's due to design maturation is by way of reference

3   to schedules --

4   A.   It's in Exhibit --

5   Q.   -- and data elsewhere?

6   A.   It's -- this is a subsection of my report

7   that starts on page 40 at line 10. And on line 14,

8   DFM2010-22 is the exhibit that is associated with this

9   section of the record.

10   Q.   Right. But it -- the analysis -- that's

11 where the analysis is. It's not in the body of -- of

12 the testimony. Correct?

13   A.   I'm still not sure you and I are hooking

14 up one to one on analysis, but the -- the change

15 orders and stuff are in the exhibit. Clearly they're

16 not on this piece of paper.

17   Q.   Correct. Correct. Correct. On that

18 same page, lines 19 to 24.

19   A.   Page 41?

20   Q.   Yes. You're --

21   A.   Let me just look at it, please.

22   Q.   Sure.

23   A.   Okay. I've looked at it.

24   Q.   Okay. So that's talking about the

25 Kissick contract and that was for foundations.

1 Correct?

2   A.   That's correct.

3   Q.   And it has been variously and -- stated

4 that -- that the Iatan project was a fast track

5 project. Do you agree?

6   A.   I would agree.

7   Q.   It's also been stated that fast track was

8 the standard approach to construction generally since

9 the mid '80s, with the exception of the federal

10 government which has only started doing it recently.

11 Is that consistent with your understanding?

12   A.   I -- I always have trouble with the word

13 "standard" in the construction industry, but it's

14 certainly one that's frequently applied.

15   Q.   Commonplace?

16   A.   Commonplace in the power business.

17   Q.   All right. Right. So it -- it's not

18 unusual that there were many aspects of the

19 contract -- of the project that were not designed at

20 the time construction started or work started by an

21 individual contractor?

22   A.   I would agree.

23   MR. SCHWARZ: I would appreciate some

24 indulgence for a moment here.

25   JUDGE PRIDGIN: Certainly.

1 BY MR. SCHWARZ:

2   Q.   Would you agree that cost reforecasts are

3 a standard practice in management of large

4 construction projects?

5   A.   Yes.

6   Q.   Would you agree that those are

7 forward-looking projects or assessments?

8   A.   Well, they look behind to the shoulder

9 and they also look forward. They do both.

10   Q.   I'm sorry?

11   A.   They do both.

12   Q.   Do they look backwards or do they take as

13 the starting point the -- the present -- where the

14 project is now?

15   A.   They do both.

16   Q.   Well, could you turn to page 26?

17   A.   Of the --

18   Q.   Of the testimony we're in now, the

19 rebuttal.

20   A.   Okay.

21   Q.   On your table there, would you explain if

22 you would, item number five, Cost increases due to

23 schedule? Well, strike that. That's a terrible

24 question. I shouldn't have done that.

25   On the Iatan project as a multi-prime

1 project, who is -- has overall responsibility for

2 maintaining the project schedule?

3   A.   The owner.

4   Q.   And what are the owner's responsibility

5 with respect to each of the contractors working on the

6 project with respect to schedule?

7   MR. HATFIELD: I just want to object. It

8 may be ambiguous as to whether he's asking him on this

9 project or for some industry standard.

10   MR. SCHWARZ: This is in reference to the

11 Iatan project.

12   MR. HATFIELD: No objection, judge.

13 Sorry.

14   JUDGE PRIDGIN: That's all right.

15   THE WITNESS: I don't think I understand

16 your question. Boil it down a little bit, if you

17 would.

18 BY MR. SCHWARZ:

19   Q.   What are -- with respect to managing the

20 schedule, what are KCPL's obligations to the

21 contractors on the project?

22   A.   Well, KCPL, you know, typically managed

23 the -- or monitored the schedule of the subcontractors

24 and was responsible for and did make sure that those

25 schedules were meshing with each other. And KCP&L

1 also made some tough calls when those schedules didn't

2 mesh with one another in order to keep the project

3 moving.

4   Q.   How could delay -- delays -- as you've

5 listed there, how could delays result in a cost

6 increase?

7   A.   Not all delays do. Some delays result in

8 a cost increase, some don't. But one that would

9 entail -- would involve a constant increase because of

10 work being on the critical path delayed and then there

11 being time function expenses associated with that.

12   Q.   I think that's a little technical. Would

13 you put that in plainer English for the Commissioners,

14 please?

15   A.   Well, let me -- maybe I -- give me your

16 question again.

17   Q.   Well, my question was, how can delays

18 cause cost increases due to scheduling?

19   A.   They can cause cost increases -- a delay

20 can because it may or may not delay the work on the

21 critical path of the project. If it delays the work

22 on the critical path of the project, there's a -- a

23 fairly good chance that there will be some extra costs

24 associated. If the delay doesn't affect the work on

25 the critical path of the project, then the chances of

1 the cost being associated with it are not so much.

2   Q.   I appreciate that answer, but I -- let

3 me -- if contractor B arrives on the site and expects

4 to -- to be working on the product of contractor A.

5 Okay?

6   A.   Okay. That usually doesn't happen, but

7 okay.

8   Q.   One contractor won't subsequently work on

9 something that's been done by another?

10   A.   Usually not. I mean each contractor's

11 responsible for his own work and --

12   Q.   No, no. That's not -- you're supposed

13 to -- assume that contractor B is supposed to run

14 cable along an interior wall.

15   A.   Okay.

16   Q.   Okay. And contractor A is supposed to

17 have finished the interior wall.

18   A.   Okay. I see what you mean.

19   Q.   Yeah.

20   A.   I thought -- I see what you mean. So

21 your question is?

22   Q.   My -- my question is if -- if a

23 contractor is -- is supposed to work on something

24 that's already been provided by a prior contr--

25   A.   Cable on the wall. The prior guy did the

1 wall.

2   Q.   The example that I gave you.

3   A.   Okay. The prior guy did the wall. Now

4 I'm here to put my cable up. Your question is?

5   Q.   How can that cause a cost increase?

6   A.   That could cause a -- it could cause a

7 cost increase because of trade stacking, for example.

8 If that wall wasn't ready and the guy came in, now

9 you've got people working in a crowded space, it may

10 or may not, but that would be an example.

11   Q.   Would contractor B, the one who's

12 supposed to run the cable --

13   A.   Okay.

14   Q.   -- would he complain to the schedule

15 manager, in this case KCPL, I had my crew here, I lost

16 a half day because what you told me was going to --

17 the wall was -- was supposed to be here that I was

18 going to attach this to and it wasn't and I had my

19 guys standing around -- would that be a cost increase

20 in the project that would be due to scheduling delay?

21   A.   It wouldn't -- no. It would be a notice

22 from contractor B that he has got a complaint and that

23 he -- he may have extra costs and he wants his money.

24 But it's a notice. I would look at it as a notice.

25   Q.   As an engineer, okay --

1   A.   Okay.

2   Q.   -- if you schedule somebody to show up to

3   affix cable to a wall and the wall isn't there, is

4   there a -- a loss in efficiency due to the provision

5   of men and material to do work that you cannot do?

6   A.   That might occur if someone had mobilized

7   to the site of the wall that wasn't there, yes. That

8   could have occurred.

9   Q.   Okay. And that was the example that I

10 gave, was it not? That's what we've been talking

11 about.

12   A.   Yeah.

13   Q.   There is a cost --

14   A.   I'm with you.

15   Q.   And I'm not concerned at this stage about

16 who's responsible for it, but if a contractor shows up

17 to do some work and what the -- in this case KCPL, the

18 schedule manager has said, You should affix your

19 product or your component to this point, to this piece

20 of property --

21   A.   Wall --

22   Q.   -- wall and it's not there, that causes

23 some cost to someone?

24   A.   It may cause cost to someone.

25   Q.   How could it not?

1   A.   Well, he might have turned around and

2 just gone around the corner and worked someplace else,

3 which is pretty common in the business.

4   Q.   Okay. Okay. But assuming that that's

5 the -- that he doesn't have -- the cable attacher

6 doesn't have any other work to do that day, that's

7 then a -- a cost?

8   A.   That might be a cost, yeah.

9   Q.   What about -- what do you mean by

10 compression?

11   A.   What do I mean?

12   Q.   Yes. As you used the word "compression"

13 in item five there, what do you mean?

14   A.   I -- within the context of item five,

15 that would be squishing a whole bunch of work into a

16 shorter period of time than is originally

17 contemplated.

18   Q.   Okay. Okay. And what kind of costs

19 might that entail?

20   A.   It may or may not. It depends on the

21 circumstances. That -- that's what the stuff of

22 construction disputes are about, to be quite frank

23 with you.

24   Q.   Yeah. But my question is, why might

25 compression increase costs?

1   A.   Well, because it could require overtime,

2 it could require weekend work, it could require a lot

3 of things.

4   Q.   Right. And the reason I'm going along

5 this line is you've got -- the Commissioners are five

6 lawyers, some of them may have some construction

7 experience, but they may not. And I don't know that

8 they're familiar with these terms and I just want to

9 get a layman kind of understanding.

10   A.   Okay.

11   Q.   Okay?

12   A.   Yeah. Do you need me to explain

13 "squish," by the way?

14   Q.   Squish, but not is.

15   A.   Squish is good enough for compression.

16 Just think squish.

17   Q.   Acceleration, how might acceleration

18 cause cost increases on a project?

19   A.   Acceleration is typically used in the

20 construction industry as -- kind of comes in two ways.

21 One is doing it faster. The other might be doing it

22 in different sequence.

23   Q.   Okay.

24   A.   Depending on the particulars, there may

25 or may not be costs associated with either of those.

1   Q.   Exactly. I mean, none of these -- it

2   doesn't say and doesn't I don't think even imply that

3   these will necessarily cause costs, but they may?

4   A.   Well, the purpose -- well, you're

5   correct.

6   Q.   Okay.

7   A.   But the purpose of this whole table

8   wasn't really to address subject matters that you're

9   going into now.

10   Q.   I -- I really liked it when you said I

11   was correct and you could have stopped after that.

12   A.   Okay. Sorry.

13   Q.   And again I'll ask you for -- you know,

14   in laymen's terms, why would loss productivity --

15   well, A, how would loss productivity result from a

16   scheduling problem?

17   A.   Loss productivity might result from a

18   scheduling problem for the reasons that we've been

19   talking about for the last ten minutes. There could

20   be compression, there could be sequence changes.

21   Q.   It -- would congestion fall into this --

22   A.   Oh, yes.

23   Q.   -- category? It's not listed here, but

24   that would be an additional item where scheduling

25   might be a problem?

1   A.   Yes. But, again, I just want to

2 reemphasize that the purpose of this table is not

3 to -- purpose of this table is different than what

4 you're using it for, but -- which is okay.

5   Q.   Well, but -- okay. And are the items

6 that are included in number five, and congestion as

7 well, are those -- those are factors that are well

8 known in -- in the construction industry?

9   A.   Those are factors that are banted about

10 with great regularity in the industry, written about,

11 argued about and paid for.

12   Q.   And hopefully planned to avoid?

13   A.   Absolutely.

14   MR. SCHWARZ: I think that's all that I

15 have for Mr. Meyer.

16   JUDGE PRIDGIN: All right. Mr. Schwarz,

17 thank you.

18   Since we're getting close to

19 four o'clock, rather than interrupt again, it might be

20 better to take a late afternoon break. Is there

21 anything further from counsel before we go on break?

22 All right. Let's reconvene at 4:05, please. Thank

23 you. We are off the record.

24   (A recess was taken.)

25   JUDGE PRIDGIN: All right. We're back on

1 record. Mr. Schwarz finished his cross-examination, I

2 believe. And just to verify, I believe Mr. Mills said

3 he would be gone some during the hearing, but just to

4 clarify for the record, any cross-examination from

5 Public Counsel? All right. Hearing none, Ms. Ott,

6 cross-examination.

7 CROSS-EXAMINATION BY MS. OTT:

8   Q.   Good afternoon, Mr. Meyer.

9   A.   Good afternoon.

10   Q.   You're not a registered professional

11 engineer, are you?

12   A.   No, ma'am.

13   Q.   Okay. And you're not a CPA?

14   A.   No, ma'am.

15   Q.   And you do not consider yourself an

16 expert on matters of accounting?

17   A.   I'm not an accountant.

18   Q.   And you also do not consider yourself an

19 expert on auditing?

20   A.   I am not an auditor.

21   Q.   Now, you are familiar with Pegasus

22 Holding --

23   A.   Yes.

24   Q.   -- Incorporated?

25   And are you familiar with their

 1 engagement for KCPL?

 2   A.   Through this hearing.

 3   Q.   So you were not interviewed by Pegasus

 4 Holding?

 5   A.   No, ma'am.

 6   Q.   And you've previously worked with

 7 Commonwealth Edison on projects?

 8   A.   Yes, ma'am.

 9   Q.   Now, did you ever work with Mr. Thomas

10 Maiman on projects when he was at Commonwealth Edison?

11   A.   No, ma'am.

12   Q.   Is your only experience working with

13 Mr. Maiman through the Iatan projects?

14   A.   No, ma'am.

15   Q.   Now, Mr. Byce, he's one of your -- is he

16 your co-worker or an employee under Meyer Consulting?

17   A.   He is a co-worker. That's a good enough

18 description.

19   Q.   So do you employ Mr. Byce?

20   A.   No.

21   Q.   So is he a contractor through the Meyer

22 Consulting or --

23   A.   Yes.

24   Q.   So do you have a written agreement with

25 Schiff Hardin for your services?

1   A.   No.

2   Q.   Does Mr. Byce have an agreement for his

3 services through Schiff Hardin?

4   A.   No.

5   Q.   Does Mr. Byce have an agreement for his

6 services through Meyer Consulting?

7   A.   No.

8   Q.   Now, could you have worked directly with

9 KCPL without going through Schiff Hardin?

10   A.   Could you -- your use of the word "could"

11 has got me. I guess I could have.

12   Q.   So is it your practice to be an

13 independent contractor with a law firm rather than

14 directly working with the owner?

15   A.   Most of my business is -- and let me

16 define that. Probably on average, 60, 65, two-thirds

17 of my business is in another whole world called

18 dispute review boards. And in that business, I work

19 directly with joint clients. Those boards are -- are

20 creatures of contract who retain me to basically help

21 them accomplish some very complex large public works

22 projects without going to court. And I work directly

23 for the joint parties. I'm retained by both parties

24 to the contract.

25   Q.   Okay. But you weren't retained by both

1 parties to the contract for the Iatan projects?

2   A.   No, ma'am.

3   Q.   Okay. I don't know if you've heard

4 discussion while you've been sitting in the room about

5 the board of directors meeting that has -- it's been

6 marked as Staff Exhibit -- or not Staff, KCPL 261-HC

7 that has the December '06 updated control budget

8 estimate. Have you heard discussions?

9   A.   Yes. I recall that.

10   Q.   Have you seen that document before?

11   A.   I don't know if I have or not.

12   Q.   I'll hand you a copy of it.

13   MS. OTT: And I think we'll need to go HC

14 because I'll probably talk about a number.

15   JUDGE PRIDGIN: Just one moment, please.

16   (REPORTER'S NOTE: At this point, an

17 in-camera session was held, which is contained in

18 Volume 26, pages 2267 to 2270 of the transcript.)

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1   JUDGE PRIDGIN: We're back in public,

2 Ms. Ott. When you're ready.

3 DANIEL MEYER testified as follows:

4 BY MS. OTT:

5   Q.   Mr. Meyer, what's your definition of

6 definitive estimate?

7   A.   In terms of this hearing?

8   Q.   Yes.

9   A.   The control budget estimate.

10   Q.   Now, what is your definition of

11 definitive estimate with industry standards?

12   A.   I really don't have one because to be

13 quite frank with you, the AACE discontinued the term

14 in year 2003, which is before this project started.

15 It was discontinued because it obviously didn't add

16 value to the discussion.

17   Q.   Okay. Prior to 2003, what was the

18 industry standard for definitive estimate?

19   A.   I would paraphrase, but it's an estimate

20 with very high accuracy.

21   Q.   And when you say high accuracy, are you

22 talking 90 percent, 80 percent, 50 percent?

23   A.   90 percent what?

24   Q.   Accuracy.

25   A.   In terms of what?

1   Q.   When you said the definition was

2   something of "very high accuracy," I'm looking -- do

3   you have a percentage to quantify the accuracy?

4   A.   Well, I think there would be variability

5   in that, but as -- I think generally how people use

6   that term when it was kind of like more en vogue, it

7   would be engineering on 70 percent, something like

8   that.

9   MS. OTT: I have no further questions.

10 Thank you.

11   JUDGE PRIDGIN: Thank you. Redirect?

12   MR. HATFIELD: If I can have one minute.

13   Yes, Judge, just a couple of questions.

14 REDIRECT EXAMINATION BY MR. HATFIELD:

15   Q.   I'm going to go backwards, Mr. Meyer.

16   A.   Okay.

17   Q.   You were just discussing definitive

18 estimate with Ms. Ott. And you were saying that the

19 term was abandoned by the AACE. And just to

20 paraphrase what you said, is that because different

21 people would use it with different meanings?

22   A.   Yes. And it brought no -- obviously

23 brought no value to the table in terms of imparted any

24 type of clarity or they wouldn't have discontinued it.

25   Q.   And is that because there was a lack of a

1 common understanding of the meaning of the term?

2   A.   Yes.

3   Q.   Now, Mr. Schwarz asked you a little bit

4 about analysis. And let me see if I've got it here.

5 Well, he was talking to you -- just leave it down

6 there. He was talking to you about page 38, line 2 of

7 your testimony. Does that testimony actually direct

8 the reader to another area for, quote, analysis?

9   A.   Yes.

10   Q.   And where does it direct the reader?

11   A.   Let me pull that -- I believe to one of

12 my schedules.

13   Q.   Right. It says what it says. And let me

14 ask you something. He -- he asked you about

15 Mr. Drabinski's analysis and talked about whether

16 Mr. Drabinski's analysis did the same thing, et

17 cetera. Do you recall that?

18   A.   Yes, I do.

19   Q.   Were you -- was the purpose of your

20 testimony to do a prudence analysis as an expert

21 offering expert opinions on prudence?

22   A.   No.

23   Q.   Is the purpose of your testimony

24 explained in the beginning of your rebuttal testimony?

25   A.   Yes, it is.

1   Q.   And what was the purpose of that

2 testimony?

3   A.   It -- it was to rebut Mr. Drabinski. It

4 was to show that all these things that Staff said

5 couldn't be done could, in fact, be done because I did

6 it.

7   Q.   Okay. And when you say the "things that

8 Staff said couldn't be done," are you referring to

9 Staff's allegation that the Kansas City Power and

10 Light cost control system could not identify and track

11 cost overruns against the control budget estimate?

12   A.   Yes. I'm referring to that and I'm --

13 I'm referring to that for a couple reasons. Number

14 one, Staff did it. They did it for some items so they

15 just truncated the effort; number two, Drabinski was

16 able to do it; and number three, I was able to do it.

17   Q.   So again comparing what you did to

18 Mr. Drabinski, you weren't trying to reach an opinion

19 on whether a particular item was prudent or not?

20   A.   No.

21   Q.   All right. And were you able in your

22 testimony to use Kansas City Power and Light's cost

23 control system to identify and explain cost overruns?

24   A.   Yes, I was. And those are captured in my

25 schedules attached to my testimony.

1   Q.   Now, I asked about in your testimony.

2   Did you also work on the project as it was

3   progressing?

4   A.   Yes, I did.

5   Q.   Were you able to identify and explain

6   cost overruns as they were occurring on the project?

7   A.   Absolutely. We went through -- first of

8   all, we vetted the CBE. After we vetted the CBE, we

9   performed a cost projection in May of '08, we

10   performed a cost projection in July of '09, we

11   performed another cost projection in March of '10 and

12   we performed yet another cost projection in November

13   of '10.

14   I sat through each and every one of those

15   cost projections for days on end working with -- or

16   observing what KCPL staff was doing with respect to

17   identifying potential costs in the future.

18   Q.   And Mr. Schwarz asked you a little bit

19   about owner responsibility with regard to schedule

20   management.

21   A.   Yes.

22   Q.   Now, were you here when Mr. Bell talked

23   about the schedule?

24   A.   Yes.

25   Q.   And at one point I think he said

1 something about the schedule maybe being a little

2 aggressive. Would you agree with that or not?

3   A.   Not really. I mean it was a schedule

4 that -- it certainly wasn't a cakewalk. No -- no

5 construction project of this size and complexity is a

6 cakewalk. They're all challenging.

7   Q.   And let me ask you about that before I go

8 onto a question. Your direct testimony and your

9 rebuttal discusses the number of construction projects

10 you've been involved with personally; is that right?

11   A.   Oh, yes. As does my rebuttal.

12   Q.   Just give us some sort of ballpark number

13 of how many construction projects.

14   A.   Well, I'm 67. I was a hands-on

15 contractor until I was 47. At any one year, 1,500--

16   Q.   All right.

17   A.   -- ish.

18   Q.   And then you mentioned that you're

19 involved in dispute review boards. Are those

20 related -- are some of those related to construction

21 projects?

22   A.   They're all related to construction

23 projects. And as I started to explain earlier, my

24 practice, what I do is visiting construction jobs all

25 over this country, in Canada, in the Caribbean, in

1 Europe. And it's my role to observe the construction

2 of those projects, whether it's design or whether it's

3 construction or whether it's the management of those

4 projects.

5   In the course of my business, I see cost

6 reports from the premiere contracting companies in

7 this -- in this country. I'm intimately familiar with

8 what those cost reports do and what they don't do.

9 I'm in a position to observe contract settlements that

10 the parties make. These projects on which -- in which

11 I'm involved range from 200 million to 3 billion.

12   I can tell you that the settlements that

13 KCPL made with Alstom are not even a blip in the

14 screen with respect to the global settlements made on

15 many, many, many government construction projects in

16 this country.

17   In the early '70s, the industry was a

18 wreck and it was a wreck because everybody litigated

19 everything. At the drop of a dime, people would go to

20 court. The industry became paralyzed. And beginning

21 in the mid '80s there was a mine shift to move away

22 from fighting and to focus more on what's good for the

23 project.

24   MR. SCHWARZ: I'm going to object at this

25 stage as being non-responsive and far beyond the scope

1 of the question.

2   JUDGE PRIDGIN: Mr. Hatfield?

3   MR. HATFIELD: I agree.

4   JUDGE PRIDGIN: Sustained.

5 BY MR. HATFIELD:

6   Q.   Mr. Meyer, we -- I think we were talking

7 about schedule just a little bit. How did the owner

8 do on schedule management?

9   A.   This is a happy job when it comes to

10 schedule. This schedule -- or this project was done

11 within 2 percent of the original contemplated time and

12 this is -- in the industry, this is a happy job.

13   MR. HATFIELD: Thank you. I don't have

14 any further questions.

15   JUDGE PRIDGIN: Mr. Hatfield, thank you.

16 Mr. Meyer, thank you very much. You may step down.

17   Are we ready for Mr. Henderson?

18   And we re-arranged chairs, Mr. Henderson.

19 If that's not -- if that chair is okay, let me know.

20 If not, we can -- we changed chairs a moment ago so

21 however you're comfortable.

22   THE WITNESS: It's fine.

23   MR. SCHWARZ: Or we can get the executive

24 director to find some suitable furniture finally.

25   JUDGE PRIDGIN: Anything before

1 Mr. Henderson takes the oath?

2   All right. If you'll raise your right

3 hand to be sworn, please, sir.

4   (Witness sworn.)

5   JUDGE PRIDGIN: All right. Thank you

6 very much. Ms. Ott, anything before he stands cross?

7   MS. OTT: I believe this would be his

8 direct testimony. He has not filed any pre-filed

9 testimony and the company is calling him as a witness.

10   JUDGE PRIDGIN: So this is KCP&L's

11 witness?

12   MS. OTT: Yes.

13   JUDGE PRIDGIN: Very good. Mr. Fischer,

14 when you're ready, sir.

15   MR. FISCHER: Thank you very much, Judge.

16 WESS HENDERSON, having been sworn, testified as

17 follows:

18 DIRECT EXAMINATION BY MR. FISCHER:

19   Q.   Good evening, Mr. Henderson.

20   A.   Good evening.

21   Q.   Thank you for agreeing to testify late

22 tonight and thank you for agreeing to participate in

23 the deposition that we took I think it was on

24 December 7th. To the extent I refer to a deposition,

25 will you understand that that's the deposition I'm

1 talking about?

2   A.   Yes.

3   Q.   I'd like to go through a number of things

4 that will be very familiar to the Commissioners, but

5 just for purposes of putting it on the record, I think

6 I need to do that, but I can hopefully do that quickly

7 since we've already talked about it in the deposition.

8   A.   Okay.

9   Q.   Is that all right?

10   A.   Uh-huh.

11   Q.   You've been the executive director of the

12 Commission since January of 2005; is that correct?

13   A.   Correct.

14   Q.   And have you ever testified in a rate

15 case before the Commission as the executive director?

16   A.   No.

17   Q.   I believe you told me in your deposition

18 that you hadn't pre-filed testimony for about ten

19 years or so; is that right?

20   A.   That's correct.

21   MS. OTT: Judge, may I interrupt. I

22 don't -- I believe you're using leading questions and

23 I don't think Mr. Henderson is a hostile witness.

24   JUDGE PRIDGIN: All right.

25   MR. FISCHER: I'm sorry. I was trying to

 1 move it along. I'll ask an open question if you'd

 2 like.

 3   JUDGE PRIDGIN: Okay. That's fine.

 4 Thank you.

 5 BY MR. FISCHER:

 6   Q.   Mr. Henderson, how long have you been

 7 employed with the Public Service Commission?

 8   A.   Roughly over 30 years.

 9   Q.   In what capacity were you first hired?

10   A.   As an accountant.

11   Q.   Would you tell me what degree you

12 received?

13   A.   I have a bachelor's degree in accounting,

14 a master's degree and a certified financial analysis

15 or --

16   Q.   Your master's degree was in public

17 administration; is that right?

18   A.   Public administration, yes.

19   Q.   And did you receive that in 1995 from the

20 University of Missouri-Columbia?

21   A.   I believe that's correct.

22   Q.   In 1981 did you receive a promotion?

23   A.   Yes. I believe so.

24   Q.   And can you tell me what position you

25 were in and what position you were promoted to?

1   A.   I believe that's when I was promoted to

2 the assistant manager of the Water and Sewer

3 Department.

4   Q.   And what position were you promoted to in

5 October of '97?

6   A.   I believe that's when I became the -- the

7 division director for operations.

8   Q.   Is that the job that's currently held by

9 Mrs. -- Ms. Dietrich?

10   A.   Yes.

11   Q.   Okay. And then I believe you were

12 promoted again in 2005; is that correct?

13   A.   Correct.

14   Q.   And would that -- what position were you

15 promoted to at that time?

16   A.   My current position.

17   Q.   And at the present time what is your

18 position?

19   A.   The executive director.

20   Q.   Are you a certified public accountant?

21   A.   No.

22   Q.   Are you an engineer?

23   A.   No.

24   Q.   Are you an expert in construction

25 management?

1   A.   No.

2   Q.   Have you ever personally conducted a

3 construction audit or prudence review of an electric

4 power plant?

5   A.   No.

6   Q.   How would you describe the role of the

7 executive director position here at the Commission?

8   A.   I have ultimate responsibility over

9 the -- over the Staff and I'm a go-between I guess, if

10 you will, between the Staff -- between the Staff and

11 the Commission.

12   Q.   Do you report directly to the five

13 Commissioners?

14   A.   Yes.

15   MR. FISCHER: Judge, I'd like to have a

16 exhibit marked that we used in the deposition. It's

17 information taken from the website of the Commission.

18   JUDGE PRIDGIN: This will be a company

19 exhibit, I believe KCP&L 81.

20   MR. FISCHER: It's not HC.

21   (KCP&L Exhibit No. 81 was marked for

22 identification.)

23 BY MR. FISCHER:

24   Q.   Mr. Henderson, do you recognize the

25 document that I've provided to you?

1   A.   Yes.

2   Q.   Did we discuss this in your deposition?

3   A.   Yes.

4   Q.   And I believe it was marked Henderson

5 Exhibit 1 at that time. Would you describe what

6 you -- what you think this document is?

7   A.   This looks like information out of the --

8 the blue book. And it's a brief description of the

9 background of the division directors here at the PSC.

10   Q.   I notice Mr. Joyce is still listed here.

11 With the exception -- and I understand he's retired;

12 is that correct?

13   A.   Yes.

14   Q.   With the exception of -- of that, would

15 the other divisions be described appropriately and the

16 current people that hold those jobs are listed there;

17 is that right?

18   A.   Yes. That's correct.

19   MR. FISCHER: Judge, I'll move for

20 admission of -- of the exhibit.

21   JUDGE PRIDGIN: KCP&L 81 has been

22 offered. Any objection?

23   Hearing none, it is admitted.

24   (KCP&L Exhibit No. 81 was received into

25 evidence.)

1 BY MR. FISCHER:

2   Q.   The PSC website says that as appointing

3 authority, the executive director directs the

4 management, administration, operations, information

5 and technology services and training and work product

6 of Missouri Public Service Commission. Is that a true

7 statement?

8   A.   That's what it says.

9   Q.   And it also indicates I think from this

10 exhibit there are four distinct divisions which are

11 comprised of many different professionals like

12 attorneys, accountants, engineers, economists and

13 other professional staff; is that right?

14   A.   Yes.

15   Q.   And those four divisions would report to

16 you; is that true?

17   A.   All of them -- yes, that's true except in

18 the case of Steve Reed. Steve Reed's a direct report

19 also to the Commission.

20   Q.   I see.

21   A.   So I have limited supervision over him.

22   Q.   As the director -- as the executive

23 director of the Commission Staff, would it be correct

24 to say that -- that you're the chief executive of the

25 Commission Staff?

1   A.   That would be fair, yes.

2   Q.   And except for the five Commissioners,

3 would you be at the top of the organizational chart at

4 the Missouri Public Service Commission?

5   A.   Yes.

6   Q.   Would you be considered the -- the chief

7 policymaker of the Commission Staff on substantive

8 issues?

9   A.   I would have ultimate responsibility for

10 the policies, yes.

11   Q.   Would you also be the chief policymaker

12 for administrative issues?

13   A.   Yes.

14   Q.   Are you the person that is ultimately

15 responsible for all substantive policies recommended

16 by the Commission Staff with the exception of legal

17 issues?

18   A.   Yes.

19   Q.   In your role as the executive director of

20 the Commission Staff, are you ultimately responsible

21 for and approve the major positions taken by the

22 Commission Staff in cases before the Missouri Public

23 Service Commission?

24   A.   I don't approve each one, but I would

25 have the ultimate responsibility, yes.

1   Q.   And would that include the positions

2 being taken by the Staff in this KCPL and GMO rate

3 case?

4   A.   Yes.

5   Q.   So the buck ultimately stops with you as

6 the executive director for all substantive

7 recommendations made by the Commission Staff in the

8 pending cases that we're talking about today?

9   A.   Correct.

10   Q.   As I understand what you've told me in

11 the deposition, you do not necessarily approve the

12 Staff personnel assignments before the Missouri Public

13 Service Commission in these cases; is that right?

14   A.   That's correct.

15   Q.   Other members of the Staff might be

16 responsible for the specific assignments of the Staff

17 in rate cases and construction and prudence audits; is

18 that --

19   A.   Yes. Each division director and manager

20 would have the responsibility of assigning staff.

21   Q.   Would you be involved in determining what

22 Staff personnel would -- would conduct a construction

23 audit or prudence review in a case like this?

24   A.   I was involved in -- in some of those

25 issues in this case, yes.

1   Q.   For both Iatan 1 and Iatan 2?

2   A.   Yes.

3   Q.   Would you be in on discussions about

4   whether to hire outside consultants to assist the

5   Staff in the construction audit of Iatan 1 and

6   Iatan 2?

7   A.   I would have been consulted, yes.

8   Q.   And would you have the final approval for

9   the decision whether to hire an outside consultant in

10   this case or not?

11   A.   Yes.

12   Q.   Is it correct that you decided not to

13   hire outside consultants to assist the Staff in

14   completing the Iatan 1 and the Iatan 2 construction

15   audit and prudence review?

16   A.   We did not hire a consultant.

17   Q.   Was one of the considerations related to

18   the decision not to hire an outside consultant for

19   this case that it would be easier to -- for the Staff

20   to complete it in-house rather than managing outside

21   consultants?

22   A.   That was one of the reasons, yes.

23   Q.   Now, do you personally have a bias or

24   feelings against the use of -- of consultants

25   generally?

1   A.   No.

2   Q.   Do you have any evidence that any members

3   of your auditing staff in this case have any bias

4   against the use of consultants by KCPL in the

5   construction audit case?

6   A.   I don't have any knowledge of that, no.

7   Q.   There are some substantial adjustments

8   though in this case, aren't there, related to the use

9   of consultants by KCP&L?

10   A.   There are.

11   Q.   That would include I think some Schiff

12 Hardin disallowances and also I believe there's a --

13 even an adjustment related to the salary of an outside

14 consultant named Chris Giles?

15   A.   Correct.

16   Q.   Now, you according to the information on

17 the Commission's website, as the executive director,

18 you're responsible for leading the agency's strategic

19 planning, technical and administrative policy and

20 procedure development and implementation and budgeting

21 process. Is that -- is that true?

22   A.   Correct.

23   Q.   And you're also responsible for ensuring

24 the work product of professional and technical staff

25 meets or exceeds substantive standards within

1 prescribed deadlines and serve as liaison between the

2 Commissioners and Staff, between the Commission and

3 the Department of Economic Development and serves as

4 the primary contact with external entities as

5 appropriate; is that correct?

6   A.   Correct.

7   Q.   Okay. Is it -- is it true that you would

8 be the one responsible for ensuring the Staff

9 completes the audits in a professional manner?

10   A.   Yes.

11   Q.   Is it also your responsibility to ensure

12 that rate cases are processed in a professional

13 manner?

14   A.   Yes.

15   Q.   Is it your responsibility to ensure that

16 the operations divisions and the -- the operation

17 division, singular, and the services division are

18 working together in a professional manner?

19   A.   Yes.

20   Q.   Is it your responsibility to ensure that

21 the various Staff divisions and personnel are working

22 together to complete the audits in a professional

23 manner?

24   A.   Yes.

25   Q.   For example, is it your responsibility to

1 ensure that the -- the auditors in the services

2 division are communicating with the engineers in the

3 operations division in a construction audit and

4 prudence review?

5   A.   Again, I would have final say over that,

6 yes.

7   Q.   Okay. Mr. Henderson, as the chief

8 policymaker for the Staff, how would you describe the

9 role of the Commission Staff in a rate case?

10   A.   To provide a fair and balanced outcome to

11 a rate case.

12   Q.   I think you told me in the deposition

13 that you described the role as they're supposed to be

14 a neutral party in the rate case, to provide a fair

15 and equitable solution to a rate case to the

16 Commissioners. Is that -- is that a fair --

17   A.   Correct. Yeah.

18   Q.   -- summary?

19   Is it the role of the Commission Staff to

20 be fair, objective and unbiased in rate cases?

21   A.   Yes.

22   Q.   Is it the role of the Commission Staff to

23 be a strong and aggressive advocate on behalf of

24 ratepayers?

25   A.   No.

1   Q.   From your perspective, is it the role of

2 the Commission Staff to present a case that's intended

3 to keep the rates to consumers as low as possible

4 within the confines of the law?

5   A.   No.

6   Q.   From your perspective, is it the role of

7 the Commission Staff to make recommendations in a rate

8 case that are designed to keep the public utility

9 financially healthy?

10   A.   Yes.

11   Q.   And in balancing the interests of

12 consumers and public utility shareholders, do you try

13 to follow the policies established by the

14 Commissioners through the Commission's previous

15 orders?

16   A.   Yes.

17   Q.   Do you personally review the major policy

18 recommendations of the Commission Staff in major rate

19 cases, especially if they're not -- if they've not

20 been previously advocated by the Staff in the past?

21   A.   No.

22   Q.   So you wouldn't necessarily review a

23 change of policy position by the Staff?

24   A.   Not every one, no.

25   Q.   What -- what kinds of positions would you

 1 typically review that were major changes?

 2   A.   Probably if they -- if they were -- if

 3 they had a significant impact on the outcome of the

 4 rate case either financially or, you know, through

 5 the -- through a change in the audit process.

 6   Q.   Okay. So if there's -- if there's a new

 7 policy involving a substantial amount of money that's

 8 being recommended to be disallowed by the Commission

 9 Staff in a rate case, would you generally approve it

10 before it's included in the testimony in a rate case?

11   A.   No. Not necessarily. I would, you know,

12 probably be advised of it, but I mean I don't know if

13 you consider that to be approval or not.

14   Q.   Okay. Well, for example, did -- did you

15 personally approve the Staff's proposed disallowance

16 in this case to disallow all the costs that exceeded

17 the 2006 control budget estimate for Iatan 1 and

18 Iatan 2 before it was included in the Staff's

19 testimony?

20   A.   I was aware of them. I didn't approve

21 it.

22   Q.   Did you approve the general concept of

23 the disallowance of all costs that exceeded the

24 control budget estimate for Iatan 1 and Iatan 2?

25   A.   Again, I was aware of the -- of it so I

1 don't know if that's considered approval. I did not

2 specifically say, Yes, I approve of that. I knew it

3 was happening.

4   Q.   So the division directors wouldn't have

5 come to you to discuss that kind of an issue?

6   A.   No. I was aware of it. We discussed it.

7   Q.   But unless you said no, it would go

8 forward?

9   A.   Correct.

10   Q.   So implicitly did you approve it?

11   A.   Yes.

12   Q.   Okay. If the Commission approved the

13 Staff's position on the cost overrun issue in this

14 case, wouldn't you agree that it would be the first

15 time in your 30 years here at the Commission where the

16 Commission has adopted such a policy on a cost overrun

17 issue?

18   A.   I don't know if that would be the case or

19 not.

20   Q.   Isn't that what you told me on page 57 of

21 the deposition?

22   A.   I don't remember. Page -- what page?

23 I'm sorry.

24   Q.   Fifty-seven.

25   A.   My pages only go to 31.

1   Q.   Okay. Well, let me see if I can give it

2 to you.

3   MS. OTT: Wess, do you have the four on

4 the sheet? Let me see what --

5   MR. FISCHER: I was looking at the mini

6 transcripts, I guess.

7   MS. OTT: Do you not have a complete

8 copy?

9   THE WITNESS: No.

10   MS. OTT: He has a condensed version.

11 BY MR. FISCHER:

12   Q.   Would you like to use my copy? I'd like

13 to show you page 57 and beginning at line 4, I guess.

14 Would you read the question and answer into the

15 record?

16   A.   Page 57, what line? I'm sorry.

17   Q.   I think it's the first -- first question

18 that's written there.

19   A.   On page 57?

20   Q.   The number's in the little --

21   A.   Right. The first question I have: Let's

22 assume for a minute that the Commission adopted the

23 position that disallowed -- okay -- company control

24 budget estimates. Would you agree that that would be

25 the first time in your 30 years where the Commission

1 policy like that had been adopted?

2   Yes. I'm not aware of any of them doing

3 it prior.

4   Q.   Mr. Henderson, when you implicitly

5 approved the position of Staff on the cost overrun

6 issue, when you had those discussions --

7   A.   Uh-huh.

8   Q.   -- did you personally know at that time

9 that the 2006 control budget estimate for Iatan 2 was

10 developed at a time when the engineering project was

11 only 20 to 25 percent complete?

12   A.   I was not aware of that.

13   Q.   Okay.

14   MR. FISCHER: Judge, at this time I'd

15 like to have another exhibit marked.

16   JUDGE PRIDGIN: This would be KCP&L 82.

17   MR. FISCHER: This is an order that's

18 actually in the record, but I thought it might be

19 easier to distribute it while we talk about it.

20   (KCP&L Exhibit No. 82 was marked for

21 identification.)

22 BY MR. FISCHER:

23   Q.   Perhaps I could borrow that deposition

24 back. Thank you.

25   A.   Uh-huh.

1   Q.   Mr. Henderson, are you familiar with what

2 Exhibit 82 is?

3   A.   Yes. It's an order regarding

4 construction prudence audits.

5   Q.   And was that issued in the current rate

6 cases, the KCPL and GMO cases, on July the 7th, 2010?

7   A.   Ye-- July.

8   Q.   July 7th, 2010?

9   A.   Right.

10   Q.   And did we discuss this in your

11 deposition and marked it Henderson Exhibit 2?

12   A.   Yes.

13   MR. FISCHER: Judge, I'd move for the

14 admission of Exhibit 82.

15   MR. FISCHER: KCPL 82 is offered. Any

16 objection? Hearing none, it is admitted.

17   (KCP&L Exhibit No. 82 was received into

18 evidence.)

19 BY MR. FISCHER:

20   Q.   Mr. Henderson, I'd like to refer you to

21 the bottom of page 1. The last paragraph there where

22 it says, Because the newly filed rate case -- cases

23 involve the Iatan plant additions to KCPL and GMO and

24 because the Commission will require completed

25 construction and prudence audits of the Iatan 1 and

1 Iatan 2 facilities and common plant, the Commission

2 will direct its Staff to complete all auditing of the

3 environmental upgrades to Iatan 1 and common plant and

4 commence, if not already started, all audits

5 associated with the -- with Iatan 2 immediately

6 subject to the specific direction of the Commission.

7   Is that -- did I read that correctly?

8   A.   Yes.

9   Q.   Then if we go to page 4 in paragraph 11

10 at the bottom, does it indicate that the Commission's

11 executive director, Wess Henderson, is assigned

12 primary audit oversight and completion? Mr. Henderson

13 shall file monthly status reports with the Commission?

14   A.   Yes.

15   Q.   So is it correct that you were assigned

16 to have the primary oversight responsibility for

17 the -- the Iatan 1 and Iatan 2 construction audits

18 after this issue -- after this order was issued?

19   A.   That's correct.

20   Q.   Now, prior to the issuance of the

21 July 7th, 2010 order, I understand that you had been

22 personally involved in the construction audit of

23 Iatan 1, Iatan 2 and the common plant by attending

24 some of the meetings and discussing some of the issues

25 even before that order was issued?

1   A.   Correct.

2   Q.   Now, after the issuance of that July 7th

3 order, did your role in the construction audit of

4 Iatan 1 and Iatan 2 and the common plant, did it

5 change in any major way or did it remain essentially

6 as it had been before the order was issued?

7   A.   I -- I would say I probably became a

8 little bit more engaged in it than I had been prior to

9 the order.

10   Q.   Okay. Would you describe that

11 engagement? What did you do? How did it change?

12   A.   Attended more meetings with Staff, helped

13 coordinate some of the -- or sat in on meetings where

14 Staff were assigned to the case, those types of

15 things.

16   Q.   I believe the order also directed that

17 Staff file the list of the proposed audit personnel

18 and the audit scopes as described in -- in that order.

19 Is that -- is that your memory?

20   A.   Yes.

21   Q.   And I believe the Staff filed a pleading

22 on July the 18th or perhaps it was July 19th which

23 included a table that listed the various personnel and

24 specific assignments. Do you recall that?

25   A.   Yes.

1   Q.   Now, did -- you did not personally

2   approve those assignments; is that right?

3   A.   That's correct.

4   Q.   Or the specific responsibilities of the

5   personnel?

6   A.   That's correct.

7   MR. FISCHER: Judge, I'd like to have

8   another exhibit marked.

9   JUDGE PRIDGIN: This will be KCPL 83.

10   (KCP&L Exhibit No. 83 was marked for

11 identification.)

12 BY MR. FISCHER:

13   Q.   Mr. Henderson, I've marked -- I've had

14 marked Exhibit 83, Coordination Procedure-5 for

15 Construction Audits, Energy. Do you recognize this

16 document?

17   A.   Yes. This was a exhibit in the

18 deposition.

19   Q.   I think it was Henderson Exhibit 4?

20   A.   Correct.

21   Q.   Would you describe what your

22 understanding of this document, what it is?

23   A.   This is Coordination Procedure-5

24 Construction Audits, Energy. And it sets out

25 guidelines and parameters and procedures for

1 engineering management, the energy department.

2   Q.   Okay. Is it your understanding that --

3 that this particular document was attached to the

4 surrebuttal testimony of Robert E. Schallenberg during

5 KCPL's last rate case?

6   A.   Yes.

7   MR. FISCHER: Judge, I'd move for the

8 admission of Exhibit 83.

9   JUDGE PRIDGIN: KCPL 83 has been offered.

10 Any objections? Hearing none, it is admitted.

11   (KCP&L Exhibit No. 83 was received into

12 evidence.)

13 BY MR. FISCHER:

14   Q.   Mr. Henderson, do you know when this

15 coordination procedure was first placed into effect?

16   A.   No, I don't.

17   Q.   Does the document describe the -- the

18 energy -- what -- how the energy staff would conduct a

19 construction audit under this particular coordination

20 approach?

21   A.   Yes.

22   Q.   Let's look at the first paragraph. It

23 indicates there that -- that coordination of the

24 construction audit will be the responsibility of the

25 energy department, energy manager -- manager or

1 designate; is that right?

2   A.   Yes.

3   Q.   Is it correct that under this particular

4 coordination procedure, it's the responsibility of the

5 energy department, particularly the energy manager or

6 his designate, to coordinate construction audits?

7   A.   That's what it says, yes.

8   Q.   Now, the energy department today includes

9 Ms. Lena Mantle. I think she's the energy department

10 manager; is that right?

11   A.   Yes.

12   Q.   And Mr. David Elliott, Mr. Shawn Lange

13 would both be in that department?

14   A.   Yes.

15   Q.   And there would be other engineers there

16 as well?

17   A.   Correct.

18   Q.   Now, let's look at the last paragraph

19 there, paragraph 5. There it seems to indicate that

20 the energy department manager will designate a member

21 of its department to act as the coordinator on that

22 construction audit; is that right? Paragraph 5.

23   A.   Yes. That's right.

24   Q.   At the time of the commencement of the

25 Iatan 1 and Iatan 2 construction audits, is it correct

1 that Ms. Lena Mantle was the energy department

2 manager?

3   A.   Yes.

4   Q.   And Mr. Elliott, Mr. Lange were part of

5 her energy department at that time too?

6   A.   Yes.

7   Q.   Now, in paragraph 2, does that indicate

8 that the coordination procedure would indicate that

9 interaction would be required with the accounting

10 department, the general counsel's office, the case

11 coordinator and other Staff members assigned?

12   A.   Yes.

13   Q.   Would it be correct to conclude from that

14 paragraph that this coordination procedure requires

15 the engineering manager would interact with members of

16 the accounting staff, the general counsel's office,

17 the rate case coordinator or other Staff members on

18 the project?

19   A.   Yes.

20   Q.   Now, let's take a look at footnote one

21 there. There it seems to indicate that the

22 coordinator is responsible for seeing that timely,

23 appropriate action is taken by assigned Staff members

24 so that the project or issue is completed at the

25 highest quality level possible within existing time

1 and resource constraints; is that right?

2   A.   Yes.

3   Q.   And let's look back at paragraph 3.

4 There it seems to indicate that there are guidelines

5 and parameters for the construction audit that -- and

6 it indicates that the coordinator shall develop

7 procedures for identification, recording of new,

8 rebuilt or refurbished plant construction costs. The

9 procedure shall include an analysis of all factors

10 necessary to ensure proper treatment of such costs or

11 rate making; is that right?

12   A.   Yes.

13   Q.   Mr. Henderson, is it correct that under

14 this coordination procedure, it was the coordinator

15 that had the responsibility to develop procedures to

16 ensure proper treatment of construction costs for

17 rate-making purposes?

18   A.   Yes.

19   Q.   And the coordinator would be someone from

20 the energy department's engineering group. Is that

21 your understanding under this procedure?

22   A.   Yes.

23   Q.   I think I asked you in the deposition

24 about what it meant, this phrase "to develop

25 procedures to ensure proper treatment of construction

1 costs for rate-making purposes." Do you recall we had

2 a brief discussion about that?

3   A.   Yes.

4   Q.   Do you recall that you suggested that

5 what that meant was all costs or factors into the

6 final recommendation, that any cost overruns have been

7 looked at and any change orders have been looked at

8 for prudency?

9   A.   Yes.

10   Q.   Okay. I think that's on page 23 of your

11 deposition.

12   A.   That's on your page 23.

13   Q.   You're right. It's probably in the mini

14 version. Does that mean that the coordinator had the

15 responsibility to ensure the proper level of

16 construction costs were included or excluded from

17 rate-base for rate-making purposes?

18   A.   They -- yes.

19   Q.   Now, if this coordination procedure had

20 been utilized for the Iatan 1 and the Iatan 2

21 construction audits, isn't it true that the

22 engineering personnel in the energy department would

23 have developed the overall Iatan audit objectives and

24 audit scope?

25   A.   Under this procedure, yes.

1   Q.   And if this coordination procedure had

2 been utilized for Iatan 1 and Iatan 2 construction

3 audits, isn't it true that the engineering personnel

4 in the energy department would have had the primary

5 responsibility to look at all factors necessary to

6 ensure proper treatment of such plants for rate-making

7 purposes?

8   A.   Yes.

9   Q.   Now, let's look back at Exhibit 83, the

10 footnote one. It indicates that -- about a third of

11 the way down that coordination is defined as

12 performing the overview function, combining the

13 efforts of all departments and individuals assigned to

14 or involved with the issue or project; is that right?

15   A.   Yes.

16   Q.   And then if we go on, it states that

17 coordination does not -- and it does -- it actually

18 underlines does not -- include the authority to

19 overrule the positions of others involved with the

20 issue or project nor does it include decision-making

21 authority in the event of a disagreement among those

22 involved; is that right?

23   A.   Yes. That's correct.

24   Q.   Does this sentence mean that the

25 coordinator does not have the authority to overrule

 1 the substantive positions of other Staff members

 2 involved in the project?

 3   A.   Yes.

 4   Q.   Now, the footnote goes on to state, Any

 5 conflicts as to substance or procedure which cannot be

 6 resolved by the coordinator should be taken up through

 7 the up-line management channels; is that right?

 8   A.   Yes.

 9   Q.   Is it correct under this coordination

10 procedure the engineering manager would take any

11 conflicts to his boss, which would be the division

12 director of the utility operations division for

13 resolution; is that right?

14   A.   Yes.

15   Q.   In this -- I guess the engineering

16 manager's boss would be Natelle Dietrich today?

17   A.   Correct.

18   Q.   Okay. And so she would be expected to

19 resolve any conflicts that occurred?

20   A.   Her along with the other division

21 director, if it included services.

22   Q.   If it included any other division?

23   A.   Right.

24   Q.   I understand. Okay. Now, was this

25 coordination procedure -- procedure utilized by the

1 Staff in conducting the Iatan 1 and the Iatan 2

2 construction audits?

3   A.   I don't believe it was.

4   Q.   The Staff did not utilize this

5 coordination procedure -- well, okay. You just said

6 they didn't.

7   A.   Right.

8   Q.   Okay. Now, if the Staff had used this

9 coordination procedure for the Iatan construction

10 audit, then one of the engineers in the engineering

11 department would have been the coordinator for the

12 construction audit; is that right?

13   A.   Under this procedure, yes.

14   Q.   Now, is this coordination procedure that

15 we've been discussing here in Exhibit 83 still in

16 effect today?

17   A.   Not that I'm aware of, no.

18   Q.   I believe you told me in your deposition

19 that the coordination procedure was rescinded along

20 with I think all the other internal policies of the

21 Commission Staff about the time that Culley Dale was

22 the ex-- was the Commission secretary?

23   A.   That's what I told you, yes.

24   Q.   Okay. Do the Staff auditors today have

25 the authority to overrule the positions of the

1 engineering Staff in a construction audit and prudence

2 review?

3   A.   No.

4   Q.   Are the Staff auditors supposed to

5 communicate with the Staff engineers and use the input

6 of the engineers to develop the rate case

7 recommendations?

8   A.   Yes.

9   Q.   Do you believe Staff auditors have the

10 engineering backgrounds to make expert judgments about

11 the prudence of expenditures at a construction site?

12   A.   I don't believe they have the engineering

13 background. I believe they have an accounting

14 background to make those decisions.

15   Q.   Well, do you believe that Staff auditors

16 could make expert judgments about the prudence of

17 expenditures of a construction site without discussing

18 their disallowances with the engineering Staff?

19   A.   In some instances, yes.

20   Q.   Would you describe what instances you

21 think that might be appropriate?

22   A.   Sure. I think in this case the issue

23 that comes to mind is the relocation of the trailers.

24 The -- I forgot the technical term for it, but all the

25 trailers that are onsite, I believe all those had to

1 be moved in order to get the turbine in place.

2   Q.   If the Staff auditors describe that as a

3 design error, would you have the same opinion that the

4 rate case auditors would have the -- the expertise to

5 make a judgment about that?

6   A.   If it was a design error?

7   Q.   Yes.

8   A.   I -- I don't think that's -- no, I don't

9 think they would have the expertise to do that. But

10 in this case I don't know for sure that it was a

11 design error. My understanding from Mr. Elliott is

12 that it was more they had to move the campus to

13 facilitate getting the generator in place and they

14 were afraid of moving the heavy equipment over the

15 campus so they had to move it.

16   Q.   Mr. Elliott is the engineer that was

17 involved; is that correct?

18   A.   That's correct. And in his opinion, he

19 did agree that the campus needed to be moved for

20 safety purposes.

21   Q.   Okay. That's good. Do you believe that

22 the Staff auditors could make expert judgments about

23 the prudence of expenditures at a construction site if

24 the Staff engineers never attended Staff meetings when

25 the Staff's proposed disallowances were being

1 discussed?

2   A.   I'm sorry. Could you say that again?

3   Q.   Yes, sir. Do you believe that the Staff

4 auditors could make expert judgments about the

5 prudence of expenditures at the construction site if

6 the Staff engineers never attended the meetings where

7 the proposed disallowances were being made?

8   A.   Yes.

9   Q.   So without the Staff engineers' presence,

10 you believe the Staff auditors could make those

11 judgments?

12   A.   Sure.

13   MR. FISCHER: Judge, could I have another

14 exhibit marked? I probably have more than I need

15 here.

16   JUDGE PRIDGIN: You may. This should be

17 KCPL 84.

18   (KCP&L Exhibit No. 84 was marked for

19 identification.)

20 BY MR. FISCHER:

21   Q.   Well, let me ask you this before I go to

22 that exhibit. Do you believe that the Staff rate case

23 auditors would be in a position to make expert

24 judgments about the prudence of expenditures at a

25 construction site without communication with the

1 engineers?

2   A.   No, not without talking to them.

3   Q.   Okay. I've put in front of you what's

4 been marked as Exhibit 84. Can you identify what this

5 document is?

6   A.   This document is the Executive Director's

7 First Monthly Status Report and Additional Staff Audit

8 Personnel Assignment Document.

9   Q.   And is this one of the Staff's reports

10 that you were directed to file with the Commission

11 status?

12   A.   Yes. It's the first one.

13   MR. FISCHER: Judge, I'd ask that 84 be

14 admitted.

15   JUDGE PRIDGIN: KCPL 84 has been offered.

16 Any objections? Hearing none, it is admitted.

17   (KCP&L Exhibit No. 84 was received into

18 evidence.)

19 BY MR. FISCHER:

20   Q.   I'd like for you, Mr. Henderson, to turn

21 to the -- what really is the -- I think the executive

22 director's monthly report that is attached. There's a

23 discussion on the -- I guess it's the third page back

24 in the document. Do you see that?

25   A.   I'm at page 3.

1   Q.   Okay. Would that be the -- the part of

2   the document you would have drafted or approved?

3   A.   I'm not -- I'm not sure what -- are you

4   asking me about --

5   Q.   Well, what I was asking you, it looks

6   like there's a cover -- I'm sorry. It's probably the

7   fourth page. There was a cover pleading that was

8   signed by Mr. Dottheim, but then there's an attachment

9   that seems to be the actual executive director's

10   monthly report.

11   A.   Yes.

12   Q.   Okay. There there's a discussion that

13   there was a meeting on July the 8th, is there not,

14   among various members of -- I guess it's the third

15   paragraph down where you -- you met with Natelle

16   Dietrich and Steve Dottheim and Bob Schallenberg; is

17   that right?

18   A.   Yes.

19   Q.   And I believe you told me this was kind

20   of a preliminary discussion to get organized for the

21   audit?

22   A.   That's correct.

23   Q.   Then there's a -- the next day on

24   July the 9th, there was a second meeting that involved

25   a much broader group of Staff; is that correct?

1   A.   Yes.

2   Q.   And I believe you -- you include a list

3   of the people who attended that July 9th meeting in

4   your document; is that right? Would you look at that?

5   It's about --

6   A.   Yes, I have it.

7   Q.   It's the first page after the -- the end

8   of the new -- the numbered page 4.

9   A.   Right. It's a sign-in sheet for Staff

10 that attended the July 9th meeting.

11   Q.   Now, that would indicate that Mr. David

12 Elliott and Mr. Dan Beck, Mr. John Rogers and Mr. Leon

13 bender, who are engineers attended; is that right?

14   A.   Yes.

15   Q.   Now, there were several other meetings

16 that are listed in your document and you have

17 attendance lists for -- that are for the meetings on

18 July the 16th, July 20th, July 21, July 23, July 26,

19 July 27 and there's several on July 28th; is that

20 right?

21   A.   Yes.

22   Q.   Now, Mr. Elliott and Mr. Shawn Lange's

23 names don't appear on those attendance lists. Is that

24 your understanding?

25   A.   Yes.

1   Q.   So I believe you told me that would

2 indicate you didn't think they would have attended

3 those meetings?

4   A.   If they didn't sign in, they probably

5 were not at the meeting.

6   Q.   Then on -- if we look at the July 9th

7 meeting paragraph, it indicates that it was decided

8 Bob Schallenberg would be the coordinator for Iatan 1

9 and Iatan 2 audit scope; is that right?

10   A.   Yes.

11   Q.   Was it the decision -- was it your

12 decision to have Mr. Schallenberg, who I think was the

13 division director, personally conduct the Iatan 1 and

14 Iatan 2 construction audit and prudence review?

15   A.   No. I -- I think as I said in my

16 deposition, I'm not -- I'm not exactly sure how it

17 came about. I didn't specifically order

18 Mr. Schallenberg to do that.

19   Q.   Okay. Now, prior to the -- the July 7th

20 order, I think Mr. Schallenberg had already been the

21 coordinator for the Iatan 1, Jeffrey and Sibley audits

22 ordered in the April 15th, 2009 order; is that right?

23   A.   Yes.

24   Q.   And he was the lead auditor or the

25 coordinator with the assistance of Mr. Chuck Hyneman

1 and Mr. Keith Majors that dealt with the prudence and

2 construction audit matters related to Iatan 1 after

3 the April 15th order was issued; is that right?

4   A.   Yes.

5   Q.   And as I understood the deposition that

6 was taken of Mr. Schallenberg in EO-2010-0259, he had

7 initially taken on that task himself after the

8 Commission issued the April 15th, 2009 order in the

9 last KCPL rate case and then he later got the help of

10 Mr. Hyneman and Mr. Majors.

11   A.   Yes.

12   Q.   Is that your understanding?

13   A.   Yes.

14   MR. FISCHER: Judge, I'd ask another

15 exhibit be marked.

16   JUDGE PRIDGIN: We'll be on KCPL 85.

17   MR. SCHWARZ: Judge, at this juncture I

18 would ask for an explanation of the relevance and

19 materiality of this line of inquiry.

20   MR. FISCHER: Yes. We're just asking

21 information about the -- Mr. Henderson is the primary

22 oversight person for the audits and we're asking

23 information about how these audits were conducted and

24 why they were conducted the way they were.

25   MR. SCHWARZ: Is -- okay. And what's the

1 material -- is that an issue somehow in this case?

2 I'm -- and I haven't attended Mr. Henderson's

3 deposition, I haven't paid much attention, frankly,

4 but I still don't understand what the issue is, what's

5 contested.

6   MR. FISCHER: $300 million of

7 disallowances.

8   (KCP&L Exhibit No. 85 was marked for

9 identification.)

10   JUDGE PRIDGIN: Mr. Fischer, when you're

11 ready.

12 BY MR. FISCHER:

13   Q.   Okay. Mr. Henderson, does -- are you

14 familiar with Exhibit -- I believe -- did you say 84?

15   JUDGE PRIDGIN: This is 85.

16   MR. FISCHER; I'm sorry. 85.

17   JUDGE PRIDGIN: That's all right.

18 BY MR. FISCHER:

19   Q.   Are you familiar with Exhibit 85?

20   A.   Yes.

21   Q.   Would you describe briefly for the record

22 what this is?

23   A.   This is an order regarding construction

24 and prudent audits of the environmental upgrades at

25 Iatan 1, Jeffrey Energy Center and Sibley Generating

 1 Facility.

 2   MR. FISCHER: Judge, I'd move for the

 3 admission of 85.

 4   MR. FISCHER: Any objection? Hearing

 5 none, 85 -- KCP&L 85 excuse me, is admitted.

 6   (KCP&L Exhibit No. 85 was received into

 7 evidence.)

 8 BY MR. FISCHER:

 9   Q.   Mr. Henderson, do you recall that in the

10 April 15th order in KCPL's last rate case there was an

11 ordered paragraph that said that the Staff should --

12 is directed to provide a specific rationale for each

13 and every disallowance recommended in the construction

14 audits and prudence reviews?

15   A.   Yes.

16   Q.   Now, at the July 9th meeting with the

17 broader group of Staff, did you -- did you personally

18 discuss the role of the engineers and the Staff

19 auditors in the Iatan 1 and Iatan 2 construction

20 audit?

21   MS. OTT: Mr. Fischer, just for clarity,

22 are you referring to the year 2010?

23   MR. FISCHER: I am. I'm sorry. I didn't

24 say that.

25   MS. OTT: And this order was the year

1 2009.

2   MR. FISCHER: Yes.

3   MS. OTT: Okay.

4   THE WITNESS: Yes. We talked about

5 issues at that meeting.

6 BY MR. FISCHER:

7   Q.   Did you give any specific directions to

8 the Staff regarding the approach that you wanted them

9 to take with regard to the Iatan 1 and the Iatan 2

10 audits?

11   A.   I -- I gave them some general directions,

12 I believe, about timeliness of the audit, timeliness

13 of data requests, those types of -- of directions.

14   Q.   But nothing specifically about the

15 approach you wanted them to take?

16   A.   No.

17   Q.   Did you direct that the Staff should

18 provide a specific rationale for each and every

19 disallowance recommended in the construction audit and

20 prudence reviews?

21   A.   I did not give them that specific

22 direction, no.

23   Q.   I think you indicated that Mr. Elliott

24 and Mr. Lange, Mr. Bender and Mr. Beck were present at

25 that July 9th meeting; is that right?

1   A.   I believe their names were on the list,

2 yes.

3   Q.   And those were all engineers by training;

4 is that right?

5   A.   Yes.

6   Q.   Now, from your perspective, what's the

7 current role of Staff engineers in a construction

8 audit and prudence review?

9   A.   They're supposed to work in conjunction

10 with the people in services to ensure that the plant

11 is built according to specs.

12   Q.   Okay. And I think in your deposition you

13 elaborated on that a little bit more. You said

14 generally to make sure that the plant is being built

15 to the specifics initially designed, to look at

16 change -- any change orders, to justify change orders,

17 make sure that if a change order happens, what the

18 company says took place actually takes place --

19   A.   Yes.

20   Q.   -- is that right?

21   A.   Yes.

22   Q.   Okay. Do you believe this is the role of

23 Mr. David Elliott and Shawn Lange in the construction

24 audit of Iatan 1 and Iatan 2?

25   A.   Yes.

1   Q.   Now, while the coordination procedure

2 that we discussed earlier was in effect, the Staff

3 engineers took a coordinator role regarding those

4 construction audits is -- for new power plants; is

5 that right?

6   A.   Yes.

7   Q.   In your deposition you couldn't recall

8 any cases in which there were no engineering issues

9 that the Commission made disallowance of construction

10 costs. Do you recall that?

11   A.   Yes.

12   Q.   Prior to the Iatan 1 and Iatan 2

13 construction audits, didn't the Staff auditors work in

14 conjunction with the Staff engineers and incorporate

15 the engineers' recommendations into the revenue

16 requirement calculations in the rate cases?

17   A.   I believe that's correct, yes.

18   Q.   Wasn't that the primary role of the Staff

19 auditors?

20   A.   To put revenue requirement together, yes.

21   Q.   Yes. And did you -- did you clarify for

22 me or confirm for me that the -- the later meetings

23 that you had that are included in your first monthly

24 status report were not attended by the Staff

25 engineers?

1   A.   Their names were not on the attendance

2 list.

3   Q.   Okay. But there were Staff auditors

4 accountants, on -- at every one of those meetings.

5 Right?

6   A.   Yes.

7   Q.   Would it be correct to conclude that the

8 Staff engineers did not have a lead coordinator role

9 in the Staff's construction audit of Iatan 1 and

10 Iatan 2?

11   A.   No.

12   Q.   They did not have a lead role?

13   A.   No, they did have a lead role.

14   Q.   They did have a lead role?

15   A.   Yes. I think we had this same discussion

16 on my deposition.

17   Q.   I thought we did too.

18   A.   And maybe we're having the same

19 confusion.

20   Q.   We probably are. On page 41 of the

21 deposition it -- I asked the question, Would it be

22 correct to conclude that the Staff engineers did not

23 have a leadership role in the Staff's construction

24 audit of Iatan 1 and Iatan 2?

25   And your answer was, I don't believe so,

1 no.

2   Is that different -- well, then I asked

3 the question, Would it be correct to conclude that the

4 Staff engineers did not have the coordinator role in

5 the Iatan 1 and Iatan 2 construction audits?

6   And your answer was, I wouldn't -- no, I

7 don't think that's correct.

8   A.   Right.

9   Q.   And then I asked, You believe that they

10 were coordinators?

11   And I believe your answer was, I think

12 they had a role in coordination.

13   A.   Right.

14   Q.   So would it be correct from that that

15 they were involved in coordination but they didn't

16 have the lead coordinator role?

17   A.   No. Mr. Wells actually had the

18 coordination role. Mr. Wells, who's an engineer, had

19 the coordination role for the operations department.

20   Q.   Now we're talking though, aren't we,

21 about the rate case itself and not the construction

22 audit?

23   A.   Oh, yes, I'm sorry. Yeah.

24   Q.   Now on the construction audit, wasn't

25 Mr. Schallenberg designated as the lead coordinator?

1   A.   Yes.

2   Q.   Okay. I think --

3   A.   Okay.

4   Q.   Maybe that's where the confusion was.

5   A.   Okay.

6   Q.   Okay. Mr. Elliott and Mr. Lange were not

7 listed as authors of the December 31, 2009 Staff

8 report on the construction audit?

9   A.   Correct.

10   Q.   And I believe you -- you confirmed for me

11 in the deposition that the pleading that was filed by

12 Mr. Dottheim related to that filing indicated that the

13 Staff auditors responsible for the report filed on

14 this date were Mr. Schallenberg, Mr. Hyneman and

15 Mr. Majors --

16   A.   Yes.

17   Q.   -- is that true?

18   A.   Yes.

19   Q.   The audit report indicated that I think

20 Mr. Schallenberg's specific responsibilities included

21 the Iatan audit objectives, the risk assessment, the

22 audit scope and common plant. Is that your memory?

23   A.   Yes.

24   Q.   Now, did you personally suggest or direct

25 that Mr. Schallenberg take those roles on?

1   A.   No.

2   Q.   Did -- did Mr. Schallenberg decide

3   himself that he was going to step up and do those

4   roles?

5   A.   Yes.

6   Q.   Your second monthly report indicated I

7   think some of the Staff folks went to the KCC

8   hearings. Did -- did any of the engineers go to those

9   hearings?

10   A.   Not that I'm aware of, no.

11   Q.   What is your understanding of the Staff's

12 position on the disallowance of costs that exceed the

13 company's control budget estimate related to Iatan 1

14 and Iatan 2?

15   A.   I'm not sure I understand what you're

16 asking.

17   Q.   I'm just asking could you briefly

18 describe what you understand the position of Staff is

19 on disallowing everything above the 2006 control

20 budget estimate?

21   A.   Yes. Basically they didn't -- I -- I

22 assume they felt that they didn't have adequate or

23 proper documentation to include those costs.

24   Q.   Is it your understanding that Staff is

25 proposing to disallow all the costs above the control

1 budget estimate for Iatan 1 and Iatan 2?

2   A.   Yes.

3   Q.   The November 3rd construction audit

4 report indicates that Mr. Hyneman is the witness on

5 that unexplained cost overrun adjustment. Is that

6 your understanding?

7   A.   Yes.

8   Q.   And I believe Mr. Majors worked

9 principally on the AFUDC calculations that accompanied

10 those adjustments?

11   A.   Yes.

12   Q.   At the time you took over the primary

13 oversight role of the Iatan 1 and the Iatan 2

14 construction audits, were you aware that Mr. Hyneman

15 and Mr. Majors had never previously conducted a

16 construction audit or prudence review?

17   A.   No.

18   Q.   At the time you took over the primary

19 oversight role of the Iatan 1 and Iatan 2 construction

20 audits, would you -- were you aware that

21 Mr. Schallenberg had not conducted a construction

22 audit and prudence review since he'd been the division

23 director?

24   A.   No.

25   Q.   Were you aware that Mr. Schallenberg had

1 never personally pre-filed testimony explaining the

2 results of a construction audit and prudence review?

3   A.   No.

4   Q.   Were you aware that Mr. Elliott had

5 conducted the construction audit of the following

6 plants, the AmerenUE Meramec plant?

7   A.   Yes.

8   Q.   And the Empire State Line Combined Cycle

9 Unit?

10   A.   Yes.

11   Q.   The Empire Energy Center, units 3 and 4?

12   A.   I wasn't aware -- I'm not sure of that

13 one.

14   Q.   What about the West Gardner KCPL

15 facility, four gas turbines near Gardner, Kansas?

16   A.   I wasn't aware of that one.

17   Q.   What about the Osawatomie project in

18 Paola, Kansas?

19   A.   I wasn't aware of that one.

20   Q.   Hawthorn 6?

21   A.   Yes.

22   Q.   7 -- Hawthorn 7?

23   A.   Yes.

24   Q.   Hawthorn 8?

25   A.   Yes.

1   Q.   Hawthorn 9?

2   A.   Yes.

3   Q.   And the 67 wind generators at Spearville,

4   Kansas?

5   A.   Yes.

6   Q.   Were you aware that he'd been involved in

7   the Hawthorn 5 rebuild review by the Staff?

8   A.   Yes.

9   Q.   And the La Cygne SCR review?

10   A.   I -- I don't remember that one, but --

11   Q.   What input, if any, do you know that

12 Mr. Elliott, Mr. Lange had in the development of the

13 Staff's proposed disallowances related to Iatan 1 and

14 Iatan 2?

15   A.   I -- I'm not aware of what interaction

16 they had or what input they had.

17   Q.   I know that was true at the time of your

18 deposition. Have you investigated that any further

19 since we've talked in the deposition?

20   A.   No.

21   Q.   Mr. Henderson, is it your understanding

22 that the Staff has -- has raised concerns or has

23 criticized the -- the company's cost control system in

24 this case?

25   A.   Yes. I know that's an issue.

1   Q.   Staff has suggested that KCPL's cost

2   control system was not identified in explaining cost

3   overruns. Is that your understanding?

4   A.   One of the issues, yes.

5   Q.   At a 50,000-foot level, would you explain

6   for the Commission what Staff wants to see in the

7   company's cost control system that's not in it today?

8   A.   I'm -- I'm not familiar with what's not

9   in it. I can tell you what I -- I think they would

10   want in it would be a description of any cost

11   overruns, any cost period. If there are change

12   orders, clear and concise explanation of those, those

13   types of items.

14   Q.   Can you elaborate any more on the

15   specifics of the cost control system that you'd like

16   to see?

17   A.   No.

18   Q.   There's a statement in the Staff's

19   November 3rd audit report and if you -- I could give

20   it to you, but it says, KCPL's cost control system is

21   very detailed with hundreds of line items. It is

22   clear that KCPL has the capability to track, identify

23   and explain cost -- control cost budget overruns.

24   Do you recall that?

25   MS. OTT: Mr. Fischer, can you identify

1 where in the Staff report?

2   MR. FISCHER: Yeah, I can. It's page 37

3 at lines 10 through 15.

4   MS. OTT: Lines 10 through 15?

5   MR. FISCHER: Yeah, it is. I could give

6 you a copy of it. I forgot what my page number was.

7 Here's the document. Let me give you the page number

8 I believe it -- I'm sorry, it's page 37, lines 10

9 through 15.

10   MS. OTT: In which Staff report?

11   MR. FISCHER: That's the November 3rd,

12 final one.

13   THE WITNESS: I'm at page 37.

14 BY MR. FISCHER:

15   Q.   And take a look at lines 10 through 15.

16   A.   Yes. I'm there.

17   Q.   Does it indicate there that KCPL's cost

18 control -- I'm sorry -- KCPL's control budget is very

19 detailed with hundreds of line items. It is clear

20 that KCPL has the capability to track, identify and

21 explain control budget cost overruns?

22   A.   That's what it says.

23   Q.   Now, is it your understanding that Staff

24 wants all the cost overruns above the control budget

25 estimate identified and explained in a single

1 spreadsheet?

2   A.   I don't know what form they want it in.

3   Q.   Okay. So you don't know what format they

4 might want?

5   A.   No.

6   Q.   Do you know if they want it summarized in

7 a single document?

8   A.   Again, I don't -- I don't know that they

9 want that or how they want it.

10   Q.   Wouldn't Staff want all the source

11 documents to support the summaries of the reasons for

12 cost overruns?

13   A.   Yes, I would assume they would.

14   Q.   Has the Staff reviewed a cost control

15 system related to other construction projects in

16 Missouri or elsewhere that Staff believes would be a

17 better system than KCPL's?

18   A.   I'm not aware of that.

19   Q.   Okay. From your perspective as the

20 executive director, do you believe that the whole

21 story of the cost overruns at Iatan 1 and 2 could be

22 described in a single document?

23   A.   I don't believe so, no.

24   Q.   Okay. Is it your understanding that

25 Mr. Elliott spent many hours and days reviewing the

1 company's records, including the change orders and

2 other documentation to determine the magnitude and the

3 reasons for the change orders out at Iatan 1 and

4 Iatan 2?

5   A.   Yes.

6   Q.   Is it also your understanding that

7 Mr. Elliott spent substantial amount of time or --

8 with KCPL personnel to try to understand the nature of

9 those change orders?

10   A.   Yes.

11   Q.   And he had assistance of Mr. Shawn Lange?

12   A.   Yes.

13   Q.   Do you think that Mr. Elliott did a

14 thorough job on the Iatan 1 and the Iatan 2

15 construction audit and prudence review?

16   A.   Yes.

17   Q.   And wouldn't you agree that Mr. Elliott

18 is a very experienced and competent engineer?

19   A.   Yes.

20   Q.   Did Mr. Elliott in this case ever

21 recommend to you that the Commission Staff should take

22 a position that any audited amount that exceeded the

23 control budget estimate should be disallowed from

24 rates?

25   A.   No. Mr. Elliott never made that -- or I

1 had a conversation with Mr. Elliott about that, no.

2   Q.   Did Mr. Elliott make any recommendations

3 to you that specific Iatan project costs should be

4 disallowed as imprudent?

5   A.   No.

6   Q.   In that November 3rd audit report that

7 was filed by Staff on page 29, if you'd turn to that,

8 I believe there's an engineering section. Do you --

9   A.   I'm there.

10   Q.   Okay. Does that indicate that based on

11 its engineering review of KCPL's change orders,

12 engineering Staff found no engineering concerns with

13 any of the Iatan 2 or Iatan common plant change orders

14 reviewed?

15   A.   That's what it says, yes.

16   Q.   And I believe there's a footnote, isn't

17 there, on that page that indicates that the

18 engineering Staff that performed a review were David

19 Elliott and Shawn Lange?

20   A.   Yes.

21   Q.   Are you familiar enough to know that

22 there's also a similar section in the August 6th

23 report where there -- where the engineers found no

24 engineering issues out at Iatan 1?

25   A.   Yes.

1   Q.   Did the engineers -- the Staff engineers

2   ever share any engineering concerns with you during

3   the course of the Iatan 1 and the Iatan 2 engineering

4   review?

5   A.   No.

6   Q.   Do you have any reason to disagree with

7   the conclusions that are contained in the Staff's

8   November 3rd or the August 6th audit report related to

9   the engineer's conclusions that there are no

10 engineering issues that need to be addressed --

11   A.   No.

12   Q.   -- at Iatan 1 or Iatan 2?

13   A.   No. I'm --

14   Q.   Do you know if the Commission in past

15 cases has ever disallowed all the costs of a new power

16 plant that exceeded a definitive estimate?

17   A.   I'm not aware they have.

18   Q.   Do you know of any past rate cases in

19 which the Commission Staff itself has recommended that

20 all the costs of a new power plant that exceeded the

21 definitive estimate be disallowed?

22   A.   No. I'm not aware of that.

23   Q.   Well, as the person in charge or at least

24 with the primary oversight role of construction audit,

25 did -- did you permit Mr. Hyneman to recommend a new

1 approach on a cost overrun issue that involves the

2 disallowance of hundreds of millions of dollars based

3 upon his own personal opinion?

4   A.   Yes.

5   Q.   But yet you -- you now know that this was

6 the first construction audit and prudence review that

7 he'd ever conducted?

8   A.   Yes.

9   Q.   Have you also reviewed the -- or are

10 aware of the Commission Staff's position on the return

11 on equity in this case?

12   A.   No, I'm not familiar with it.

13   Q.   Are you familiar at all with the position

14 the Staff's taking on merger transition costs?

15   A.   No.

16   Q.   If I ask you to assume that the Staff's

17 low on ROE was 8.5 percent, could I ask you if you

18 know of any other case that would have a ROE

19 recommendation that low and -- while you've been here

20 at the Commission?

21   A.   I don't know.

22   MS. OTT: Objection, relevance.

23   JUDGE PRIDGIN: I'll overrule.

24   THE WITNESS: I don't know of any case.

25 BY MR. FISCHER:

1   Q.   Mr. Henderson, did you approve the

2   Staff's decision to enter into the stipulation and

3   agreement in Case No. EO-2005-0329, which is the

4   regulatory plan stipulation case?

5   A.   Yes.

6   Q.   How would you rate the success of the

7   KCPL regulatory plan overall?

8   A.   It -- it accomplished one of its goals,

9   that was to get a power plant built.

10   Q.   I think in your deposition you expressed

11   it this way, I think it's working the way it was

12   designed?

13   A.   Yes.

14   Q.   Okay. That July 7th order regarding the

15   construction and prudence audits I think indicated in

16   paragraph 4 if you look at that --

17   A.   What exhibit was that?

18   Q.   That would have been -- it's the

19   July 7th --

20   A.   KCPL 82?

21   Q.   Yeah. I believe that's right.

22   A.   All right. I have it.

23   Q.   If you look at the order paragraph 4, do

24   you see that? It indicates that all auditing

25   activities shall be conducted in accordance with

1 Generally Accepted Auditing Standards issued by the

2 American Institute of Certified Public Accountant

3 standards. All Commission Staff members conducting

4 audit activity of any type in these matters shall

5 attest by affidavit that all their auditing activity

6 and reports comply with these standards --

7   A.   Yes.

8   Q.   -- is that right?

9   Did you specifically direct Staff to

10 follow that directive?

11   A.   No.

12   Q.   Then if you'd go back to the November 3rd

13 audit report that Staff filed and look on page 19.

14   A.   I'm there.

15   Q.   Okay. Look at lines 29, beginning there

16 where it says, While the Staff auditors have conducted

17 their audit in accordance with the general standards

18 of field work listed below, they are not necessarily

19 reviewed and apply to all of the detailed specific

20 interpretations of the individual SAS to this audit;

21 is that right?

22   A.   That's what it says.

23   Q.   And then it goes on to say, Such an

24 undertaking would require an extensive investment in

25 training and personnel that has not been viewed as

1 necessary for the work performed in this audit; is

2 that right?

3   A.   Yes.

4   Q.   Would it be correct to conclude that the

5 Commission Staff has not previously made the

6 investment in training and personnel to fully comply

7 with the SAS 95 standards?

8   A.   I think that's what that says, yes.

9   Q.   Would that have been the decision of

10 someone in the accounting department or where is that

11 decision made not to make that investment?

12   A.   Yeah, it would have been -- that would

13 have been a training issue.

14   Q.   The audit report on page 20 there, the

15 next page, lists ten GAAS standards; is that right?

16   A.   Yes.

17   Q.   And the first one is that -- it states,

18 The audit must be performed by a person or persons

19 having adequate technical training and proficiency as

20 an auditor; is that correct?

21   A.   Yes.

22   Q.   I believe you confirmed that Mr. Elliott

23 and Mr. Lange found no engineering issues out at

24 Iatan 1 and Iatan 2; is that right?

25   A.   Yes.

1   Q.   And did you testify that you didn't know

2 whether Mr. Elliott or Mr. Lange had been involved in

3 the development of the specific Staff allowances --

4 disallowances or did you say they had not been? I

5 forgot what you said.

6   A.   I don't remember. I -- ask the question

7 again.

8   Q.   Do you know whether Mr. Elliott and

9 Mr. Lange had any direct input to the Staff

10 disallowances that are proposed in this case on

11 Iatan 1 and Iatan 2?

12   A.   Yeah, I -- I believe I said I don't know.

13   Q.   Okay. Well, assuming for the moment that

14 the record will reflect that -- that Mr. Schallenberg

15 and Mr. Hyneman and Mr. Majors, the rate case auditors

16 that were involved, have never personally done the

17 work on a construction audit, would you be concerned

18 about this particular GAAS standard that they be --

19 that the auditor -- that the audit be performed by a

20 person having adequate technical training and

21 proficiency?

22   A.   No.

23   Q.   The second standard listed there is one

24 of independence; is that correct?

25   A.   Yes.

1   Q.   That general standard indicates that in

2 all matters relating to the assignment and

3 independence and mental attitude is to be maintained

4 by the auditor or auditors; is that correct?

5   A.   Yes.

6   Q.   Mr. Henderson, what does that second

7 standard mean to you?

8   A.   I'm not exactly sure what mental attitude

9 is. I -- I would say it means to me that the auditors

10 have to be independent.

11   Q.   Does it mean that the auditors should

12 approach his auditing task with an open mind?

13   A.   Just says independent. I don't know what

14 the intent -- what was meant by that.

15   Q.   Okay. So you don't know what that

16 standard might mean?

17   A.   No.

18   Q.   Do you think that a just -- setting aside

19 the standards, do you think that it would be

20 appropriate for your -- your auditors to approach the

21 task with an open mind?

22   A.   Yes. I would assume they would do that.

23   Q.   Would you also assume that they would

24 approach their auditing task with an unbiased view

25 toward the company he's auditing?

1   A.   Yes.

2   Q.   Mr. Williams asked Bill Downey, the

3 president of KCPL, how he viewed the relationship

4 between KCPL and the Staff. What would your opinion

5 of that question today?

6   A.   Strained.

7   Q.   Strained. Would you explain why?

8   A.   I -- I -- honestly, I don't think the

9 company trusts us any more than we trust the company.

10   Q.   So the Staff has a -- an issue of trust?

11   A.   Yes. In some instances.

12   Q.   Mr. Henderson, have you ever been

13 involved in a rate case in your 30 years in which you

14 heard Staff counsel cross-examine a witness based on

15 his personal performance review?

16   A.   I've never heard that, no.

17   Q.   And in your 30 years of experience here

18 at the Commission, have you ever been involved in a

19 case where a retired employee was asked what his lump

20 sum pension was?

21   A.   No.

22   Q.   Have you ever been involved in a case

23 where a mid -- mid-level management person was asked

24 to disclose on the record in front of his -- his

25 fellow employees his salary?

1   A.   No.

2   Q.   Hypothetically if you found a poster

3 displayed in the office of a Staff auditor with the

4 picture of a company consultant where the Staff

5 auditor had added the caption, Consulting, if you're

6 not part of the solution, there's good money to be

7 made in prolonging the problem, hypothetically would

8 that cause you any concern about whether those Staff

9 auditors had any bias toward the company or

10 its -- or its consultants?

11   A.   I think it would be truly inappropriate.

12 Not knowing how it got there or who put it there or

13 anything like that, I mean, I'd need to have more

14 information about it.

15   Q.   Do you have any information about an

16 incident like that?

17   A.   Yes.

18   MR. FISCHER: I'd like to have a document

19 marked, Judge.

20   JUDGE PRIDGIN: It will be KCPL 86.

21   (KCP&L Exhibit No. 86 was marked for

22 identification.)

23   MR. FISCHER: That was marked as 86?

24   JUDGE PRIDGIN: Yes, sir. KCP&L 86 to be

25 accurate.

 1 | BY MR. FISCHER:

 2 | Q.   What's your understanding of what this

 3 | document represents, Mr. Henderson?

 4 | A.   My understanding is that one of the Staff

 5 | members had this hanging up somewhere in the -- in the

 6 | audit site.

 7 | Q.   Do you know who that's a picture of at

 8 | the top?

 9 | A.   No.

10 | Q.   Do you recognize anybody in the room that

11 | looks like that?

12 | A.   Gentleman back there with the glasses

13 | maybe.

14 | Q.   Okay.

15 | A.   This person doesn't have glasses on.

16 | Q.   No, he doesn't. Do you know if any

17 | action was taken related to this --

18 | A.   Yes.

19 | Q.   -- from a disciplinary standpoint?

20 | A.   Yes.

21 | Q.   Thank you very much.

22 | MR. FISCHER: That's all the questions I

23 | have.

24 | JUDGE PRIDGIN: Mr. Fischer, thank you.

25 | MR. FISCHER: I'd move for the admission

 1 of 86.

 2   JUDGE PRIDGIN: 86 has been offered. Any

 3 objections?

 4   KCPL 86 is admitted.

 5   (KCP&L Exhibit No. 86 was received into

 6 evidence.)

 7   JUDGE PRIDGIN: Cross-examination?

 8 Mr. Schwarz, no cross?

 9   MR. SCHWARZ: I would assume I go last on

10 this one.

11   JUDGE PRIDGIN: How --

12   MR. SCHWARZ: I would assume that I'm

13 less adverse to Mr. Henderson. That may or may not be

14 the case.

15   JUDGE PRIDGIN: Let me double check my

16 list. I may be wrong. Well, let me speed this up.

17 Is there a preference who goes first? Would Staff

18 rather go first?

19   MS. OTT: I have no preference.

20   MR. SCHWARZ: I'd rather go last.

21   JUDGE PRIDGIN: Ms. Ott --

22   MS. OTT: But I would ask for a break.

23   JUDGE PRIDGIN: Okay. Do you need -- I'm

24 sorry. Go ahead.

25   MS. OTT: I mean it's almost 6:00, so I

1 don't know if it's an appropriate time to go to

2 dinner, but I need at least a-five minute break.

3   JUDGE PRIDGIN: We certainly can. Do you

4 know -- how much cross do you anticipate having?

5   MS. OTT: More than a half hour.

6   JUDGE PRIDGIN: Okay. It might be a

7 better time then to take the break. Because if

8 Mr. Fischer hadn't wrapped up before long, I was going

9 to ask roughly how much more time he had. I show the

10 time to be about ten till 6:00. Let us break for

11 dinner until 7:00 and then we will resume for cross.

12 Is there anything further from counsel before we go to

13 break?

14   Okay. We'll stand in recess until 7:00.

15 Thank you.

16   (A recess was taken.)

17   JUDGE PRIDGIN: All right. Good evening.

18 We are back on the record. When we left for dinner,

19 if I recall correctly, Ms. Ott was going to 2263

20 cross-examine Mr. Henderson; is that correct?

21   MS. OTT: Yes.

22   JUDGE PRIDGIN: All right. Anything

23 further before she resumes?

24   All right. Mr. Henderson, you're still

25 under oath.

1   THE WITNESS: Yes.

2   JUDGE PRIDGIN: Ms. Ott, when you're

3 ready.

4 CROSS-EXAMINATION BY MS. OTT:

5   Q.   Good evening, Mr. Henderson.

6   A.   Good evening.

7   Q.   Do you agree with Staff's position in

8 this case?

9   A.   Yes.

10   Q.   Have you ever seen an adjustment for a

11 consultant made during a rate case?

12   A.   Yes.

13   Q.   Has Staff ever supported a disallowance

14 of a consultant's fees in a rate case?

15   A.   Yes.

16   Q.   Have you had any complaints regarding the

17 relationship of the engineers and the auditors on this

18 case?

19   A.   No.

20   Q.   Have you had any complaints regarding the

21 relationship between the engineers and audits in

22 relationship to the Iatan construction project

23 prudence review?

24   A.   No.

25   Q.   Has KCPL ever complained to you about its

 1 relationship with the auditors or engineers in regards

 2 to this case?

 3   A.   No.

 4   Q.   Is Staff advocating on behalf of the

 5 ratepayers in this case?

 6   A.   No.

 7   Q.   Is Staff advocating on behalf of the

 8 utility in this case?

 9   A.   No.

10   Q.   So Staff is -- has a neutral position in

11 this case?

12   A.   Staff is trying to present a neutral

13 position in this case.

14   Q.   Now, is every audit the same in which

15 Staff conducts?

16   A.   No. There would be different

17 circumstances.

18   Q.   So there's changes on how an audit is

19 conducted between cases?

20   A.   Yes.

21   Q.   Now, do Staff internal policies change

22 over time?

23   A.   Yes.

24   Q.   And can they change in between

25 different -- different audits?

1   A.   Yes.

2   Q.   Now, I believe you should have Exhibit 82

3 in front of you. And it's the July 7, 2010 order

4 regarding construction and prudence audits. And

5 paragraph --

6   A.   You said KCPL?

7   Q.   Yes. Number 82.

8   A.   Number 82. I have it.

9   Q.   Okay. And in the Commission order,

10 paragraph 4, and it says that, All -- all auditing

11 activities shall be conducted in accordance with the

12 Generally Accepted Auditing Standards.

13   Now, would engineers typically follow the

14 GAAS standards?

15   A.   Generally not, no.

16   Q.   Now, had Staff begon -- begun its

17 construction audit and prudence review prior to this

18 July 7th, 2010 date?

19   A.   Yes. I believe so.

20   Q.   KCPL has a regulatory plan?

21   A.   Yes, they do.

22   Q.   Okay. In your 30 years of experience, do

23 you know of any other regulatory plan for a utility

24 such as the one in place for KCPL?

25   A.   That's -- that's the only -- that's the

 1 first one I'm aware of. There's other utilities that

 2 are involved in this one, but that's the first one I'm

 3 aware of.

 4   Q.   The first regulatory plan?

 5   A.   Yes.

 6   Q.   Now, do you have Staff Exhibit --

 7 Staff -- KCPL Exhibit No. 83 in front of you?

 8   A.   I have it.

 9   Q.   And I just want to be clear, you

10 testified that this exhibit -- this coordination

11 procedure was not in effect during this construction

12 audit?

13   A.   That's correct.

14   Q.   Are you aware of any disagreements

15 between the auditing Staff and engineering Staff

16 related to this matter?

17   A.   No.

18   Q.   Does an engineer have the -- Staff

19 engineer have the authority to overrule a Staff

20 auditor?

21   A.   No.

22   Q.   And would a Staff auditor have the

23 authority to overrule a Staff engineer?

24   A.   No.

25   Q.   Now, if there was a dispute between an

1 auditor and engineer, what would take place?

2   A.   The dispute would go to the case

3 coordinators for resolution. If that couldn't happen,

4 it would go to the division directors for resolution.

5 And if that couldn't happen, it would be brought to me

6 for resolution.

7   Q.   And you haven't -- have you had any

8 disputes brought before you --

9   A.   No.

10   Q.   -- between engineering --

11   Now, are -- did Staff engineers make

12 decisions from meetings when Staff auditors were not

13 present?

14   A.   I assume they did, yes.

15   Q.   Can Staff engineers make decisions

16 without discussing all of their work with a Staff

17 auditor?

18   A.   Yes.

19   Q.   And did any Staff engineer complain that

20 they were being excluded from work that they should

21 have been involved with?

22   A.   Not to me, no.

23   Q.   Are you aware of the Staff engineer --

24 are you aware of any Staff engineer being excluded

25 from any work that they wanted to perform?

1   A.   No.

2   Q.   Have you received any complaints from a

3 Staff engineer regarding their involvement in this

4 audit?

5   A.   No.

6   Q.   In talking about the campus relocation

7 earlier, why from an auditing perspective would that

8 disallowance -- would that expense for the campus

9 relocation be imprudent?

10   A.   I believe that the main factor would be

11 is -- I think the Staff would first look at the

12 initial siting of the campus and then delve into why

13 it had to be moved, whether it was a design flaw or

14 what. The main question would be is the cost of the

15 relocation and if ratepayers should have to pay for

16 that campus twice, once for originally being put where

17 it was and then the -- paying again when it was

18 relocated.

19   Q.   So it was imprudent because they paid

20 twice to have the campus put in place?

21   A.   Yes.

22   Q.   Do you know when Staff began its audit on

23 the Iatan 1 project?

24   A.   No, I don't.

25   Q.   Do you know if Staff was conducting its

1 audit during rate case Nos. ER-2009-0089 and

2 ER-2009-0090?

3   A.   Yes. I believe they were.

4   Q.   Do you know when Staff began auditing

5 Iatan 2?

6   A.   No.

7   Q.   Now, Mr. Henderson, do you necessarily

8 make rate-making policy or do you review policy that's

9 going to be proposed to the Commission for the

10 adoption ultimately by the Commission, if they would

11 choose that?

12   A.   Generally policy is -- is brought to me

13 through division directors.

14   Q.   But do you make the policy for the

15 Commission?

16   A.   No.

17   Q.   And who does that?

18   A.   The Commission makes the policy or the

19 division directors or -- you know, one of the division

20 directors or comes up through the managers to division

21 directors to me for approval for -- to be presented to

22 the Commissioners. So I would have final say over the

23 Staff's proposal.

24   Q.   Now, back to Exhibit 83. Does

25 coordination procedure five assign costs to

1 terminations in construction audits to the energy

2 department?

3   A.   No.

4   Q.   Was -- and you indicated that was not in

5 effect for the Iatan 1 and 2 audits?

6   A.   I believe that's correct.

7   Q.   Are you aware of during the Staff's audit

8 of Iatan 1, Iatan 2 and the common plant, there being

9 any differences of opinion on adjustments among the

10 Staff accountants and the Staff engineers assigned to

11 the construction audit and prudence review?

12   A.   None were brought to my attention.

13   Q.   Now, do you have Exhibit 85 in front of

14 you?

15   A.   I do.

16   Q.   Okay. And number three in the Commission

17 orders, it states that KCPL is directed to cooperate

18 with the Commission Staff by providing all pertinent

19 invoices necessary for the completion of environmental

20 upgrades at Iatan 1 and shall expedite the provision

21 of any invoices for the true-up proceeding. All

22 true-up invoices shall be provided to the Commission

23 Staff for review no later than June 8th, 2009.

24   Do you see that?

25   A.   Yes.

1   Q.   Do engineers normally perform invoice

2   reviews?

3   A.   Yes, they can.

4   Q.   But is it typical that during a true-up

5   proceeding that engineering would be reviewing the

6   invoices or would it be the auditors?

7   A.   Generally it would be the auditors.

8   Q.   Now, there were talk about this -- I

9   believe another exhibit and it would be your -- the

10 first monthly status report, 84. And there was a

11 Staff meeting on July 9th, 2010. Was Mr. Schallenberg

12 the lead of the construction audit prior to this

13 meeting?

14   A.   Yes.

15   Q.   Do you know when Mr. Schallenberg began

16 the lead role on the construction audit?

17   A.   No.

18   Q.   Now, do you know if Mr. Schallenberg, as

19 the division director, is consulted by Staff on an

20 audit regarding Staff's position?

21   A.   Yes.

22   Q.   So Mr. Schallenberg is generally aware of

23 Staff's auditing during construction projects?

24   A.   Yes.

25   Q.   Do you believe KCPL should have a policy

1 and procedure to identify and explain any cost

2 overruns?

3   A.   Yes.

4   Q.   Are you aware if KCPL has a procedure --

5 policy and procedure to identify and explain cost

6 overruns?

7   A.   I know they have their -- their -- their

8 cost system that they have in place. I don't know if

9 they have a policy and procedure for it or not.

10   Q.   Do you know of any other construction

11 project that the owner had agreed to identify and

12 explain cost overruns?

13   A.   No.

14   Q.   Are you aware of whether Mr. Elliott and

15 Mr. Lange requested to attend the hearings in Kansas

16 of the Kansas Corporate Commission on Iatan 1, Iatan 2

17 and the common plant?

18   A.   No, they didn't request to go there.

19   Q.   Did Mr. Dottheim request to attend?

20   A.   Yes.

21   Q.   Did Mr. Hyneman request to attend?

22   A.   Yes.

23   Q.   Do you know whether Mr. Schallenberg was

24 involved in the Staff's audit of Iatan 1 in the late

25 '70s, early '80s?

1   A.   I believe he was, yes.

2   Q.   And at that time he wasn't a division

3 director, was he?

4   A.   Correct.

5   Q.   Do you know whether Mr. Elliott was

6 prevented from taking any position in this pending

7 case he desired to take?

8   A.   I'm not aware of any.

9   Q.   Any prevention?

10   A.   Right.

11   Q.   Okay. Do you know whether Mr. Elliott

12 was prevented from conducting any audit of the Iatan

13 construction project he desired to perform?

14   A.   No. I'm not aware he was prevented from

15 doing anything.

16   Q.   Are you aware of any other companies,

17 other than KCPL, who have plans for additional

18 amortizations tied to the cost control systems for a

19 construction project?

20   A.   No.

21   Q.   Is it common for Staff practice to

22 disallow unsubstantiated costs?

23   A.   Yes.

24   Q.   And is Staff recommending the

25 disallowance of cost overruns because they are not

1 documented as required by the regulatory plan?

2   A.   That's -- yes, that's in the various

3 Staff testimony.

4   Q.   Do you find an 8.5 percent return on

5 equity inadequate?

6   A.   Not for me, no.

7   Q.   So you would accept an 8.5 percent return

8 on your investment?

9   A.   Yes, I would.

10   Q.   Was Mr. Schallenberg involved in the

11 audit of Wolf Creek?

12   A.   Yes, I believe so.

13   Q.   Are you aware of any Staff auditor

14 indicating that they were out to get KCPL?

15   A.   No.

16   Q.   Do you know if the cross-examination --

17 the use of the performance evaluation in a

18 cross-examination was material because a KCPL witness

19 was testifying contrary to the information contained

20 within that evaluation?

21   A.   I'm not aware.

22   MR. FISCHER: Objection, I think that

23 assumes facts not in evidence.

24   JUDGE PRIDGIN: Ms. Ott?

25   MS. OTT: I believe Mr. Schallenberg

1 answered.

2   THE WITNESS: I'd be Mr. Henderson.

3   MS. OTT: Sorry. Mr. Henderson answered.

4   THE WITNESS: I know we look alike,

5 but --

6   MS. OTT: You're both wearing glasses.

7   THE WITNESS: Let's just stop it there.

8   JUDGE PRIDGIN: Yeah, stop. He did

9 answer pending an objection. Mr. Fischer, I'm sorry.

10 Your objection was assuming facts not in evidence?

11   MR. FISCHER: Yes.

12   JUDGE PRIDGIN: Okay. Do you have a

13 response?

14   MS. OTT: Mr. Fischer brought up Staff's

15 use of using an evaluation in a proceeding and here we

16 have evidence in which we had testimony that someone

17 indicated their experience and then when a performance

18 evaluation was brought out, it could be considered

19 contrary. So I'm asking Mr. Schallenberg -- sorry,

20 Mr. Henderson if -- if that's the reason why Staff

21 brought out the performance evaluation.

22   JUDGE PRIDGIN: All right. I'll

23 overrule.

24   THE WITNESS: I don't -- I don't know.

25 BY MS. OTT:

1   Q.   Now, in Staff's -- Staff's report there

2 was a section that identified the -- the GAAS

3 standard?

4   A.   Yes.

5   Q.   And GAAS standard No. 3, it's reported in

6 Staff's report, is due professional care in the

7 performance of work?

8   A.   Yes.

9   Q.   I'm going to hand you a copy of the due

10 professional care in the performance of work. Can you

11 review that document for a moment?

12   MR. HATFIELD: Do you have a copy of

13 that?

14   MS. OTT: Sure.

15 BY MS. OTT:

16   Q.   And if you go to -- if you go to the

17 second page of that document, you see the professional

18 scepticism?

19   A.   Yes.

20   Q.   And this would be Section .07?

21   A.   Yes.

22   Q.   Can you read .07 into the record?

23   A.   It says, Due professional care requires

24 the auditor to exercise professional scepticism.

25 Professional scepticism is an attitude that includes a

1 questioning mind and a critical assessment of audit

2 evidence. The auditor uses the knowledge, skill and

3 ability called for by the professional public

4 accounting to diligently perform in good faith and

5 with integrity the gathering and objective evaluation

6 of evidence.

7   Q.   Thank you.

8   MS. OTT: I have nothing further. Thank

9 you, Mr. Henderson.

10   JUDGE PRIDGIN: All right. Ms. Ott,

11 thank you. Mr. Mills, I think you were gone when we

12 went. Did you have any cross of Mr. Henderson?

13   MR. MILLS: No, I don't. Thank you.

14   MR. SCHWARZ: I don't either at this

15 stage. The Staff has covered it.

16   JUDGE PRIDGIN: Thank you. No bench

17 questions. Any redirect?

18 REDIRECT EXAMINATION BY MR. FISCHER:

19   Q.   Mr. Henderson, could I focus you on

20 paragraph 9 of the document that Ms. Ott just handed

21 out?

22   A.   .09?

23   Q.   Yes.

24   A.   I'm there.

25   Q.   Does that indicate that the auditor

1 neither assumes that management is dishonest or

2 assumes unquestioned honesty?

3   A.   Yes. That's what it says.

4   MR. FISCHER: Thank you. That's all I

5 have.

6   JUDGE PRIDGIN: Mr. Fischer, thank you.

7 Mr. Henderson, thank you, sir.

8   THE WITNESS: Thank you.

9   JUDGE PRIDGIN: I'm showing Mr. Majors is

10 the next witness.

11   MS. OTT: Is it Mr. Elliott?

12   MR. FISCHER: I think it's Mr. Elliott.

13   JUDGE PRIDGIN: I show Majors on my list,

14 but Elliott is certainly fine with me. Just double

15 checking. Okay. Mr. Elliott then. All right. Thank

16 you.

17   Does counsel need a moment? That's

18 certainly fine. Let's go off the record. Just to be

19 safe, let me go off the record just briefly.

20   (KCP&L Exhibit Nos. 204-HC and 215 were

21 marked for identification.)

22   JUDGE PRIDGIN: All right. We are back

23 on the record. Anything from counsel before

24 Mr. Elliott takes the oath?

25   MS. KLIETHERMES: No, Judge.

1   JUDGE PRIDGIN: If you'd raise your right

2 hand to be sworn, please.

3   (Witness sworn.)

4   JUDGE PRIDGIN: Thank you very much, sir.

5   Ms. Kliethermes, anything before he

6 stands cross?

7 DAVID ELLIOTT, having been sworn, testified as

8 follows:

9 DIRECT EXAMINATION BY MS. KLIETHERMES:

10   Q.   Just, Mr. Elliott, could you please state

11 and spell your name for the record.

12   A.   David Elliott, D-a-v-i-d E-l-l-i-o-t-t.

13   Q.   And, Mr. Elliott, did you prepare to

14 be -- I'm sorry. Did you prepare and cause to be

15 filed certain documents in the record?

16   A.   Yes.

17   Q.   And were those documents the August 6th,

18 Iatan report which has been marked as 204? And I

19 believe there might be an HC and NP on that. Yes,

20 there is an HC and NP on it. Did you prepare a

21 portion of that document?

22   A.   Yes.

23   Q.   And did you also prepare a portion of the

24 November 3rd cost of service report, which is numbered

25 as 205?

1   A.   Yes.

2   Q.   Did you also prepare a surrebuttal

3   testimony which has been marked as 215?

4   A.   Yes.

5   Q.   And on 205, to your knowledge, is there

6   both an HC and an NP version?

7   A.   I have an HC version with me, so I assume

8   there's an NP.

9   Q.   Do you have any changes or corrections to

10 make to any of those documents that you're responsible

11 for?

12   A.   No.

13   Q.   And if you were to be asked the same

14 questions contained in those documents or asked to

15 draft the same sections of the reports of those -- or

16 asked to draft the same sections of those reports,

17 would you have any changes and are those true and

18 correct to the best of your abilities?

19   A.   No changes and, yes, they are true to the

20 best of my ability.

21   MS. KLIETHERMES: Judge, at this time I

22 will offer Exhibit 204-HC and NP and Exhibit 215.

23   JUDGE PRIDGIN: Just to ver-- excuse me.

24 Just to make sure I have Mr. Elliott's surrebuttal, if

25 that's what you're wanting to offer, is No. 214 on my

1 list.

2   MS. KLIETHERMES: Oh, I'm sorry.

3   JUDGE PRIDGIN: Just want to make sure

4 we're clear on that.

5   MS. KLIETHERMES: Yes. That is 214.

6   JUDGE PRIDGIN: So 214 is offered and

7 204-NP and HC are offered; is that correct?

8   MS. KLIETHERMES: Yes.

9   JUDGE PRIDGIN: All right. Any

10 objections?

11   MR. FISCHER: 205, that's not offered?

12 We have no objection. There was a reference on 205

13 that it was a cost of service report. Is that the

14 construction audit report, by chance, the November 3rd

15 construction audit report?

16   MS. KLIETHERMES: It is. I'm very sorry.

17 Please reflect that in the record.

18   JUDGE PRIDGIN: I just want to make sure

19 I'm clear on what's being offered. Is it 205 or 204

20 or both?

21   MS. KLIETHERMES: It is 204. It is not

22 205.

23   JUDGE PRIDGIN: So 204 and 214 are being

24 offered?

25   MS. KLIETHERMES: Yes.

1   JUDGE PRIDGIN: All right. Thank you.

2 And did I hear no objection?

3   MR. FISCHER: No objection.

4   JUDGE PRIDGIN: 204-NP and HC is

5 admitted. 214 is admitted.

6   (KCP&L Exhibit Nos. 204-NP, 204-HC and

7 214 were received into evidence.)

8   MS. KLIETHERMES: I tender the witness

9 for cross.

10   JUDGE PRIDGIN: Thank you. Mr. Mills?

11 CROSS-EXAMINATION BY MR. MILLS:

12   Q.   I do have a few questions. Mr. Elliott,

13 let me -- let me give you -- I'm going to try and see

14 if I can understand your role in the audit in this

15 case so let me start by giving you a hypothetical.

16 And you may have heard this when I was cross-examining

17 Mr. Giles.

18   Assume that at some point in the project

19 a major component is -- is put into -- put into place

20 and welded in upside down. Okay? Is it your

21 understanding that in order for that situation to be

22 corrected, a change order would likely be entered to

23 take out that piece of equipment and put it in the

24 right way?

25   A.   If -- I would -- I would say that there

1 is a case that if the drawing showed it going up

2 upside down and welded it, may need a change order to

3 put it right.

4   Q.   Right. Okay. So in that case, there

5 would be a change order to make it right?

6   A.   Yes.

7   Q.   Okay. Now, if the -- if it was -- and in

8 that case you would have looked at the change order.

9 Correct? Because you looked -- assuming it was over

10 $50,000 and -- for that change order, you would have

11 looked at that change order?

12   A.   Probably, yes.

13   Q.   Okay. And what would your evaluation of

14 that change order consist of?

15   A.   Basically I would -- I would review the

16 change order to -- to see if -- what supporting

17 documentation was attached to it that said why -- you

18 know, why was the change order necessary and review

19 that. And then in this case, have a conversation with

20 KCPL to -- to see if there's anything else beyond that

21 I need to understand --

22   Q.   Okay.

23   A.   -- from an engineering standpoint.

24   Q.   Okay. Would your analysis go back to the

25 point at which the -- the drawing was -- was

1 originally misdrawn?

2   A.   No.

3   Q.   Okay. So you would evaluate the change

4 order from the -- the point at which the mistake was

5 being corrected?

6   A.   That's correct.

7   Q.   Okay. So your analysis would take --

8 would not look at whether or not it was reasonable for

9 KCPL to have gotten to the point where that piece of

10 equipment had to be fixed?

11   A.   No.

12   Q.   Okay. So in your evaluation, you made

13 no -- well, is it -- in such a situation there would

14 be -- would there not necessarily be additional costs

15 to put the piece of equipment in once and then take it

16 out and put it back in again?

17   A.   There -- there could be costs, yes,

18 associated with that.

19   Q.   Wouldn't there almost have to be

20 additional costs borne by somebody?

21   A.   Okay, yes. Borne by somebody, yes. I'm

22 sorry. Yes.

23   Q.   Okay. And your analysis would not make

24 any judgment as to whether or not those costs should

25 be borne by ratepayers, KCPL shareholders, one of the

1 contractors or who should pay for those additional

2 costs; is that correct?

3   A.   That's correct.

4   Q.   You didn't look at the costs at all?

5   A.   I did not look at the costs.

6   Q.   Okay.

7   MR. MILLS: Judge, that's all I have.

8 Thank you.

9   JUDGE PRIDGIN: Mr. Mills, thank you.

10 Mr. Schwarz?

11   MR. SCHWARZ: No cross.

12   JUDGE PRIDGIN: KCPL, Mr. Fischer?

13   MR. FISCHER: Yes. Thank you, Judge.

14 CROSS-EXAMINATION BY MR. FISCHER:

15   Q.   Good evening, Mr. Elliott.

16   A.   Good evening.

17   Q.   Thanks for staying late.

18   A.   No problem.

19   Q.   I'm going to ask you some questions that

20 we've already discussed in our deposition of

21 December 7th. And to the extent I refer to the

22 deposition, that's the one I'll be talking about.

23   A.   Okay.

24   Q.   As I understand it from direct, you were

25 part of the November 3rd audit report and I'll have

1 some questions about that as well. Do you have a copy

2 of that with you?

3   A.   I have a copy of my section --

4   Q.   Okay.

5   A.   -- of that report.

6   Q.   Okay. Before we discuss the comments in

7 that audit report, I'd like to just visit with you

8 very briefly with -- about your education, work

9 background if that's all right with you.

10   A.   Sure.

11   Q.   I believe you summarized your educational

12 background and work experience in the audit report

13 itself right after the affidavit; is that right?

14   A.   I believe that's where it is, yes.

15   Q.   You're an Iowa State University grad with

16 a degree in bachelor of science in mechanical

17 engineering?

18   A.   Yes.

19   Q.   And you received that degree in 1975,

20 nearly 35 years ago. Right?

21   A.   That's correct.

22   Q.   And prior to being employed at the PSC,

23 you were employed at Iowa Illinois Gas and Electric

24 for about 18 years?

25   A.   Almost 18 years, yes.

1   Q.   And I believe you assisted the

2 maintenance engineer at the electric generating

3 station and you were later involved in monitoring the

4 performance of the power plant; is that right?

5   A.   Yes.

6   Q.   And you've been employed with the

7 Missouri Public Service Commission since September of

8 1993?

9   A.   Yes.

10   Q.   And would it be correct to conclude that

11 you've been employed as an engineer with the

12 Commission for 17 years?

13   A.   Yes.

14   Q.   And during those 17 years, have you

15 conducted numerous construction audits for the

16 construction of new generating plants and other

17 power -- power equipment?

18   A.   Yes.

19   Q.   During your deposition we discussed I

20 think at some length the various construction audits

21 and prudence reviews that you participated in during

22 those 17 years. And I'd like to cut through that if I

23 can.

24   A.   Sure.

25   Q.   But you recall we had that discussion?

1   A.   Yes, we did.

2   Q.   But I would like to confirm for the

3 record that you did conduct the construction audits

4 and prudence reviews of these particular plants.

5 Would you agree with me as I go through that you were

6 involved in these construction audits and --

7   A.   I participated in the construction

8 audits, yes.

9   Q.   Okay.

10   A.   Doing an engineering review, which we now

11 call engineering review, yes.

12   Q.   The AmerenUE Meramec combustion turbine?

13   A.   There was some initial work done on that,

14 yes.

15   Q.   And the Empire State Line Combined cycle

16 unit?

17   A.   Yes.

18   Q.   And the Empire Energy Center Units 3 and

19 4?

20   A.   Yes.

21   Q.   The West Gardner Units 1, 2, 3 and 4?

22   A.   Yes.

23   Q.   The 77-megawatt gas turbine located at

24 Paola, Kansas; what they call the Osawatomie project?

25   A.   Yes.

1   Q.   And the Hawthorn 6 plant?

2   A.   Yes.

3   Q.   The Hawthorn 7?

4   A.   Yes.

5   Q.   And Hawthorn 8?

6   A.   Yes.

7   Q.   Hawthorn 9?

8   A.   Yes.

9   Q.   67 wind generators at Spearville, Kansas?

10   A.   Yes.

11   Q.   And I believe you were also involved in

12 the Hawthorn 5 rebuild?

13   A.   Yes.

14   Q.   And then I guess more recently the La

15 Cygne SCR project?

16   A.   Yes.

17   Q.   And now in this case and I guess the last

18 case to some extent, the KCPL case, the Iatan 1 SCR

19 and the -- the Iatan 2 supercritical coal plant in

20 this case?

21   A.   Yes.

22   Q.   Did I miss one? Did you get involved in

23 Empire Riverton plant or was there --

24   A.   Yes. There was a case where there was an

25 SCR put on at the Asbury plant for Empire. I did some

1 review on that. And then River-- the new combustion

2 turbine Riverton 12 at their Riverton generating plant

3 in Kansas.

4   Q.   Okay. Now, as I understand it, you've --

5 you participated in the Iatan 1 AQCS audit and the

6 Iatan 2 and the common plant review that occurred

7 in -- in this case at Iatan. Right?

8   A.   I'm hesitating because I don't

9 differentiate common plant, but yes, if it was part of

10 Iatan 1 and 2, yes.

11   Q.   Now, did you approach your job in this

12 case any differently than you approached the

13 construction audits and prudence reviews that you've

14 conducted in your previous 17 years at the Commission?

15   A.   No.

16   Q.   Did you have any instructions from anyone

17 that you should conduct this audit any differently

18 than you conducted your previous construction audits

19 at the Commission?

20   A.   No.

21   Q.   I believe you testified in your

22 deposition that you didn't take any instructions on

23 how to conduct this construction audit from the lead

24 coordinator, Mr. Schallenberg; is that right?

25   A.   That's correct.

1   Q.   And you didn't have any conversations

2 with Mr. Schallenberg discussing how you were to

3 conduct this construction audit and prudence review?

4   A.   That's correct.

5   Q.   Did you have any directions from Mr. Wess

6 Henderson regarding how you were to conduct the

7 construction audit and prudence review?

8   A.   No.

9   Q.   And what about Ms. Natelle Dietrich? Did

10 you have any discussions with her about how to conduct

11 it?

12   A.   No.

13   Q.   You didn't need to have any instructions

14 because you approached your construction audit in the

15 same manner that you approached your previous audits;

16 is that right?

17   A.   That's correct.

18   Q.   Let's turn for a minute to the

19 November 3rd audit report. I think your section,

20 page 29.

21   A.   Okay.

22   Q.   Beginning at lines 29, I think you state

23 there, Therefore, engineering Staff requested from

24 KCPL copies of all approved change orders with a value

25 change, and in parenthesis, increase or decrease,

 1 parenthesis closed, $50,000 or more. As of

 2 September 20, 2010, engineering Staff has received

 3 from KCPL copies of 647 change orders dated through

 4 July 2010 having associated cost changes of $50,000 or

 5 more; is that right?

 6   A.   That's correct.

 7   Q.   Then you go on to describe the fact that

 8 you did an initial review of those 647 change orders

 9 and then, as I understand it, comprehensively reviewed

10 222 change orders; is that right?

11   A.   Yes.

12   Q.   And then on page 30 of that report if you

13 go to line 17, you state, The engineering Staff

14 discussed the 222 change orders selected with KCPL

15 construction project personnel to understand the

16 reasons for each of the change orders. In addition,

17 the engineering Staff reviewed contractor, slash,

18 vendor contracts, purchase orders, drawings and

19 correspondence related to the change orders; is that

20 right?

21   A.   Yes. Not necessarily for each change

22 order.

23   Q.   Okay.

24   A.   It depends on the change order, but yes.

25   Q.   Is a change order an indication of either

1 a change in the original contract or -- or work order

2 that is a change in the work or a change in the price?

3   A.   A change order, yes, is a change in the

4 work either above and beyond the contract or purchase

5 order. And yes, it may reflect an additional or

6 deduction of costs.

7   Q.   And a change order typically explains the

8 reason for the change in some aspect of the

9 construction project; is that right?

10   A.   Yes.

11   Q.   Now, what -- what's a purchase order?

12 How does that differ from a change order?

13   A.   I believe a purchase order is issued to a

14 vendor or contractor requesting services to be done or

15 a purchase of a piece of equipment.

16   Q.   And did you review change orders and

17 purchase orders?

18   A.   I reviewed mostly change orders. There

19 may have been a couple of purchase orders that were

20 associated with a better explanation of the change

21 order, but I did not look at all purchase orders.

22   Q.   Can a purchase order be helpful in

23 understanding the reasons for an increased cost that

24 may have shown up on a change order?

25   A.   I believe it could, yes.

1   Q.   Now, in that November 3rd audit report if

2 you go to page 30, I believe you indicated that you

3 did an initial review of 647 change orders and

4 determined that 385 change orders were engineering

5 related; is that right?

6   A.   Yes.

7   Q.   And you then selectively reviewed those

8 385 change orders, but more -- you took a deeper dive,

9 as I heard the term used here, and comprehensively

10 reviewed 222 of the 385 change orders?

11   A.   That's correct.

12   Q.   Now, as I understand your report on

13 page 30, after your review of the change orders, you

14 classified the 222 change orders into six categories;

15 is that right?

16   A.   That's correct.

17   Q.   And these six categories appear to

18 include the four categories of change orders that we

19 discussed in the deposition that you utilized in

20 previous construction audits; is that right?

21   A.   That's correct.

22   Q.   For example, your -- your type one

23 included change orders associated with final design

24 changes or final engineering changes; is -- is that

25 correct?

1   A.   Yes.

2   Q.   And you note that KCPL awarded some

3   contracts before the completion of final design?

4   A.   Yes.

5   Q.   And, therefore, there were changes due to

6   work that started before the final design or final

7   engineering was completed; is that right?

8   A.   Yes.

9   Q.   Now, in addition, additional work was

10 added to some of those contracts along the way; is

11 that true?

12   A.   Yes.

13   Q.   These type one change orders appear to be

14 the same as the type one change orders that were

15 allowed to be included in rates in your previous

16 construction audits that we discussed in the

17 deposition.

18   A.   I -- that's my recollection, yes.

19   Q.   Okay. Now, did you recommend any of the

20 change -- type one change orders be disallowed in

21 rates in this case?

22   A.   No, I did not.

23   Q.   In the -- in the table that appears on

24 page 31, it appears that there were 36 of the 222

25 change orders that fell into that type one category;

1 is that right?

2   A.   Yes.

3   Q.   The type two change order was also I

4 think discussed in that audit report. And those were

5 change -- change orders associated with changes made

6 by the company; is that right?

7   A.   Yes.

8   Q.   And these change orders -- or changes

9 were made for -- for efficiency or to make the

10 operation safer or for maintenance purposes at

11 Iatan 2; is that right?

12   A.   Yes.

13   Q.   It appears that 35 of the 222 that you

14 looked at fell into that category?

15   A.   Yes.

16   Q.   Now, these type two change orders appear

17 to be the same as the type two changes that were

18 allowed to be included in rates in your previous

19 audits that we discussed in your deposition.

20   A.   I believe that's correct, yes.

21   Q.   Did you recommend that any of the type

22 two change orders be disallowed in rates in this case?

23   A.   No, I did not.

24   Q.   Then there was a type three change order

25 that are for field design change orders; is that

1 right?

2   A.   Yes.

3   Q.   The type three change orders were made

4 due to final design decisions left to be worked out

5 during the actual construction and design changes made

6 in the field; is that right?

7   A.   Yes.

8   Q.   The type three change orders also

9 included changes in the way work was done in order to

10 avoid potential problems in the field; is that right?

11   A.   Yes.

12   Q.   And I believe your -- your report

13 indicates that 66 of the 222 change orders that you

14 comprehensively reviewed fell into that type three

15 category?

16   A.   Yes.

17   Q.   Now, these type three change orders

18 appear to be the same as the type three change orders

19 that were allowed to be included in rates in your

20 previous construction audits, is that right, that we

21 discussed?

22   A.   I seem to think that we had a discussion

23 about me splitting three into three and four in this

24 case if my memory serves me right.

25   Q.   And I think we -- we did discuss some

1 re-categorization.

2   A.   Yes.

3   Q.   You added a five and a six that we talked

4 about as well?

5   A.   That's correct. That's correct.

6   Q.   But did you recommend any of the type

7 three change orders be disallowed in rates in this

8 case?

9   A.   No.

10   Q.   Then when we looked at changes you

11 classified as type four, those were for field

12 construction changes. Correct?

13   A.   Yes.

14   Q.   Those were made due to unforeseen

15 problems or obstacles encountered during construction;

16 is that correct?

17   A.   Yes.

18   Q.   Now the type four change orders also

19 included changes that needed to be made to change the

20 design, to make repairs or modify materials or

21 equipment to make it work as required; is that right?

22   A.   Yes.

23   Q.   And I believe 44 of the 222 change orders

24 you comprehensively reviewed fell into that category;

25 is that correct?

1   A.   Yes.

2   Q.   Now, those type four change orders appear

3 to be the same as the type four or very similar to the

4 ones that you allowed in rates in previous

5 construction audits; is that right?

6   A.   Yes. I think previously I said something

7 about there was only one about field construction

8 issues and I created two. So yes, there were -- would

9 have been in one of the buckets before, yes.

10   Q.   And you recommended that any of the type

11 four change orders in this case be allowed in -- or

12 not be disallowed in rates; is that right?

13   A.   That's correct.

14   Q.   Now, as we mentioned here just a second

15 ago, you did create two additional buckets, a type

16 five and a type six; is that right?

17   A.   I believe so, yes.

18   Q.   The type five related to changes

19 associated with contracts that were written such that

20 the final costs would be determined at a later date;

21 is that right?

22   A.   That's correct.

23   Q.   The amount of the work or the number of

24 items purchased or the prices were to be trued up at a

25 later date in this category; is that right?

1   A.   Yes.

2   Q.   And 38 of the 222 change orders fell into

3 this type five category; is that right?

4   A.   Yes.

5   Q.   Now, Mr. Elliott, is there anything

6 inherently unreasonable about a contract where such

7 items are to be determined at a later date?

8   A.   From -- from my engineering perspective,

9 I -- I understand that you may not know exactly what

10 you want, but you know that you're going to need to

11 order some and you may make that decision at a later

12 point. From an engineering standpoint, I understand

13 that, yes.

14   Q.   And such contracts exist on a large

15 construction project like Iatan 1 or Iatan 2; is that

16 correct?

17   A.   Did you ask me do they?

18   Q.   They exist?

19   A.   Yeah. I believe so.

20   Q.   Now, did you recommend any of the type

21 five change orders in this case be disallowed in

22 rates?

23   A.   No.

24   Q.   And finally, I think there were three

25 change orders that were related to changes of the --

1 of this type of contract; is that right?

2   A.   Yes.

3   Q.   Now, these were for changes associated

4 with time and -- time and material contracts that were

5 converted to fixed price contracts; is that right?

6   A.   Yes.

7   Q.   Now, is -- from your perspective as an

8 engineer, is there anything inherently unreasonable

9 about converting a time and materials contract into a

10 fixed price contract?

11   A.   From an engineering standpoint, no.

12   Q.   Did you recommend any of the type six

13 change orders be disallowed in rates in this case?

14   A.   No.

15   Q.   So as I understand your testimony, you've

16 not recommended in your section of the November 3rd

17 construction audit report or your testimony in the

18 case that the Commission disallow any of the costs

19 associated with the change orders for types one, two,

20 three, four, five or six; is that right?

21   A.   Based on my engineering review, that's

22 correct.

23   Q.   And in past cases, the Staff has allowed

24 in rates similar cost increases related to other

25 electric power plants based upon the results of

1 similar audits; is that right?

2   A.   Yes.

3   Q.   Now, if the Commission asked you to apply

4 the same type of analysis in this case that you've

5 applied in the previous construction audits in your

6 17-year career at the Commission, wouldn't you tell

7 the Commission that you found no reason to disallow

8 any of the costs based upon your review in this case?

9   A.   That's correct. Based on my review.

10   MR. FISCHER: Judge, I'd like to visit

11 with Mr. Elliott about his work papers. They're

12 marked confidential so perhaps we could go in-camera.

13   JUDGE PRIDGIN: All right. Just a

14 moment, please. I'm assuming everybody who's in here

15 can stay.

16   (REPORTER'S NOTE: At this point, an

17 in-camera session was held, which is contained in

18 Volume 26, pages 2386 to 2396 of the transcript.)

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1   JUDGE PRIDGIN: Mr. Fischer, thank you.

2 We're back in public forum. When you're ready.

3 DAVID ELLIOTT testified as follows:

4 BY MR. FISCHER:

5   Q.   Now, Mr. Elliott, I believe you stated in

6 your deposition that you also discussed the 222 change

7 orders with KCPL construction project personnel to

8 understand the reasons for those change orders?

9   A.   To -- to -- to attempt to get a full

10 understanding, yes, I did.

11   Q.   And Mr. Lange also assisted you in your

12 review?

13   A.   Mr. Lange par-- was there, yes.

14   Q.   Isn't it true that you and Mr. Lange

15 developed fairly long lists of questions regarding

16 those change orders that you discussed with the KCPL

17 personnel?

18   A.   I don't think we had a formal list that

19 we presented to KCP&L. I think there were notes that

20 I took based on my review. Basically how it would

21 work, we would sit down with Mister -- Mr. Davis and

22 we would go through each change order in the pile

23 and -- and have a discussion. I don't remember a

24 specific list given to him of questions.

25   Q.   Well, I think you told me you discussed

1 every change order with KCPL?

2   A.   The 222, yes.

3   Q.   Isn't it true that you spent a couple of

4 long days with Mr. Forrest Archibald, Mr. Brad Lutz

5 and Mr. Brent Davis going over each of those

6 222 change orders?

7   A.   That's correct.

8   Q.   You stayed at the site until

9 eight o'clock or so going over those change orders?

10   A.   At least one evening, yes.

11   Q.   And did the KCPL folks answer your

12 questions and give you explanations for the cost

13 variances of those change orders the best that they

14 could?

15   A.   I believe so.

16   Q.   Based on your review, were you able to

17 identify the cost variances related to those change

18 orders up or down?

19   A.   I'm sorry. I -- I -- could you re --

20 re-ask me the question?

21   Q.   Yes, sir. Based on your review, were you

22 able to identify the cost increases or decreases that

23 were related to specific change orders?

24   A.   Yes. The change orders either identified

25 an increase or a decrease and we discussed all of

1 those of the 222, yes.

2   Q.   And based on your review and your

3 inquiries of the KCPL personnel, were you able to

4 verify the change orders, that they were valid and

5 understand the reasons why they were done?

6   A.   From an engineering perspective, yes.

7   Q.   And you were able to identify the cost

8 increases and explain the reason for the cost

9 increases from the engineering perspective?

10   A.   I -- I looked at the change orders and

11 understood why the change orders were done. There was

12 a cost associated with that. I did not make a

13 determination of those costs, but yes, there were

14 costs associated with those change orders.

15   Q.   And you were able to identify them?

16   A.   They were on the change order, yes.

17   Q.   Okay. And the change order had the

18 reason for the changes?

19   A.   The change order had reasons. And again,

20 I had discussions with -- with KCPL personnel on those

21 222 change orders.

22   Q.   And -- and don't your work papers that --

23 that we went over in your deposition and talked about

24 today, don't they summarize essentially the results of

25 your analysis of your construction audit and prudence

1 review of Iatan 1 and Iatan 2?

2   A.   Those sheets that are in my -- in the

3 reports that were filed, is that what you're --

4   Q.   Yes.

5   A.   Yes, yes.

6   Q.   In your work papers. I'm not sure they

7 were filed with the report, but --

8   A.   My work papers were what I used to come

9 to my conclusions and put the things in the -- put the

10 change orders in the buckets. And, yes, that was the

11 end result was what was in the report, yes.

12   Q.   Did Mr. Schallenberg, Mr. Hyneman or

13 Mr. Majors join you in your discussions with KCPL

14 construction project personnel when you were trying to

15 understand the reasons for each of those -- those

16 change orders?

17   A.   No.

18   Q.   Do you know why the auditors did not join

19 you for those discussions about the change orders?

20   A.   I do not know.

21   Q.   Did any of these gentlemen ever tell you

22 that they had separate discussions with KCPL

23 construction personnel to understand the reasons for

24 the change orders?

25   A.   I don't recall that discussion, no.

1   Q.   Were you ever invited to any meetings

2 with KCPL personnel that the Staff auditors had

3 scheduled to discuss the change orders?

4   A.   I don't believe so.

5   Q.   Mr. Elliott, are you familiar with the

6 November 3rd Staff construction audit report where the

7 Staff -- where it states -- it's on page 6. Do you

8 need a full copy?

9   A.   I don't have anything but my section of

10 those reports. I'm sorry.

11   Q.   Okay. Let me give you a complete copy.

12 On page 6.

13   A.   Okay. I'm there.

14   Q.   I don't have my -- a line number, but

15 there does it state that Staff has proposed an

16 adjustment for the Iatan project cost overruns that

17 have been incurred and charged to the project but have

18 not been identified and explained by KCPL's cost

19 control system of the Iatan project?

20   A.   That's what it says.

21   Q.   Now, is it your understanding the Staff

22 auditors in this part of the audit report have

23 proposed to disallow the audited costs that exceeded

24 the KCPL control budget estimate?

25   A.   That is my understanding.

1   Q.   Is it your understanding that that

2 control budget estimate, the 2006 control budget

3 estimate for Iatan 2, was developed at a time when

4 only 20 to 25 percent of the engineering work was

5 completed?

6   A.   I'm not sure that I know exactly the

7 percentage of engineering, but it was done early

8 before all -- all the engineering was done, yes.

9   Q.   And you don't have reason to dispute

10 company testimony along that line; is that right?

11   A.   No, I do not.

12   Q.   Mr. Elliott, in the -- any of the

13 construction audits and prudence reviews that you've

14 done over the last 17 years here at the Commission,

15 with the exception I guess of this case, have you ever

16 been involved in a case in which the rate case

17 auditors recommended the disallowance of all of the

18 increased construction costs above the original budget

19 estimate when you testified that as the Staff

20 engineer, that there were no engineering issues that

21 needed to be addressed?

22   A.   I don't believe they did, no.

23   Q.   Have you ever been involved in a case

24 during your time here at the Commission in which the

25 Staff auditors did not adopt your engineering

1 recommendations that the full cost of the plant should

2 be included in rates?

3   MS. KLIETHERMES: Objection, assumes

4 facts not in evidence.

5   JUDGE PRIDGIN: Mr. Fischer?

6   MR. FISCHER: Judge, I think we've been

7 going over this. We talked about it in the deposition

8 as well that there are cases --

9   MS. KLIETHERMES: You made the statement

10 that his recommendation is that all costs be approved.

11 That is in no way his recommendation in this case.

12   MR. FISCHER: Maybe I need to make it in

13 the negative.

14 BY MR. FISCHER:

15   Q.   Have you ever been involved in a case in

16 which the Staff auditors did not adopt your -- your

17 suggestion that there needed to be no disallowances

18 from an engineering perspective?

19   A.   Yes. From an engineering perspective.

20   Q.   You didn't mean to say you have been

21 involved in a case like that?

22   A.   I'm sorry. I --

23   Q.   I had double negatives.

24   A.   I think you did, sir. I meant to say

25 that I was -- I'm not aware that I was involved in a

1 case with what you said, I believe is what I meant to

2 say.

3   Q.   Okay. I apologize for the confusion

4 there.

5   A.   Okay.

6   Q.   And as the Staff engineer that completed

7 the construction audit of Iatan 1 and Iatan 2, you've

8 not recommended that any of those type one through six

9 change orders that you reviewed be excluded from

10 rates. Is that what I understand from your testimony

11 earlier?

12   A.   I -- I made no recommended disallowance

13 based on my engineering review of the 222 change

14 orders.

15   Q.   And those change orders that you reviewed

16 represented 90 percent of the cost increases

17 associated with Iatan 2?

18   A.   Yeah. Yes.

19   Q.   Mr. Elliott, while you were onsite

20 looking at change orders, were there other documents

21 that you might have reviewed that were related to --

22 to the -- the changes that were going on, the cost

23 increases that happened?

24   A.   Yes. I believe there were other

25 documents with certain ones, yes.

1   Q.   And would it be necessary from your

2 perspective, to look at more than just change orders

3 to understand those cost increases?

4   A.   In some cases, yes.

5   Q.   Did you look at recommendations to

6 awards?

7   A.   No, I did not.

8   MR. FISCHER: Okay. I'd like to have

9 another exhibit marked, Judge.

10   JUDGE PRIDGIN: I believe we'd be at KCPL

11 90.

12   MR. FISCHER: It's an HC exhibit from the

13 2007 rate case. It should be HC.

14   JUDGE PRIDGIN: This will be KCPL 90-HC.

15   (KCP&L Exhibit No. 90-HC was marked for

16 identification.)

17 BY MR. FISCHER:

18   Q.   Mr. Elliott, I'm -- I've handed you

19 what's been marked as Exhibit 90-HC and I believe we

20 talk about it in the deposition as Exhibit 1 HC. Do

21 you recognize this as your true-up direct testimony in

22 KCPL's rate case ER-2007-0291?

23   A.   Yes

24   MR. FISCHER: I'd move for admission of

25 the exhibit.

1   JUDGE PRIDGIN: Any objection?

2   MS. KLIETHERMES: No objection.

3   JUDGE PRIDGIN: Hearing none, KCPL 90-HC

4 is admitted.

5   (KCP&L Exhibit No. 90-HC was received

6 into evidence.)

7 BY MR. FISCHER:

8   Q.   Now, in that 2007 KCPL rate case, you

9 personally conducted the construction audit of the La

10 Cygne selected catalytic reduction equipment; is that

11 right?

12   A.   Yes.

13   Q.   And I'd like to ask you to turn to page 3

14 of your testimony in that case.

15   A.   Okay.

16   Q.   At lines 1 through 4. And there it

17 states, A construction audit is Staff's review of a

18 construction project to determine the final cost --

19 excuse me, final construction cost of the project and

20 whether any adjustment to the final cost should be

21 made because additional costs incurred for the project

22 were not prudent; is that right?

23   A.   That's what it says, yes.

24   Q.   Do you believe that this definition

25 accurately describes the construction audit and

1 reviews that you've done over the last 17 years with

2 the Commission?

3   A.   Yes.

4   Q.   If you could look down to lines 21

5 through 23, there in that case you indicated that, My

6 responsibility on this construction audit was to

7 review the changes to the construction costs

8 associated with the project to determine if the

9 changes were prudent in regard to the engineering

10 aspects of the project; is that correct?

11   A.   That's correct.

12   Q.   Does this describe generally your

13 responsibility when you've conducted construction

14 audits at the Commission?

15   A.   Yes.

16   Q.   Now, your goal is to review the changes

17 to the construction costs associated with the project

18 under review to determine if the changes were prudent

19 in regard to the engineering aspects of the project;

20 is that right?

21   A.   That's correct.

22   Q.   Now I think in your deposition you

23 indicated that this description described your

24 responsibilities with regard to your construction

25 audit and prudence review of Iatan 1 and Iatan 2; is

1 that right?

2   A.   Yes.

3   Q.   And then if we go back to the -- the

4 November 3rd audit report, your engineering section --

5   A.   Yes.

6   Q.   -- at page 29, lines 11 through 12 --

7   A.   Yes.

8   Q.   -- don't you say there that, Based on its

9 engineering review of KCPL's change orders,

10 engineering Staff found no engineering concerns with

11 any of the Iatan 2 or Iatan common plant change orders

12 reviewed; is that right?

13   A.   That's correct.

14   Q.   There was a footnote there that

15 identified yourself and I believe Mr. Shawn Lange as

16 the engineering Staff that conducted the engineering

17 review?

18   A.   Yes.

19   Q.   And I believe you reached a similar

20 conclusion, didn't you, that there were no engineering

21 issues regarding change orders reviewed in the -- in

22 the earlier construction audit, the August 6th report

23 on Iatan 1?

24   A.   That's correct.

25   Q.   And you were the author of that section

1 of the report, is that right, the August 6th report?

2   A.   Yes.

3   Q.   Now, you made field visits out to the

4 construction site; is that right?

5   A.   Iatan, yes.

6   Q.   Didn't you tell me that you made about

7 20 visits out to the construction site during the --

8 that period that you were auditing Iatan 1 and 2?

9   A.   At the time of the deposition, I had been

10 there 20 times. I have been there once since.

11   Q.   During a field visit, the engineering

12 Staff would meet with the construction personnel and

13 company personnel to -- to review the overall progress

14 of the construction, review the documentation related

15 to the changes that were occurring on -- while you

16 were there?

17   A.   Yes.

18   Q.   And it was during those field visits that

19 you'd review the change orders?

20   A.   We may have had some brief discussion on

21 change orders. It wasn't until I believe in September

22 that we actually went through every single 22-- 222

23 because at the time I hadn't picked out the 222 and I

24 didn't know how many total there would be before the

25 engineering report was due.

1   So there may have been some brief

2 discussions of change orders as we got them and were

3 onsite. And if we saw -- if there was a particular --

4 we would tour the site and if there was some pointed

5 out -- some of the change orders could be pointed out

6 to us and have discussions on that, yes.

7   Q.   And I think during your deposition you

8 indicated that during your review of those change

9 orders, you would -- you would identify the costs of

10 that change order, what -- the costs that were

11 associated with it?

12   A.   There was cost associated with the change

13 order because the change order would identify the

14 cost, yes.

15   Q.   And I'd like for you to go to page 10 of

16 your -- of the testimony that is 90-HC -- I'm sorry.

17 I think I've got the wrong page number. No, I'm -- my

18 reference, I'm sorry, is to the audit report.

19   A.   Okay.

20   Q.   On page 10 --

21   A.   Okay.

22   Q.   -- at lines 4 through 6 I think is there

23 a reference that says that, If it's determined there

24 are engineering concerns with a change order, the

25 engineers would share this information with the

1 auditing Staff and consult with Staff management to

2 determine the appropriate response?

3   A.   I'm sorry. I must be in the wrong

4 document. I'm sorry.

5   Q.   I've probably got the wrong document. Is

6 that --

7   A.   I'm in the November 6th -- or

8 November 3rd Staff report. Is that where I should be?

9   Q.   Well, let me see. I think it's the

10 August 6th report.

11   A.   Okay. I don't have that complete report.

12   Q.   Okay.

13   MR. FISCHER: Thank you.

14 BY MR. FISCHER:

15   Q.   Could you --

16   A.   Okay.

17   Q.   -- refer to page 10.

18   A.   Yes.

19   Q.   At lines 4 through 6.

20   A.   Yes.

21   Q.   There does it indicate that if it's

22 determined that there are engineering concerns with a

23 change order, the engineers would share this

24 information with the auditing Staff and consult with

25 Staff management to determine the appropriate

1 response?

2   A.   Yes.

3   Q.   You also state there on line 6 that, In

4 addition, the engineers work with auditing Staff on

5 specific issues that are raised during the course of

6 the construction audit to ensure that both an

7 engineering and an auditing perspective are provided;

8 is that right?

9   A.   Yes.

10   Q.   Now, is that a correct description of

11 your activities for both the Iatan 1 and the Iatan 2

12 construction audits?

13   A.   In -- in general, yes. I'm not sure --

14 since there were no issues raised by me, I don't

15 believe I had a conversation with Staff auditing or

16 Staff management and I don't believe there was any

17 specific issue that -- that I worked with the auditors

18 on looking at.

19   Q.   You just mentioned a minute ago that

20 you'd gone back to the Iatan site since our

21 deposition?

22   A.   Yes.

23   Q.   What was the purpose of that visit?

24   A.   Just to follow up to see if the plant was

25 still on and working.

1   Q.   Was it -- was it running okay?

2   A.   Yes. 900-some megawatts.

3   Q.   Wow. Its -- its nameplate's 850?

4   A.   Yes.

5   Q.   I believe in your deposition you -- you

6 testified that you recalled seeing the auditing Staff

7 at the Iatan site one time?

8   A.   To the best of my recollection, at least

9 one time, yes.

10   Q.   Any more than that?

11   A.   I can't remember if there were two visits

12 or one visit. I really can't. I remember at least

13 one.

14   Q.   Okay. But less than five?

15   A.   Yes.

16   Q.   Now, in that August 6th report on page 9

17 at line 31, I believe you indicate that during your

18 field visits, you toured the construction site,

19 reviewed documents related to changes, including

20 changes in the schedule and costs, and received

21 updates on safety related aspects of the project; is

22 that right?

23   A.   Yes.

24   Q.   And I believe you also discussed the

25 construction progress and -- and future milestones and

 1 reviewed any relevant documentation while you were on

 2 the site --

 3   A.   Yes.

 4   Q.   -- is that right?

 5   A.   Yes.

 6   Q.   You attended progress meetings of

 7 multiple contractors and KCPL personnel where

 8 scheduling issues, safety issues and contractor

 9 interference issues were discussed; is that right?

10   A.   We attended several, yes.

11   Q.   Were you given the opportunity to attend

12 the meetings you desired to attend at the Iatan site?

13   A.   Yes.

14   Q.   Did you feel the KCPL personnel onsite

15 were generally cooperative and helpful to you in

16 completing your tasks?

17   A.   Yes.

18   Q.   You also attended quarterly meetings held

19 in Jefferson City over the years where KCPL -- where

20 the strategic infrastructure or status reports were

21 discussed with Staff, Public Counsel and other

22 signatories to the regulatory plan; is that right?

23   A.   Yes.

24   Q.   Did KCPL provide the Staff with quarterly

25 status reports every three months or so after the

1 projects were commenced?

2   A.   I'm not specific on the timing, but they

3 were quarterly reports, yes.

4   Q.   Were those lengthy documents that

5 detailed the progress of the construction project, the

6 cost changes and schedule changes?

7   A.   I believe they highlighted it, yes.

8   Q.   And those status reports included reports

9 showing the critical path milestones and where the

10 project was ahead of schedule or where it was behind

11 schedule; is that right?

12   A.   Yes.

13   Q.   During your deposition, I believe you

14 testified that, I believe that KCPL came to the

15 meeting with documents updating their project schedule

16 and costs and presented those to the people in the

17 room and opened it up for questions and attempted to

18 answer all the questions that were asked.

19   Is that a fair --

20   A.   Yes.

21   Q.   -- summary of what happened?

22   A.   My memory is you're correct, yes.

23   Q.   And did those meetings generally include

24 discussions of the cost reports, the schedules and any

25 construction issues that were ongoing at the time?

1   A.   Yes.

2   Q.   Did those meetings discuss where costs

3 were increasing or where the project was experiencing

4 scheduling concerns?

5   A.   I believe those were brought up, yes.

6   Q.   Were construction issues identified by

7 KCPL and discussed with the Staff and the other

8 signatories during those meetings?

9   A.   I believe so, yes.

10   Q.   For example, do you remember the crane

11 accident that occurred on May 23rd? Was that

12 discussed at one of those quarterly meetings?

13   A.   Yes. I believe it was.

14   Q.   Do you recall that we discussed the

15 company's cost control system and the various cost

16 reports that were generated by it?

17   A.   I believe the cost control report was --

18 was reviewed in those meetings, yes.

19   Q.   And in your deposition I believe you

20 testified that you personally felt that KCPL

21 construction team was providing relevant information

22 from your personal -- personal perspective; is that

23 right?

24   A.   From my personal perspective, that's what

25 I believe, yes.

1   Q.   The room was generally full, wasn't it,

2 when we met down in 210?

3   A.   Yes, it was.

4   Q.   And there were other members of your

5 engineering Staff like Mr. Lange or Mister -- or

6 perhaps Ms. -- Ms. Mantle that might have attended?

7   A.   Yes.

8   Q.   And do you agree that Mr. Schallenberg

9 was always an active participant -- or was very often

10 an active participant in those quarterly meetings?

11   A.   I would say so, yes.

12   Q.   Did Mr. Hyneman and Mr. Majors sometimes

13 attend those quarterly meetings?

14   A.   My -- my recollection is yes, they did.

15   Q.   And sometimes Commission Staff lawyers or

16 lawyers for other parties that are signatories?

17   A.   Yes. That's my recollection.

18   Q.   Isn't it true that Mr. Brent Davis, Terry

19 Foster, Carl Churchman, Forrest Archibald, Denise

20 Shewmaker, Scott Hydebrink, Bob Bell, Ken Roberts,

21 Eric Gould, Chris Giles and Curtis Blanc have attended

22 some of these meetings in your presence?

23   A.   Most of those I recognize. I'm not sure

24 I recognize a couple of those people that I could

25 physically point them out, but the majority of those,

1 yes, I would say attended the meetings.

2   Q.   And do you recall that Mr. Bill Downey,

3 the president of the company, attended one of the

4 early meetings?

5   A.   That's my recollection is he attended one

6 of the early meetings, yes.

7   Q.   And often Mr. Mills or other

8 representatives of the Public Counsel or other

9 signatory parties were in attendance; is that right?

10   A.   Yes. I believe so.

11   Q.   And sometimes there were members of -- or

12 representatives of the joint owners of the project

13 like Empire or MJMEUC?

14   A.   Yes. That's correct.

15   Q.   Mr. Elliott, how would you describe your

16 relationship -- your personal relationship with the --

17 with KCPL personnel and their staff?

18   A.   Very professional.

19   Q.   Let's go back to that August 6th Staff

20 audit report. On page 10 at lines 25 through 26, the

21 Staff report indicated that Staff discussed with KCPL

22 a majority of these change orders in order to better

23 understand the reason for the change order; is that

24 right?

25   A.   Yes.

1   Q.   Did you feel like the KCPL personnel

2 attempted to answer your questions with regard to

3 those change orders?

4   A.   I believe so, yes.

5   Q.   Then you go onto state, The reasons

6 include -- and I think it's the reasons for the change

7 orders, but the reasons include design maturation,

8 design changes, interference issues and improved

9 operation maintenance; is that right?

10   A.   Yes.

11   Q.   Finally then on paragraph 4 of page 10 of

12 that report you state that, Staff has determined there

13 are no engineering issues regarding the change orders

14 reviewed?

15   A.   That's correct.

16   Q.   So just to summarize, is it correct to

17 conclude that the Staff has determined there are no

18 engineering issues regarding the change orders related

19 to Iatan 1 or Iatan 2?

20   A.   That's correct.

21   Q.   Since you found no engineering issues or

22 concerns regarding the change orders of Iatan 1 or 2,

23 would it be correct to conclude that it was

24 unnecessary to share any engineering concerns with the

25 auditing Staff?

1   A.   Yes.

2   Q.   Was it, therefore, also unnecessary to

3 consult with the auditing Staff and consult with Staff

4 management to determine appropriate responses because

5 you didn't find any issues?

6   A.   That's correct.

7   Q.   In your deposition you also testified, I

8 believe, that you didn't recall any discussions with

9 the auditing Staff or Mr. Henderson regarding whether

10 you had any disallowances to propose related to Iatan

11 1 and Iatan 2; is that right?

12   A.   I don't recall a discussion, no.

13   Q.   Are you -- you don't recall a discussion?

14   A.   I'm sorry, yes, I don't recall a

15 discussion.

16   Q.   Okay. Now, the August 6th report also

17 included various Staff disallowances recommended for

18 Iatan 1; is that right?

19   A.   I believe so.

20   Q.   And I believe those were developed by the

21 auditing Staff rather than yourself?

22   A.   That's correct.

23   Q.   So those recommendations -- those

24 recommended disallowances were not based on your

25 findings?

1   A.   That's correct.

2   Q.   In other words, those specific

3 disallowances contained in the August 6th construction

4 audit and prudence review report are not based on your

5 findings since you found there were no engineering

6 issues at Iatan 1?

7   A.   That's correct.

8   Q.   Now, the November 3rd construction audit

9 report also included various Staff disallowances

10 recommended for Iatan 2 and I think also Iatan 1, they

11 were included again; is that right?

12   A.   I believe so, yes.

13   Q.   Now, were those recommended specific

14 disallowances contained in that November 3rd report

15 developed by the auditing Staff rather than yourself?

16   A.   Yes.

17   Q.   Those adjustments were not being

18 recommended by the engineering Staff based on your

19 findings there were no engineering issues at Iatan 1

20 or Iatan 2?

21   A.   That's correct.

22   Q.   There was also a December 31, 2009 audit

23 report. Do you recall that?

24   A.   Yes.

25   Q.   The cover pleading that was filed

1 indicated that the Staff auditors responsible for the

2 report were Mr. Schallenberg, Mr. Hyneman and

3 Mr. Majors. Is that your recollection?

4   A.   That's my recollection, yes.

5   Q.   Now, your name wasn't listed as one of

6 the Staff persons that was responsible for that

7 December 31, 2009 Iatan report; is that right?

8   A.   That's correct.

9   Q.   Were -- would it be correct to conclude

10 that you didn't have anything to do with that report?

11   A.   There was no engineering review section

12 of that report, I believe. So yes, there -- I had

13 nothing to do with the report.

14   Q.   Did you have any substantive input into

15 the Staff's proposed disallowances for Iatan 1 and 2

16 contained in the December 31 report?

17   A.   No.

18   Q.   So those adjustments were developed by

19 the auditing Staff?

20   A.   I believe so, yes.

21   Q.   Would it be correct to conclude that you

22 did not have any substantive input into the specific

23 disallowances contained in the April 2009 report, the

24 December 31, 2009 report or the November 3rd, 2010

25 construction audit report?

1   A.   That's correct.

2   Q.   Were you consulted about any of the

3 specific disallowances proposed by Mr. Schallenberg,

4 Mr. Hyneman or Mr. Majors in the Staff's November 3rd

5 or December 31 audit report?

6   A.   No.

7   Q.   Let's go back to your true-up testimony

8 in Case ER-2007-0291.

9   A.   Okay.

10   Q.   This testimony described the construction

11 audit and prudence review you conducted on the La

12 Cygne SCR project; is that right?

13   A.   Yes.

14   Q.   I'd like to refer you to page 4, lines 19

15 through 23.

16   A.   Okay.

17   Q.   There you're asked the question, Is it

18 unusual to have changes in costs on projects of this

19 size?

20   And you answer, No. Most construction

21 projects have changes in costs. Generally the larger

22 the project, the more complex the project is. The

23 more complex a project is, the more likely it is that

24 unforeseen situations will occur as construction

25 progresses.

1   Is that right?

2   A.   That's correct.

3   Q.   Do you agree with those statements today?

4   A.   That's my belief, yes.

5   Q.   Most construction projects have changes

6 in cost. Correct?

7   A.   Most of them, yes.

8   Q.   And the larger the project, the more

9 complex the project tends to be?

10   A.   That's my belief, yes.

11   Q.   Now, as the complexity of the

12 construction project increases, the more likely it is

13 that there will be unforeseen situations that occur at

14 that construction site; is that right?

15   A.   That's my belief, yes.

16   Q.   Now, in that testimony I think you

17 identified the four categories of major change orders

18 that we talked about and you looked at in this case;

19 is that correct?

20   A.   That's correct.

21   Q.   I'm not going to go through those again

22 since they're the same, but you found that the costs

23 that had increased due to the factors -- one of those

24 four factors, is that right, at La Cygne?

25   A.   That's correct.

1   Q.   And I believe you listed those changes

2   that -- and the amount of the cost increase or the

3   decrease associated with those in your Schedule 3; is

4   that right?

5   A.   That's correct.

6   Q.   Didn't you categorize the reasons for the

7   cost increases at La Cygne according to those -- those

8   same categories that are listed on Schedule 3?

9   A.   Yes.

10   Q.   And your Schedule 3 identifies the amount

11 of the cost change and the classification of the type

12 of change order; is that right?

13   A.   That's -- that is correct.

14   Q.   Is it sometimes prudent for a

15 construction project to begin construction before the

16 final design for the plant is entirely completed?

17   A.   Could -- could you repeat the question,

18 please?

19   Q.   Certainly. I believe we talked about it

20 in the deposition. And is it -- my question is, is it

21 sometimes prudent for a construction project to begin

22 construction before the final design for the entire

23 plant is completed?

24   A.   It could be, yes.

25   Q.   And such changes due to design changes

1 can be found to be reasonable, prudent and included in

2 rates; isn't that true?

3   A.   Could be, yes, true.

4   Q.   For example, in the La Cygne SCR

5 construction audit, Staff found there were some

6 increases due to the fact the work started before the

7 final design was completed; isn't that right?

8   A.   Yes.

9   Q.   And Staff found those cost increases were

10 reasonable and should be included in rates; is that

11 right?

12   A.   I believe there was no adjustment made,

13 yes.

14   Q.   Now, Staff found some cost increases that

15 were due to what some people might call fast tracking

16 in that case; is that right?

17   A.   I believe so, yes.

18   Q.   And those costs increases were not

19 disallowed from rates; is that right?

20   A.   I believe that's correct, yes.

21   Q.   Now, your Schedule 3 also identified

22 type 2 changes and those were included in rates.

23 Correct?

24   A.   Yes.

25   Q.   As was type 3 and type 4?

1   A.   Yes.

2   Q.   The Staff position was based, in part,

3 upon your construction audit findings that there were

4 no engineering issues related to the change orders at

5 La Cygne; is that right?

6   A.   Yes.

7   Q.   Now, in that 2007 KCPL rate case, were

8 you able to identify the cost increases using the

9 change orders and by talking to the KCPL personnel?

10   A.   Yes.

11   Q.   Would you agree that your Schedule 3

12 attached to your true-up testimony in that 2007 rate

13 case identified the specific reasons for the change

14 orders that occurred at the La Cygne SCR project?

15   A.   For the change orders identified. I

16 believe there were some that were just lumped

17 together, but yes.

18   Q.   And did you use the change orders and the

19 explanation of those changes as a basis for your

20 recommendations in the case?

21   A.   Yes.

22   Q.   It helped identify the reasons for the

23 change orders?

24   A.   Yes. Again, the buckets get -- the

25 change orders got put in buckets.

1   Q.   Were you aware in that case there was a

2   cost control system in effect that tracked those

3   changes?

4   A.   I don't recall.

5   Q.   Okay. But is it correct that you needed

6   to do some analysis and work on those change orders to

7   understand the reasons for the change orders?

8   A.   Yes.

9   Q.   Would you agree that you needed to

10   exercise your professional judgment in reviewing those

11   change orders?

12   A.   From an engineering perspective, yes.

13   Q.   But you were able to identify the dollars

14   associated with the change orders through the analysis

15   of those change orders and the explanations you

16   received from the company?

17   A.   The -- the costs associated with those

18   change orders were identified, and on Schedule 3

19   totaled up, yes.

20   Q.   Do you think the fact that you're a

21   trained engineer was helpful in understanding the

22   nature of those change orders?

23   A.   From an engineering perspective, yes.

24   Q.   We talked about this in the deposition, I

25   think. In your 35 years as an engineer, have you ever

1 noticed laypersons like lawyers or other people that

2 do not have the benefit of your professional

3 engineering and construction background, that they

4 might not understand the construction issues in the

5 same manner that a trained engineer might?

6   A.   That's possible, yes.

7   Q.   Sometimes non-engineers just don't have

8 the professional background to fully understand the

9 implications of things that are going on at a

10 construction site?

11   MR. MILLS: I object. That calls for

12 speculation.

13   JUDGE PRIDGIN: I'll overrule, let him

14 answer if he knows. If he doesn't know, he can say

15 so.

16   THE WITNESS: I don't know.

17 BY MR. FISCHER:

18   Q.   Wouldn't you expect the engineering

19 jargon on a change order might not be familiar to

20 non-engineers?

21   MR. MILLS: Again, I object. That calls

22 for more speculation. He's being asked to talk about

23 this -- this amorphus group of people who are

24 non-engineers and what they can or cannot understand

25 in specific situations. There's no way he could

1 possibly know. It's pure speculation.

2   MR. FISCHER: I'll withdraw. We'll move

3 on.

4 BY MR. FISCHER:

5   Q.   Mr. Elliott, in your -- your professional

6 education, your 35 years of practical experience as an

7 engineer, are they helpful in your understanding

8 construction issues?

9   A.   From an engineering perspective, yes.

10   Q.   Now, one of the largest change orders

11 listed on your Schedule 3 of your true-up direct

12 testimony in that 2007 rate case related to two

13 existing column foundations not capable of supporting

14 new loads, additional pile caps were installed, costs

15 not to exceed $500,000 per contract. Do you see that?

16   A.   Yes, I do.

17   Q.   Do you see that change order explanation

18 in the middle of the chart?

19   A.   I'm not sure of the middle, but yes, I

20 see the explanation.

21   Q.   As an engineer, are you able to

22 understand what that means?

23   A.   I would say so, yes.

24   Q.   Now, during your deposition, we also

25 discussed several other construction audits that were

1 done as a part of the -- 2006, the rate case, the

2 ER-2006-0314. Do you recall that?

3   A.   That's the KCPL rate case, yes.

4   Q.   Yes. We talked about the West Gardner

5 combustion turbine project, the Osawatomie project,

6 the Hawthorn 6 combustion turbine project, Hawthorn 7

7 and 8, Hawthorn 9 combined cycle and the Spearville

8 wind projects. Do you recall we talked about all

9 those?

10   A.   Yes.

11   Q.   I don't want to talk about all those

12 again, but isn't it correct that you used similar

13 processes in those audits to review the change orders

14 and to classify the change orders into the type 1

15 through 4 categories that you did for La Cygne?

16   A.   I believe I used the same process.

17   Q.   And this is the same process that you

18 used for Iatan 1 and Iatan 2; is that right?

19   A.   I believe so, yes.

20   MR. FISCHER: Judge, could I have another

21 exhibit marked?

22   JUDGE PRIDGIN: This would be KCPL 91.

23   (KCP&L Exhibit No. 91-HC was marked for

24 identification.)

25   MR. FISCHER: This is also an HC exhibit,

1 Judge so 91-HC.

2   JUDGE PRIDGIN: 91-HC. Thank you.

3 BY MR. FISCHER:

4   Q.   Mr. Elliott, this is another exhibit we

5 talked about during the deposition, which was marked

6 as 2-HC at that time. Does this appear to be your

7 direct testimony in Case No. ER-2006-0314?

8   A.   Yes.

9   MR. FISCHER: I'd move for admission of

10 91-HC.

11   MR. SCHWARZ: I object. I'd like to know

12 what the materiality and relevance of testimony filed

13 some four and a half years ago is to any issue in this

14 case. I certainly can't believe it's going to be used

15 for purposes of impeachment of this witness at this

16 stage.

17   JUDGE PRIDGIN: Mr. Fischer?

18   MR. FISCHER: Judge, I can ask a few more

19 questions and I think we can show the relevance of it.

20 It clearly -- it shows his approaches in these

21 previous cases and his views about some of the issues

22 in this -- in this matter.

23   MR. SCHWARZ: Well, then I object to it

24 as being cumulative and already asked and answered at

25 least twice.

1   JUDGE PRIDGIN: I'll overrule. 91-HC is

2 admitted.

3   (KCP&L Exhibit No. 91-HC was received

4 into evidence.)

5 BY MR. FISCHER:

6   Q.   I'd like to refer you to page 2, lines 3

7 through 5.

8   A.   Okay.

9   Q.   Where you state, The purposes of my

10 testimony is to address the Staff's construction audit

11 of KCPL's generating projects completed since KCPL's

12 last rate case, increase case, the Wolf Creek Nuclear

13 Generating Station, EO-- Case No. EO-85-185; is that

14 right?

15   A.   Yes.

16   Q.   And once again, Mr. Elliott, you used the

17 same four categories of cost, the type 1 through 4, in

18 your -- your audit review of -- of those particular

19 units; is that right?

20   A.   That's correct.

21   Q.   And what units were involved in that

22 case? Let me just help you. It was the West Gardner,

23 Osawatomie and all those -- the combustion turbines?

24   A.   Six -- Hawthorn 6 and 7, Hawthorn 9, the

25 Osawatomie unit and the West Gardner units, yes.

1   Q.   And in that case you found that there

2 were no reasons from an engineering perspective to

3 disallow any rates -- disallow any costs from rates?

4   A.   That's correct.

5   Q.   Is it your understanding the Staff did

6 not make any disallowances in those cases?

7   A.   My recollection is that that's correct.

8   Q.   Now, isn't it true that in some of those

9 cases that you reviewed in that case, the costs had

10 increased above the original estimate?

11   A.   I believe that's correct.

12   Q.   Did any of the auditors in that case or

13 anyone else attempt to persuade you to recommend that

14 the costs above the original estimate should be

15 disallowed from rate-base as an imprudent cost?

16   A.   No.

17   MR. FISCHER: I'd like to have another

18 exhibit marked, Judge.

19   JUDGE PRIDGIN: KCPL 92. Is this HC?

20   MR. FISCHER: This is HC as well.

21   (KCP&L Exhibit No. 92-HC was marked for

22 identification.)

23 BY MR. FISCHER:

24   Q.   Mr. Elliott, this is another exhibit we

25 talked about in your deposition. It was marked as

1 Exhibit 3-HC at that time and it's been marked as

2 92-HC in this case. Does this appear to be your

3 true-up direct testimony in ER -- in KCPL's Case

4 ER-2006-0314?

5   A.   Yes.

6   Q.   And in this case you completed the

7 construction audit of 67 turbines at Spearville; is

8 that right?

9   A.   Yes. I just wanted to confirm, yes.

10   Q.   If you'd refer to page 3 on your true-up,

11 lines 7 through 8.

12   A.   Okay.

13   Q.   I don't want to talk about the numbers,

14 but is it correct that there were increases in the

15 costs of the Spearville wind project?

16   A.   Yes.

17   Q.   And I believe you indicated in that

18 testimony on lines 11 through 15 that the largest

19 increase at Spearville was due to a FERC requirement

20 for low voltage operation to wind turbine generators?

21   A.   Yes.

22   Q.   But there were other increases as well

23 due to additional spare equipment or changes in scope

24 of work?

25   A.   Yes.

1   Q.   And once again, you used your categories

2 of type 1 through 4 to categorize the cost increases?

3   A.   Yes.

4   Q.   And you didn't make any disallowances in

5 that case based upon engineering concerns; is that

6 right?

7   A.   That's correct.

8   Q.   And the Staff didn't make any

9 disallowances in the rate case related to those

10 projects; is that right?

11   A.   I believe that's correct, yes.

12   Q.   Now, in all these cases that you have

13 been involved with in the past, you didn't have a

14 single document that identified and explained cost

15 increases for your -- for the projects you reviewed;

16 is that true? You had to look at several documents?

17   A.   I don't recall what all documents I

18 looked at. I can't say for sure if they were more

19 than a page or several pages. I just don't remember

20 all the documents in all these cases.

21   Q.   But you weren't able to just ask KCPL to

22 press the button, spreadsheet sheet comes out with all

23 the cost increases?

24   A.   I don't recall that, no. I -- I just

25 don't.

1   Q.   You would have recalled it if it would

2 have been that easy, wouldn't you?

3   A.   Probably. But I can't say for sure

4 because I just don't remember.

5   MS. KLIETHERMES: Judge, we've been going

6 for about an hour and a half. Are we nearing an end

7 or --

8   MR. FISCHER: It might be a good time to

9 take a break.

10   JUDGE PRIDGIN: Do you know how much more

11 cross you have?

12   MR. FISCHER: I think I can wrap up in

13 maybe 30 minutes. I don't know.

14   JUDGE PRIDGIN: With permission of

15 counsel, if you've got that much more to go and then

16 redirect to go, this might be a pretty good time to

17 knock off for the evening and just pick back up after

18 Dr. Hadaway's testimony. Is there any -- any

19 objection from counsel? I was, you know -- I'm always

20 hesitant to stop somebody in the middle --

21   MR. FISCHER: It's not a problem. We've

22 been going a long time today.

23   JUDGE PRIDGIN: We have. I just have

24 some scheduling confirmation to take up with counsel.

25 I'm pretty sure I'm clear on the schedule. I just

1 want to make sure so I can inform the Commission. Is

2 that something we can take up off the record?

3   MR. STEINER: Either way, Judge.

4   JUDGE PRIDGIN: Anything further from

5 counsel before we go off the record? Ms. Kliethermes?

6   MS. KLIETHERMES: Just for clarity, was

7 Exhibit 89 ever offered?

8   JUDGE PRIDGIN: I show that it was

9 offered and admitted.

10   MS. KLIETHERMES: Okay. Oh, I'm sorry.

11 88 is what I meant to ask about.

12   JUDGE PRIDGIN: I do not show that.

13   MS. KLIETHERMES: You had the three work

14 papers. That was the middle work paper.

15   MR. FISCHER: I'd move for admission of

16 that.

17   JUDGE PRIDGIN: Any objection?

18   MS. KLIETHERMES: No.

19   JUDGE PRIDGIN: KCPL 88 -- was that HC?

20   MS. KLIETHERMES: Yes.

21   JUDGE PRIDGIN: Thank you. 88-HC is

22 admitted.

23   (KCP&L Exhibit No. 88-HC was received

24 into evidence.)

25   MR. FISCHER: Thank you, Mr. Elliott. I

1 appreciate your patience tonight.

2   THE WITNESS: No problem.

3   JUDGE PRIDGIN: All right. Anything

4 further before we go off the record? We'll resume at

5 8:30 a.m. And I assume we will be going directly to

6 mini opening and then Dr. Hadaway on the stand. All

7 right. We will stand in recess then until 8:30 a.m.

8 Thank you. We're off the record.

9   (WHEREUPON, the hearing was adjourned

10 until 8:30 a.m., January 27, 2011.)

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2   CERTIFICATE OF REPORTER

3

4   I, Tracy Thorpe Taylor, CCR No. 939, within the

5   State of Missouri, do hereby certify that the

6   testimony appearing in the foregoing matter was duly

7   sworn by me; that the testimony of said witnesses was

8   taken by me to the best of my ability and thereafter

9   reduced to typewriting under my direction; that I am

10 neither counsel for, related to, nor employed by any

11 of the parties to the action in which this matter was

12 taken, and further, that I am not a relative or

13 employee of any attorney or counsel employed by the

14 parties thereto, nor financially or otherwise

15 interested in the outcome of the action.

16

17   _____

18   Tracy Thorpe Taylor, CCR

19

20

21

22

23

24

25

1   I N D E X

2 KCP&L EVIDENCE:

3 KRIS NIELSEN
   Cross-Examination by Ms. Kliethermes   2045
4 Cross-Examination by Ms. Kliethermes (In-camera) 2067
   Questions by Commissioner Jarrett   2089
5 Questions by Commissioner Kenney   2091
   Recross-Examination by Mr. Mills   2104
6 Redirect Examination by Mr. Fischer   2113

7 FORREST ARCHIBALD
   Direct Examination by Mr. Hatfield   2129
8 Cross-Examination by Mr. Schwarz   2133
   Cross-Examination by Mr. Schwarz (In-camera)   2138
9 Cross-Examination by Mr. Mills (In-camera)   2151
   Cross-Examination by Ms. Ott   2154
10 Cross-Examination by Ms. Ott (In-camera)   2196
   Redirect Examination by Mr. Hatfield   2205
11 Redirect Examination by Mr. Hatfield (In-camera) 2221

12 DANIEL MEYER
   Direct Examination by Mr. Hatfield   2234
13 Cross-Examination by Mr. Schwarz   2236
   Cross-Examination by Ms. Ott   2263
14 Cross-Examination by Ms. Ott (In-camera)   2267
   Redirect Examination by Mr. Hatfield   2272
15
   WESS HENDERSON
16 Direct Examination by Mr. Fischer   2279
   Cross-Examination by Ms. Ott   2346
17 Redirect Examination by Mr. Fischer   2360

18 STAFF'S EVIDENCE:

19 DAVID ELLIOTT
   Direct Examination by Ms. Kliethermes   2362
20 Cross-Examination by Mr. Mills   2365
   Cross-Examination by Mr. Fischer   2368
21 Cross-Examination by Mr. Fischer (In-camera)   2386

22

23

24

25

EXHIBITS INDEX

		MARKED	REC'D

KCP&L EXHIBITS:

KCP&L Exhibit No. 4-NP
Rebuttal Testimony of Forrest
Archibald, Non-Proprietary   2133

KCP&L Exhibit No. 4-HC
Rebuttal Testimony of Forrest
Archibald, Highly Confidential   2133

KCP&L Exhibit No. 81
Division Descriptions   2283   2284

KCP&L Exhibit No. 82
Order Regarding Construction and
Prudence Audits   2296   2297

KCP&L Exhibit No. 83
Coordination Procedure-5   2300   2301

KCP&L Exhibit No. 84
Executive Director's Status Report   2311   2312

KCP&L Exhibit No. 85
Order Regarding Construction and
Prudence Audits   2317   2318

Exhibit No. 86
Picture and text   2342   2344

Exhibit No. 87-HC
Graph, Highly Confidential   2386   2387

Exhibit No. 88-HC
Table of data, Highly Confidential   2389   2438

Exhibit No. 89-HC
Change Order List, Highly Confidential 2390   2395

Exhibit No. 90-HC, Highly Confidential
True-Up Direct Testimony of
David Elliott, Highly Confidential   2405   2406

Exhibit No. 91-HC
Direct Testimony of David Elliott,
Highly Confidential   2431   2433

1   EXHIBITS INDEX (Continued)
                                    MARKED   REC'D
2

Exhibit No. 92-HC
3 True-Up Direct Testimony of
David Elliott, Highly Confidential   2434
4

STAFF EXHIBITS:
5

KCP&L Exhibit No. 204-HC
6 Staff's Construction Audit and
Prudence Review, Highly Confidential   2361   2365
7

KCP&L Exhibit No. 204-NP
8 Staff's Construction Audit and
Prudence Review, Non-Proprietary   2365
9

KCP&L Exhibit No. 214
10 Rebuttal Testimony of David Elliott   2365

11 KCP&L Exhibit No. 215
Testimony of Cary Featherstone   2361
12

KCP&L Exhibit No. 275-HC
13 Data Request No. 266,
Highly Confidential   2055
14

KCP&L Exhibit No. 276-HC
15 Change Orders, Highly Confidential   2057   2058

16 KCP&L Exhibit No. 277
Data Request Responses to
17 Nos. 0331 and 0630   2057   2058

18 KCP&L Exhibit No. 278
Employee Survey   2076
19

KCP&L Exhibit No. 279-HC
20 10/09 Audit, Materials Management
Review, Highly Confidential   2078   2079
21

KCP&L Exhibit No. 280
22 Data Request responses to No. 622   2081   2083

23 Exhibit No. 281-HC
R&O 237, Highly Confidential   2230   2231
24

25

$			

$1 2068:5,8
  2069:16

$10 2179:13
  2180:7,8,16,
  25 2181:2

$100 2180:16

$12 2091:14
  2092:2

$12,714,596
  2089:17

$12,714,596.4
  0 2090:9

$130 2178:7,8

$18 2181:3

$190 2215:20

$2 2181:1

$220 2104:25
  2112:21
  2191:15
  2215:7,17

$24 2135:18

$30 2215:21

$300 2317:6

$37 2133:22
  2134:18

$40 2166:4

$5,000 2106:3

$5,346,049
  2090:16,18

$50 2133:25
  2134:21

$50,000
  2366:10
  2375:1,4

$500,000
  2430:15

$7,754,454
  2089:21
  2090:17

$8 2181:3

0			

0170
  2136:14,18
  2137:2

0181 2137:8

0331 2063:8
  2443:17

06 2266:7

0630 2063:8
  2443:17

07 2359:20,22

08 2163:12
  2218:3,9
  2275:9

09 2218:2
  2275:10
  2360:22

1			

1 2054:12
  2074:5
  2079:23
  2082:24
  2087:18
  2096:16
  2114:8
  2115:2
  2117:19
  2120:6,9,15
  2121:10
  2124:8
  2130:13,17,2
  1 2161:13,23
  2184:10,11,1
  8,20
  2185:7,18
  2187:3
  2203:8,9,14
  2204:12,13
  2284:5
  2288:1,5,14
  2293:17,24
  2297:21,25
  2298:3,17,23
  2299:4
  2302:25
  2305:20
  2306:2
  2308:1
  2315:8,13,21
  2316:2
  2317:25
  2318:19
  2319:9
  2320:24
  2321:12
  2322:9,24
  2323:5
  2325:13
  2326:1,13,19
  2328:13
  2331:21
  2332:3,14
  2333:24

2334:3,12
  2338:24
  2339:11
  2351:23
  2353:5,8,20
  2355:16,24
  2371:21
  2372:18
  2373:5,10
  2383:15
  2400:1
  2404:7
  2405:20
  2406:16
  2407:25
  2408:23
  2409:8
  2412:11
  2419:19,22
  2420:11,18
  2421:6,10,19
  2422:15
  2431:14,18
  2433:17
  2436:2

1,468,5
  2175:11
  2176:18
  2177:5
  2207:11
  2208:17
  2209:24,25
  2215:16

1,500 2185:15
  2276:15

1,600 2185:15

1,685 2176:22
  2177:5,6
  2178:6
  2181:13
  2188:16
  2207:20

1.25
  2074:12,14
  2075:13

1.365 2100:10

1.45 2105:9

1.465
  2100:4,15
  2105:2,3,5,1
  5

1.68 2101:1
  2218:10

1.685 2100:18
  2105:1

2152:17
  2209:15,23
  2210:2
  2211:24
  2212:2

1.988 2166:4

1:15 2103:7

1:30
  2103:7,24
  2104:6
  2168:10,19

10 2251:7
  2275:11,13
  2330:3,4,8,1
  5 2410:15,20
  2411:17
  2418:20
  2419:11

10/09 2443:20

10:20 2102:21

100 2126:24
  2127:5

1000 2045:15

101 2045:19
  2180:14

104595
  2046:23

11 2159:6,10
  2298:9
  2408:6
  2435:18

1100 2046:7

111 2045:6

119 2047:2

12 2082:8
  2155:8,24
  2156:4
  2212:16
  2247:13
  2248:1
  2250:20
  2373:2
  2408:6

1200 2129:25

1210 2215:15

12th 2172:16
  2174:21

13
  2159:1,3,6,2
  5
  2160:3,4,15
  2168:1

2198:10,15 2212:13	**1995** 2281:19	2355:16 2371:21	2296:9 2325:19
130 2044:11	**19th** 2299:22	2372:19 2373:6,10	2402:2 2431:1
13220 2047:9	─────────── ════ 2 ════	2379:11	**2007** 2080:4
14 2159:9,10 2251:7	**2** 2080:3	2383:15 2400:1	2081:5 2136:4,9
145 2105:10	2082:8,25 2088:13	2402:3 2404:7,17	2217:24 2405:13
2109:11 2111:23	2089:20 2096:16	2407:25 2408:11	2406:8 2427:7,12
1464 2046:20	2115:2 2117:19	2409:8 2412:11	2430:12
15 2330:3,4,9,1	2120:1,2,6,1 0,18 2121:10	2419:19,22 2420:11	**2008** 2054:12 2161:18
5 2435:18	2130:16,17,2 5	2421:10,20 2422:15	2217:21
15th 2315:22 2316:3,8	2131:6,9,12 2132:6,12,17	2426:22 2431:18	**2009** 2054:12 2079:3
2318:10	2136:4,8 2153:14	2433:6	2082:6 2203:20
16 2086:6 2090:1	2161:16 2176:5	**2,800** 2185:3,4	2216:14,21,2 2 2315:22
2132:6	2177:2 2184:22,25	**2:30** 2206:3	2316:8 2319:1
1613 2046:20	2185:9,23	**20** 2105:16	2324:7
16th 2314:18	2187:19 2243:11	2108:17,23 2296:11	2353:23 2421:22
17 2074:2 2090:1,14	2247:17 2273:6	2338:14 2375:2	2422:7,23,24
2370:12,14,2 2 2373:14	2278:11 2288:1,6,14	2402:4 2409:7,10	**2010** 2159:14,15
2375:13 2402:14	2293:18,24 2296:9	**20,000**	2166:8 2177:12,13,2
2407:1	2297:11	2108:19 2115:12	2 2187:21
1780 2043:23	2298:1,5,17, 23 2299:4	**20,000-foot**	2297:6,8 2298:21
17-year 2385:6	2302:25 2303:7	2164:22	2318:22 2348:3,18
18 2179:14,15	2305:20	**200** 2044:11 2048:6,10	2354:11 2375:2,4
2180:10 2369:24,25	2306:2 2308:1	2228:6 2277:11	2422:24
18th 2299:22	2315:9,14 2318:19	**2003** 2080:18	**2011** 2043:7 2155:8,24
19 2090:4 2132:9	2319:9 2320:24	2271:14,17	2156:4 2172:17
2251:18 2337:13	2321:12 2322:10,24	**2004** 2080:19 2242:11	2439:10
2423:14	2323:5 2325:14	**2005** 2079:24	**202.586.3409** 2045:16
1969 2086:8	2326:1,13,19	2080:11 2132:9	**204** 2362:18
1975 2369:19	2328:14 2331:21	2280:12 2282:12	2364:19,21,2 3
1980s 2084:17 2085:21	2332:4,14 2333:13	**2006** 2098:24	**2045** 2441:3
2106:14	2334:3,12 2338:24	2100:25 2122:12	**204-HC** 2361:20
1981 2281:22	2339:11	2132:10 2194:13	2363:22
1985 2086:8	2352:5	2209:15	2365:6
1993 2132:6 2370:8	2353:5,8	2293:17	2443:5
1994 2132:7			

204-NP 2364:7
  2365:4,6
  2443:7

205 2362:25
  2363:5
  2364:11,12,1
  9,22

2055 2443:13

2057
  2443:15,17

2058
  2443:15,17

20585 2045:15

2'06
  2100:20,22

2067 2066:6
  2441:4

2076 2443:18

2078 2443:20

2079 2443:20

2081 2443:22

2083 2443:22

2089 2441:4

2091 2441:5

20th 2314:18

21 2096:16
  2237:20
  2238:7
  2314:18
  2407:4

210 2417:2

2104 2441:5

2113 2441:6

2129 2441:7

2133 2441:8
  2442:4,6

2138 2137:19
  2441:8

214 2363:25
  2364:5,6,23
  2365:5,7
  2443:9

215 2361:20
  2363:3,22
  2443:11

2151 2137:19
  2441:9

2154 2441:9

2196 2195:11
  2441:10

2197 2195:11

22 2237:20
  2238:7
  2246:23
  2247:14
  2248:1,2
  2409:22

220 2176:5
  2181:13
  2190:4
  2191:17
  2215:20

2205 2441:10

222
  2375:10,14
  2377:10,14
  2378:24
  2379:13
  2380:13
  2381:23
  2383:2
  2397:6
  2398:2,6
  2399:1,21
  2404:13
  2409:22,23

2221 2220:20
  2441:11

2222 2220:20

2230 2048:11
  2443:23

2231 2443:23

2234 2441:12

2236 2441:13

2263 2345:19
  2441:13

2267 2266:18
  2441:14

2270 2266:18

2272 2441:14

2279 2441:16

2283 2442:8

2284 2442:8

2296 2442:10

2297 2442:10

23 2305:10,12
  2314:18
  2407:5
  2423:15

230 2046:11

2300 2442:11

2301 2442:11

231 2118:9,10

2311 2442:13

2312 2442:13

2317 2442:15

2318 2442:15

2342 2442:16

2344 2442:16

2346 2441:16

235 2090:20
  2118:9,10

2360 2441:17

2361
  2443:6,11

2362 2441:19

2365 2441:20
  2443:6,8,10

2368 2441:20

237 2189:9
  2223:10
  2231:5
  2443:23

2386 2385:18
  2441:21
  2442:18

2387 2442:18

2389 2442:19

2390 2442:21

2395 2442:21

2396 2385:18

23rd 2416:11

24 2251:18

2405 2442:23

2406 2442:23

2431 2442:25

2433 2442:25

2434 2443:3

2438 2442:19

25 2043:9
  2099:12
  2100:10
  2105:21
  2108:17
  2132:10,15,1

7 2296:11
  2402:4
  2418:20

251 2194:16

251-HC
  2153:20

26 2043:7
  2066:6
  2096:10,14,1
  5 2097:25
  2137:19
  2195:11
  2220:20
  2253:16
  2266:18
  2314:18
  2385:18
  2418:20

261
  2153:21,22,2
  3

261-HC
  2153:24
  2211:3
  2266:6

263 2120:15

266 2053:18
  2055:16
  2443:13

27 2096:15,16
  2098:20
  2185:3
  2314:19
  2439:10

273 2071:2,4
  2102:10

275 2054:24
  2055:8
  2071:10
  2075:15
  2102:6,13
  2120:18

275-HC 2055:3
  2443:12

276 2057:23
  2058:3

276-HC
  2057:24
  2058:11,12
  2443:14

277 2063:4
  2102:10
  2443:16

277-HC
  2071:14

278 2076:16
  2443:18

279
  2079:13,15

279-HC
  2078:22
  2079:10,14
  2443:19

280
  2081:21,25
  2083:8,9,12,
  13 2443:21

281-HC
  2230:22,23,2
  5
  2231:5,10,11
  2443:23

28th 2314:19

29 2333:7
  2337:15
  2374:20,22
  2408:6

2-HC 2432:6

2nd 2161:18

2's 2187:3

———————————
3
———————————
3 2130:20
  2277:11
  2304:3
  2312:25
  2327:11
  2359:5
  2371:18,21
  2406:13
  2425:3,8,10
  2426:21,25
  2427:11
  2428:18
  2430:11
  2433:6
  2435:10

30 2177:13
  2234:14
  2281:8
  2294:15
  2295:25
  2341:13,17
  2348:22
  2375:12
  2377:2,13
  2437:13

300 2044:7

301 2044:23
  2045:2

308 2044:20

309 2048:6

30th
  2159:11,15
  2177:12,22

31 2294:25
  2324:7
  2378:24
  2413:17
  2421:22
  2422:7,16,24
  2423:5

312 2045:11

312.371.2673
  2047:3

314.395.8002
  2047:14

314.725.8788
  2044:12

320 2047:9

32459 2047:2

331 2063:20

3321 2046:15

3420 2044:15

35 2369:20
  2379:13
  2428:25
  2430:6

36 2378:24

360 2063:25

37 2135:18
  2330:2,8,13

38 2246:20
  2247:2,24
  2250:3,5,6
  2273:6
  2383:2

385
  2377:4,8,10

3-HC 2435:1

3rd 2159:14
  2203:20
  2326:3
  2329:19
  2330:11
  2333:6
  2334:8
  2337:12

  2362:24
  2364:14
  2368:25
  2374:19
  2377:1
  2384:16
  2401:6
  2408:4
  2411:8
  2421:8,14
  2422:24
  2423:4

———————————
4
———————————
4 2049:19
  2131:2
  2250:20
  2295:13
  2298:9
  2300:19
  2314:8
  2327:11
  2336:16,23
  2348:10
  2371:19,21
  2406:16
  2410:22
  2411:19
  2419:11
  2423:14
  2426:25
  2431:15
  2433:17
  2436:2

4:05 2262:22

40
  2165:8,20,23
  2166:1,5
  2251:7

400 2045:19

41 2250:17
  2251:19
  2322:20

412 2046:20

417.864.8800
  2044:4

418679 2046:2

428 2044:7

43
  2235:8,19,22

43-HC 2235:24

43-NP 2235:24

44
  2235:8,20,22

  2381:23

445 2203:8

445-A 2204:12

44-HC 2235:25

44-NP 2235:24

45
  2235:8,20,23

4520 2046:7

455 2203:2

455-A 2203:3

456 2045:11

45-HC 2235:25

45-NP 2235:25

47 2276:15

475 2046:19

484
  2203:16,24
  2204:8

4-HC
  2132:2,24
  2133:2
  2442:5

4-NP 2133:1
  2442:3

———————————
5
———————————
5 2054:12
  2105:21
  2131:6
  2302:19,22
  2328:7
  2372:12
  2433:7

5,000 2243:13

50 2271:22

50,000-foot
  2329:5

57 2294:20
  2295:13,16,1
  9

573.443.3141
  2045:7

573.634.2266
  2044:24
  2045:3

573.634.2500
  2044:21

573.635.0427
  2045:12

573.635.2700
2044:8

573.636.6263
2046:12

573.636.6758
2045:20

573.659.8672
2046:24

573.751.0052
2047:6

573.751.6514
2048:7

_____
6
6 2131:9
2243:12
2327:20
2372:1
2401:7,12
2410:22
2411:19
2412:3
2431:6
2433:24

6:00 2233:22
2344:25
2345:10

60 2265:16

601 2044:23
2045:2

60-plus
2217:2

622 2081:25
2082:1
2216:4
2443:22

63105 2044:12

63119 2047:14

63130 2047:6

64111 2044:16
2046:7

64141-9679
2046:3

647 2375:3,8
2377:3

65 2265:16

65101
2044:8,20
2045:20
2046:11

65102

2048:7,11

65102-0456
2045:12

65102-0537
2044:24
2045:2

65110-4595
2046:23

65201 2045:6

65802 2044:3

66 2380:13

66101 2046:19

66213 2047:10

66606 2046:15

67 2276:14
2328:3
2372:9
2435:7

6th 2333:22
2334:8
2362:17
2408:22
2409:1
2411:7,10
2413:16
2418:19
2420:16
2421:3

_____
7
7 2131:12
2327:22
2348:3
2372:3
2431:6
2433:24
2435:11

7:00
2345:11,14

70 2100:11
2272:7

70s 2277:17
2355:25

75 2099:19
2100:11
2101:9
2105:11
2109:3,12
2111:20,22

753 2046:19

77-megawatt
2371:23

785.271.9991
2046:16

7th 2279:24
2297:6,8
2298:21
2299:2
2315:19
2336:14,19
2348:18
2368:21

_____
8
8 2131:15
2327:24
2372:5
2431:7
2435:11

8.5 2335:17
2357:4,7

8:30 2233:18
2439:5,7,10

80 2271:22

80s 2252:9
2277:21
2355:25

81 2283:19,21
2284:21,24
2442:7

816.360.5976
2044:16

816.460.2400
2046:8

816.556.2314
2046:3

82 2296:16,20
2297:2,14,15
,17 2336:20
2348:2,7,8
2442:9

83
2300:9,10,14
2301:8,9,11
2306:9
2308:15
2349:7
2352:24
2442:11

84 2311:17,18
2312:4,13,15
,17 2317:14
2354:10
2442:12

85 2316:16
2317:8,15,16

,19
2318:3,5,6
2353:13
2442:14

850 2413:3

86
2342:20,21,2
3,24
2344:1,2,4,5
2442:16

871 2047:13

87-HC 2442:17

88 2438:11,19

88-HC
2438:21,23
2442:19

89 2438:7

899 2047:5

89-HC 2442:20

8th 2313:13
2353:23

_____
9
9 2131:18
2328:1
2360:20
2372:7
2413:16
2431:7
2433:24

90 2126:24
2127:5
2217:3
2271:22,23
2404:16
2405:11

900-some
2413:2

90-HC
2405:14,15,1
9 2406:3,5
2410:16
2442:22

90s 2084:17
2085:22
2128:1

91 2431:22

913.321.8884
2046:20

913.338.7700
2047:10

91-HC 2431:23

2432:1,2,10
2433:1,3
2442:24

92 2434:19

92-HC 2434:21
2435:2
2443:2

939 2043:24
2044:3
2440:4

95 2217:3
2338:7

97 2282:5

970
2187:9,11,18

9th 2045:6
2313:24
2314:3,10
2315:6
2318:16
2319:25
2354:11

———————
A
———————

a.m
2439:5,7,10

AACE 2271:13
2272:19

AARP 2047:15

abandoned
2272:19

abilities
2363:18

ability
2135:12
2162:11
2213:12
2360:3
2363:20
2440:8

able 2068:16
2110:20
2114:2,15,25
2189:5
2190:14
2215:16
2218:4
2219:14
2274:16,21
2275:5
2398:16,22
2399:3,7,15
2427:8
2428:13

2430:21
2436:21

abreast
2233:13

absence
2093:1,11
2095:5,6,15,
20

absent
2064:19

absolute
2113:17

absolutely
2153:4
2155:9
2160:20
2162:22
2164:17
2171:17
2173:12
2186:3
2207:4
2208:3,11,22
2217:15
2227:24
2231:8
2232:6
2238:2
2262:13
2275:7

abundance
2087:2

abuse 2126:1

acceleration
2260:17,19

accept 2357:7

acceptable
2078:10,16
2095:2
2096:2

accepted
2076:11
2337:1
2348:12

access
2117:11
2121:13,17
2122:1

accessed
2087:18

accident
2416:11

accompanied

2326:9

accomplish
2265:21

accomplished
2336:8

accordance
2336:25
2337:17
2348:11

according
2075:10
2077:25
2167:23
2181:8
2188:11
2289:16
2320:11
2425:7

account
2136:25

**accountabilit
y** 2073:25
2074:25

accountant
2263:17
2281:10
2282:20
2337:2

accountants
2285:12
2322:4
2353:10

accounting
2124:4,5,6,7
2125:6
2158:15
2218:20
2263:16
2281:13
2303:9,16
2309:13
2338:10
2360:4

accounts
2228:25

accuracy
2099:20
2271:20,21,2
4 2272:2,3

accurate
2153:3
2159:20
2160:8,24,25
2161:4
2163:6

2217:19
2342:25

accurately
2164:6
2406:25

accurateness
2242:16

across
2108:11
2163:15

act 2302:21

action
2073:22
2074:25
2303:23
2343:17
2440:11,15

active
2417:9,10

activities
2056:2
2336:25
2348:11
2412:11

activity
2337:4,5

actual
2090:20,23
2162:17,20
2164:16
2166:2
2177:2,9,16,
21,25
2178:3,5
2183:13,16
2184:8
2186:21,22,2
4,25
2187:1,5
2192:24
2251:1
2313:9
2380:5

actually
2079:23
2088:2
2090:19,25
2103:19,22
2105:21
2106:14
2115:15,24
2117:12
2119:22
2123:4
2154:10

2159:9
2174:3
2179:14
2212:5
2237:15
2242:25
2273:7
2296:18
2306:17
2320:18
2323:17
2409:22

actuals
2183:20

add 2105:4
2106:3
2271:15

add-delete
2130:22

added 2107:21
2342:5
2378:10
2381:3

addendum
2075:14

addition
2058:17
2070:3
2098:14
2375:16
2378:9
2412:4

additional
2059:11
2071:23,25
2085:5,13
2087:25
2127:6
2224:11
2225:17
2226:22
2261:24
2312:7
2356:17
2367:14,20
2368:1
2376:5
2378:9
2382:15
2406:21
2430:14
2435:23

additions
2099:7
2297:23

address

2129:24
2168:13
2234:12
2261:8
2433:10

addressed
2120:6
2334:10
2402:21

adequate
2084:19,23
2325:22
2338:19
2339:20

adjourned
2049:4
2439:9

adjust
2134:23

adjusted
2239:9

adjustment
2100:21
2121:7,8
2214:13
2245:18
2289:13
2326:5
2346:10
2401:16
2406:20
2426:12

adjustments
2120:23
2121:4
2245:3
2289:7
2326:10
2353:9
2421:17
2422:18

administer
2232:18

**administratio
n** 2094:3
2119:21
2125:17
2128:9,10
2281:17,18
2285:4

**administrativ
e** 2286:12
2289:19

admission
2132:24

2235:18
2284:20
2297:14
2301:8
2318:3
2343:25
2405:24
2432:9
2438:15

admitted
2058:11
2079:13
2083:12
2133:1
2153:24
2230:21
2231:10
2235:23
2284:23
2297:16
2301:10
2312:14,16
2318:5
2344:4
2365:5
2406:4
2433:2
2438:9,22

adopt 2402:25
2403:16

adopted
2294:16
2295:22
2296:1

adoption
2352:10

advance
2062:23
2092:15

advantaged
2092:5

adverse
2344:13

advise
2056:11

advised
2293:12

advocate
2291:23

advocated
2292:20

advocates
2126:5

advocating

2347:4,7

AEP 2199:19

AEPC 2199:22

affairs
2056:13,14

affect
2180:21
2255:24

affidavit
2337:5
2369:13

affix
2258:3,18

a-five 2345:2

afraid
2179:18
2310:14

after-a-fact
2218:20

afternoon
2076:12
2168:22
2169:10
2262:20
2263:8,9

**after-the-
fact** 2219:11

AFUDC 2326:9

against
2064:25
2074:17
2090:24
2099:23
2106:4
2123:21
2162:9
2165:15,16
2178:6
2207:11,12
2274:11
2288:24
2289:4

age 2086:22
2087:1

Agencies
2047:3

agency's
2289:18

agenda
2101:24
2102:2
2103:4,6,8,1
2,13,23

2104:5
2129:14
2168:24,25
2205:12

aggregation
2163:5

aggressive
2276:2
2291:23

ago 2194:19
2278:20
2369:20
2382:15
2412:19
2432:13

AGP/SIEUA/
MEUA 2044:9

agreed 2085:4
2201:17
2220:2
2355:11

agreeing
2279:21,22

agreement
2054:10
2059:11
2109:5,6,10
2167:22,23
2170:6
2182:11
2193:8,11
2209:7
2218:25
2235:2
2264:24
2265:2,5
2336:3

ahead 2053:1
2134:1
2344:24
2415:10

Air 2047:1

alert 2169:3

alerted
2244:9,18,25
2245:20

alike 2358:4

all-day
2056:13,14

allegation
2274:9

allocated
2100:7

2191:11
2215:8,18

allocations
2202:22

allow 2060:11
2103:8
2169:6
2170:21

allowances
2091:13
2339:3

allowed
2164:5,25
2378:15
2379:18
2380:19
2382:4,11
2384:23

allowing
2164:9

allows
2099:21
2176:24

alone
2094:12,19,2
4

aloud 2059:3

already
2128:17
2202:11
2207:24
2213:15
2223:25
2235:14
2256:24
2280:7
2298:4
2315:20
2368:20
2432:24

Alstom
2117:13,19
2118:7,12
2119:8,10,16
2120:6,9,15,
18
2131:15,17
2277:13

am 2071:10
2130:4
2136:2,17
2212:20
2234:19
2243:15
2247:15,23

2263:20
2318:23
2440:9,12

AMASH 2046:18

ambiguity
2179:24

ambiguous
2167:5
2179:18
2254:8

Ameren 2045:7

AmerenUE
2327:6
2371:12

American
2199:10
2337:2

among 2306:21
2313:14
2353:9

amorphus
2429:23

amortizations
2356:18

amount
2065:10,18
2092:5
2105:1,2,16
2109:20
2112:12,16
2134:2,22,23
2135:8
2176:10
2177:3,9,16,
21 2187:22
2190:2
2194:24
2229:3
2293:7
2332:7,22
2382:23
2425:2,10

amounts
2105:3,9
2107:13
2110:25
2111:6
2135:12
2223:6
2249:7

analyses
2120:22
2219:7

analysis

2073:9
2074:20
2115:16
2120:9
2125:12,24
2131:3
2189:17,18
2192:1
2194:1
2215:25
2218:20
2219:11,22
2220:3
2223:16,22
2237:24
2238:11,16
2239:8,12,14
,17 2241:21
2242:8,14,19
,20 2243:3
2247:18
2248:7,9,14,
22
2249:19,24
2250:7,9,10
2251:1,10,11
,14
2273:4,8,15,
16,20
2281:14
2304:9
2366:24
2367:7,23
2385:4
2399:25
2428:6,14

analytics
2125:16

and/or
2053:23

ANNETTE
2048:4

answer
2056:11
2088:14,16
2106:11
2112:25
2113:1,2,3,1
6 2127:8
2128:5
2153:11
2156:7
2157:7
2166:24
2167:8,11
2180:14
2183:6,8
2188:20

2190:14
2203:7
2209:2
2216:23
2230:2
2237:3,10
2242:23,24
2243:14
2249:2
2256:2
2295:14
2322:25
2323:6,11
2358:9
2398:11
2415:18
2419:2
2423:20
2429:14

answered
2062:24
2073:4,15
2084:12
2156:11
2157:14
2173:15
2174:23
2188:24
2191:22
2237:15
2358:1,3
2432:24

answering
2127:5
2164:15
2209:12

answers
2171:4
2172:13,18

anticipate
2345:4

anticipated
2069:16
2112:14
2225:2

anybody
2076:1
2343:10

anyone 2085:9
2121:23
2171:20
2202:12
2215:18,23
2225:16
2373:16
2434:13

anything
2049:5
2102:3,20
2103:17
2104:8
2129:15
2167:17
2168:10
2169:15,23
2170:2,8,18
2175:3,24
2176:18,22
2181:12,13,1
9 2188:16
2190:12
2205:24
2233:25
2246:6
2262:21
2278:25
2279:6
2342:13
2345:12,22
2356:15
2361:23
2362:5
2366:20
2383:5
2384:8
2401:9
2422:10
2438:4
2439:3

anywhere
2078:9
2121:21
2201:11

apologies
2072:18
2102:18

apologize
2076:10
2157:11
2404:3

apparent
2201:25

appear
2058:16
2063:17
2154:2
2194:24
2250:3,5,6
2314:23
2377:17
2378:13
2379:16
2380:18

2382:2
2432:6
2435:2

appeared
2052:23
2068:9

appearing
2440:6

appears
2077:16
2223:7
2378:23,24
2379:13

applicable
2123:13
2125:14,15,1
9

Application
2043:11,15
2074:6

applied
2191:18
2241:16
2242:8,20,22
2252:14
2385:5

apply 2123:8
2176:20
2337:19
2385:3

appointed
2097:6

appointing
2285:2

appraisals
2200:20

appreciate
2076:7
2094:9
2252:23
2256:2
2439:1

appreciated
2057:1

approach
2053:6
2057:8
2063:3
2075:22
2078:20
2081:19
2135:24
2153:15
2219:23

2252:8
2301:20
2319:8,15
2335:1
2340:12,20,2
4 2373:11

approached
2373:12
2374:14,15

approaches
2241:16
2432:20

appropriate
2074:16
2109:2
2200:22
2290:5
2303:23
2309:21
2340:20
2345:1
2411:2,25
2420:4

appropriately
2284:15

approval
2043:12,16
2060:7
2100:20
2111:22
2164:3
2207:13
2229:9
2288:8
2293:13
2294:1
2352:21

approvals
2113:21

approve
2134:1
2163:25
2225:23
2226:3
2227:15
2286:21,24
2287:11
2293:9,15,20
,22
2294:2,10
2300:2
2336:1

approved
2059:8
2100:18
2194:23

2211:24
2212:8
2218:4
2226:9
2227:22
2229:14,18
2294:12
2296:5
2313:2
2374:24
2403:10

approving
2211:10

approximately
2056:9
2090:20
2099:12
2178:7
2228:1

approximation
2185:3

April 2080:4
2114:9
2187:21
2315:22
2316:3,8
2318:10
2422:23

April/May
2191:16

AQCS 2373:5

arbitrations
2124:13

Archibald
2129:7,15,25
2130:2
2133:11
2152:3
2153:18
2154:19
2168:23
2169:2,17,20
2170:24
2189:4
2194:10
2198:3
2200:5
2205:13,23
2206:7,14
2223:3
2226:2
2230:14
2231:15
2232:13
2398:4
2417:19

2441:7
2442:4,6

Archibald's
2202:20,22

area 2070:15
2077:4
2124:3
2125:5
2206:24,25
2273:8

areas 2070:17
2077:14
2081:10
2096:11
2121:9
2124:10
2128:13,17
2135:13
2166:5

aren't 2219:3
2289:8
2323:20

argued
2262:11

argument
2092:7

argumentative
2174:3,6

arrives
2256:3

ARTHUR
2045:14

article
2236:23
2237:1,4

articulated
2123:9

Asbury
2372:25

Asia 2109:16

aside 2340:18

aspect
2135:11
2175:3
2376:8

aspects
2252:18
2407:10,19
2413:21

asserted
2097:4

assertion

2096:18,22,2
3 2194:6

assertions
2096:12

assessment
2125:11
2324:21
2360:1

assessments
2080:17
2204:22,24
2205:4
2253:7

assign
2165:22,25
2352:25

assigned
2236:21
2298:11,15
2299:14
2303:11,23
2306:13
2353:10

assigning
2287:20

assignment
2312:8
2340:2

assignments
2287:12,16
2299:24
2300:2

assist
2158:19
2288:4,13

assistance
2189:6
2315:25
2332:11

assistant
2282:2

assisted
2370:1
2397:11

assisting
2171:21

associated
2063:12
2089:16,21
2245:3
2248:19
2251:8
2255:11,24
2256:1

2260:25
2298:5
2367:18
2375:4
2376:20
2377:23
2379:5
2382:19
2384:3,19
2399:12,14
2404:17
2407:8,17
2410:11,12
2425:3
2428:14,17

Association
2044:21

assume
2059:22
2105:14
2108:22
2109:13
2168:5
2209:14
2210:14
2256:13
2295:22
2325:22
2331:13
2335:16
2340:22,23
2344:9,12
2350:14
2363:7
2365:18
2439:5

assumed
2157:3

assumes
2181:24
2357:23
2361:1,2
2403:3

assuming
2058:5
2072:12
2212:1,7
2259:4
2339:13
2358:10
2366:9
2385:14

assumption
2105:18

assumptions
2173:1

assurance 2074:15 **attach** 2257:18 **attached** 2049:15 2054:6,8,10, 17 2060:20 2124:8 2188:1 2220:6 2235:10 2274:25 2301:3 2312:22 2366:17 2427:12 **attacher** 2259:5 **attachment** 2152:7 2204:25 2313:8 **attachments** 2054:9 **attempt** 2079:2 2110:24 2397:9 2434:13 **attempted** 2415:17 2419:2 **attempting** 2209:2 2217:16 2225:7 **attend** 2102:1 2103:15,17 2355:15,19,2 1 2414:11,12 2417:13 **attendance** 2314:17,23 2322:1 2418:9 **attended** 2299:12 2310:24 2311:6 2314:3,10,13 2315:2 2317:2 2321:24 2414:6,10,18	2417:6,21 2418:1,3,5 **attending** 2298:23 **attention** 2317:3 2353:12 **attest** 2337:5 **attitude** 2340:3,8 2359:25 **attorney** 2044:2,6,10, 14,15,19,22 2045:1,5,9,1 0,14,18 2046:1,5,6,1 0,14,18,22 2047:1,5,8,1 2 2171:6 2172:5 2440:13 **attorney- client** 2097:5 2098:11 **attorneys** 2172:2 2285:12 **attributable** 2059:15 **attribute** 2166:3 **audience** 2103:5 2129:14 **audit** 2052:1 2057:6,17 2060:24,25 2062:19,22 2064:14 2070:16 2073:1,7 2075:2,3,5,8 ,10 2077:1,3 2078:5 2079:4,5 2085:3 2086:19,24 2087:3,15 2096:19 2097:19,22 2098:1 2115:11 2116:20,21	2122:17 2126:2 2137:12 2176:21 2181:11 2189:10 2225:5 2283:3 2287:23 2288:5,15 2289:5 2291:3 2293:5 2298:12,22 2299:3,17,18 2301:19,24 2302:22 2304:5 2305:23,24 2308:10,12 2309:1 2312:7 2313:21 2315:9,14 2316:2 2318:20 2319:12,19 2320:8,24 2322:9,24 2323:22,24 2324:8,19,21 ,22 2326:3,16,22 2327:2,5 2329:19 2332:15 2333:6 2334:8,24 2335:6 2337:4,13,17 ,20 2338:1,14,18 2339:17,19 2343:6 2347:14,18 2348:17 2349:12 2351:4,22 2352:1 2353:7,11 2354:12,16,2 0 2355:24 2356:12 2357:11 2360:1 2364:14,15 2365:14 2368:25 2369:7,12	2373:5,17,23 2374:3,7,14, 19 2377:1 2379:4 2384:17 2399:25 2401:6,22 2404:7 2406:9,17,25 2407:6,25 2408:4,22 2410:18 2412:6 2418:20 2421:4,8,22 2422:25 2423:5,11 2426:5 2427:3 2433:10,18 2435:7 2443:6,8,20 **audited** 2332:22 2401:23 **auditing** 2097:22 2127:23 2263:19 2289:3 2298:2 2336:24 2337:1,5 2340:12,24,2 5 2348:10,12 2349:15 2351:7 2352:4 2354:23 2409:8 2411:1,24 2412:4,7,15 2413:6 2419:25 2420:3,9,21 2421:15 2422:19 **auditor** 2061:18 2087:5,6 2263:20 2315:24 2338:20 2339:19 2340:4 2342:3,5 2349:20,22 2350:1,17

2357:13
2359:24
2360:2,25

auditors
2291:1
2308:24
2309:4,9,15
2310:2,4,22
2311:4,10,23
2318:19
2321:13,19
2322:3
2324:13
2337:16
2339:15
2340:4,9,11,
20 2342:9
2346:17
2347:1
2350:12
2354:6,7
2400:18
2401:2,22
2402:17,25
2403:16
2412:17
2422:1
2434:12

audits 2073:3
2074:9,12,14
,19 2079:8
2083:20
2086:4
2088:4
2093:18
2098:5
2125:12,13
2126:9
2225:2
2287:17
2290:9,22
2297:4,25
2298:4,17
2300:15,24
2302:6,25
2305:21
2306:3
2308:2
2315:21
2316:22,23
2317:24
2318:14
2319:10
2321:4,13
2323:5
2326:14,20
2336:15
2346:21
2347:25

2348:4
2353:1,5
2370:15,20
2371:3,6,8
2373:13,18
2374:15
2377:20
2378:16
2379:19
2380:20
2382:5
2385:1,5
2402:13
2407:14
2412:12
2430:25
2431:13
2442:10,15

August
2079:24
2333:22
2334:8
2362:17
2408:22
2409:1
2411:10
2413:16
2418:19
2420:16
2421:3

author
2408:25

authority
2285:3
2306:18,21,2
5 2308:25
2349:19,23

authorization
2060:12
2061:2
2134:21
2180:19

authorize
2061:9,12
2180:22

authorized
2062:4

authors
2324:7

aux 2057:19
2058:15

auxiliary
2089:20
2090:15

availability

2203:11
2204:15

available
2056:10
2086:18
2087:7,23
2123:1,2
2204:24
2216:14,17,2
3 2217:3
2229:18,21,2
5 2240:5

Ave 2046:19

Avenue 2044:3
2045:11,15

average
2243:13
2265:16

avoid 2079:2
2091:23
2218:24
2262:12
2380:10

awarded
2378:2

awards 2405:6

aware
2064:10,18
2065:22
2077:9
2108:3
2111:19
2157:21
2235:6,16
2238:17
2241:20
2243:18
2244:3,6,8
2293:20,25
2294:6
2296:2,12
2308:17
2325:10
2326:14,20,2
5
2327:4,12,16
,19
2328:6,15
2331:18
2334:17,22
2335:10
2349:1,3,14
2350:23,24
2353:7
2354:22
2355:4,14

2356:8,14,16
2357:13,21
2403:25
2428:1

away 2277:21

awful 2076:3

———————
B
———————

bachelor
2369:16

bachelor's
2281:13

background
2116:8
2198:13
2284:9
2309:13,14
2369:9,12
2429:3,8

backgrounds
2309:10

backwards
2253:12
2272:15

balance
2246:15
2248:11

balanced
2291:10

balancing
2135:15
2292:11

ballpark
2276:12

banks 2055:23
2056:5,6

banted 2262:9

bar 2074:8
2123:21

Bardgett
2044:19

base 2085:22
2175:11
2181:12,19
2190:3
2191:12,18
2215:15
2236:16
2242:14,17

based 2074:16
2123:24
2157:4

2159:15,21
2169:7
2176:20
2181:9
2183:19
2187:4,5,6,7
2188:20,25
2189:1
2200:8
2214:14
2218:23
2224:15,19
2236:7
2333:10
2335:2
2341:14
2384:21,25
2385:8,9
2397:20
2398:16,21
2399:2
2404:13
2408:8
2420:24
2421:4,18
2427:2
2436:5

basic 2228:21

basically
2090:11
2240:24
2243:8,24
2265:20
2325:21
2366:15
2397:20

basis
2061:9,17
2062:5
2106:17
2177:25
2178:1,2
2212:4,6,8
2214:19
2238:22
2427:19

bathroom
2205:25

Beach 2047:2

bear 2088:23
2159:2
2184:19

became
2277:20
2282:6
2299:7

Beck 2314:12
2319:24

becomes
2099:23
2179:16

becoming
2198:25

befuddle
2098:22

begin 2103:20
2425:15,21

beginning
2086:10
2096:10,15
2111:15
2273:24
2277:20
2295:13
2337:15
2374:22

begon 2348:16

begun 2081:4
2348:16

behalf
2059:14
2126:5,8,19
2291:23
2347:4,7

behind 2245:2
2253:8
2415:10

belief
2424:4,10,15

believe
2049:3,14
2056:24
2063:8
2065:16
2068:12
2069:4,18
2070:22
2079:1
2080:3,17
2082:18
2086:8
2089:12
2093:7
2097:5
2102:25
2108:6
2120:12
2122:17
2124:2
2126:3
2153:19,24

2164:14
2167:23
2168:12,22
2169:25
2178:3,20
2183:8
2189:16
2194:11
2198:25
2201:12
2202:14
2203:17,25
2204:9
2205:12
2215:4
2216:4
2233:6
2236:10
2250:4
2263:2
2273:11
2279:7
2280:17,22
2281:21,23
2282:1,6,11
2283:19
2284:4
2289:12
2299:16,21
2308:3,18
2309:9,12,13
,15,25
2310:21
2311:3,10,22
2313:19
2314:2
2315:1
2317:14
2319:12
2320:1,22
2321:17
2322:25
2323:9,11
2324:10
2326:8
2330:8
2331:20,23
2333:8,16
2336:21
2338:22
2339:12
2348:2,19
2351:10
2352:3
2353:6
2354:9,25
2356:1
2357:12,25
2362:19

2369:11,14
2370:1
2372:11
2373:21
2376:13,25
2377:2
2379:20
2380:12
2381:23
2382:17
2383:19
2397:5
2398:15
2401:4
2402:22
2404:1,24
2405:10,19
2406:24
2408:15,19
2409:21
2412:15,16
2413:5,17,24
2415:7,13,14
2416:5,9,13,
17,19,25
2418:10
2419:4
2420:8,19,20
2421:12
2422:12,20
2425:1,19
2426:12,17,2
0 2427:16
2431:16,19
2432:14
2434:11
2435:17
2436:11

believes
2331:16

Bell 2207:7
2275:22
2417:20

Bemiston
2044:11

bench 2089:3
2117:22
2124:20,24
2125:2
2169:5,12
2205:16
2360:16

bender
2314:13
2319:24

benefit
2429:2

besides
  2193:20
best
  2072:2,10
  2086:1
  2119:22
  2125:16
  2363:18,20
  2398:13
  2413:8
  2440:8
bet 2230:2
better
  2226:24
  2262:20
  2331:17
  2345:7
  2376:20
  2418:22
beyond
  2124:23
  2167:1
  2277:25
  2366:20
  2376:4
bias 2288:23
  2289:3
  2342:9
bid 2133:24
  2245:12
  2246:7,13
bids 2243:24
  2244:10,19
  2245:1
Bill 2341:2
  2418:2
billing
  2053:25
billion
  2100:4,10
  2101:1
  2105:1,2,3,5
  ,15 2152:18
  2169:24
  2210:10
  2277:11
bit 2084:16
  2103:11
  2128:3
  2129:13
  2161:5
  2168:6,7
  2213:23
  2217:11
  2254:16

2273:3
2275:18
2278:7
2299:8
2320:13
Blake 2046:18
Blanc 2417:21
Blanc's
  2167:24
blatant
  2077:22
blip 2277:13
Blitz 2044:19
block 2058:25
  2059:1
  2099:22
blue 2284:8
board 2100:19
  2133:25
  2154:5,10
  2194:23
  2211:3,6,10,
  14 2212:8
  2266:5
boards
  2265:18,19
  2276:19
Bob 2207:7
  2313:16
  2315:8
  2417:20
body 2081:9
  2127:24
  2251:11
Boil 2254:16
boiler
  2057:19
  2058:16
  2079:25
  2089:20
  2090:15
  2240:23
book 2284:8
books 2218:2
boom 2249:14
Boonville
  2044:3
boot 2231:23
borne
  2367:20,21,2
  5

borrow
  2296:23
boss
  2307:11,16
bottom 2090:3
  2136:13
  2152:17,18
  2153:20
  2189:4
  2238:23
  2239:2,4
  2240:8
  2241:3,9
  2297:21
  2298:10
bottom's
  2241:4
Boulevard
  2047:13
box 2045:11
  2046:2,23
  2047:5
  2048:6,11
  2058:24,25
Brad 2398:4
break 2052:8
  2072:10,15,1
  9,25 2075:14
  2101:23
  2102:4,20,23
  2103:2,7
  2129:13
  2168:8,20
  2205:24,25
  2206:5
  2233:20,21
  2262:20,21
  2344:22
  2345:2,7,10,
  13 2437:9
breaking
  2101:25
Brent 2207:7
  2398:5
  2417:18
brief 2072:15
  2089:8
  2284:8
  2305:2
  2409:20
  2410:1
briefly
  2055:18,25
  2066:2
  2081:6

2087:17
2317:21
2325:17
2361:19
2369:8
bring 2226:18
broad 2175:12
broadening
  2128:1
broader
  2313:25
  2318:17
Broadway
  2044:15
broke 2168:24
  2169:20
brought
  2069:15
  2272:22,23
  2350:5,8
  2352:12
  2353:12
  2358:14,18,2
  1 2416:5
BRUDER
  2045:14
Bryan 2047:9
Brydon
  2045:10
buck 2287:5
bucket 2179:4
buckets
  2382:9,15
  2400:10
  2427:24,25
bucks 2180:25
budge 2133:12
budget
  2080:7,8,10
  2098:20
  2099:6,7,8,1
  1,18
  2100:1,4,9,1
  3,15,18
  2101:1,5,14
  2104:19,20,2
  5 2107:4
  2108:7
  2109:17
  2122:13
  2135:1
  2152:9,16,22
  2153:1,2

2154:5,9
2160:4,5,22
2161:11,20
2162:1,5,6,9
,10,11,13
2164:9,12,19
,20,24,25
2165:4,6,13,
16,17,18
2166:2,6,11,
12,19
2167:1,14,15
2169:22
2170:2,8,18
2175:7
2176:2,11,13
2179:13
2180:15,17,2
5 2181:3,19
2182:14
2187:2,3,21
2188:22
2190:4,10
2192:22
2194:13,22
2203:16,24
2204:8,19
2207:10
2208:17
2209:15
2210:2,6
2211:13,24
2213:8,13
2214:20,24
2215:7,15
2218:10,15
2219:15
2223:6
2224:22
2229:4
2266:7
2271:9
2274:11
2293:17,24
2295:24
2296:9
2325:13,20
2326:1
2329:23
2330:18,21,2
4 2332:23
2401:24
2402:2,18
budgeted
2108:17
2180:8
budgeting
2180:14
2183:2

2184:3
2289:20
budgets
2080:9
2217:25
2219:3
build 2125:25
2239:17
building
2243:22
2244:5,6,10
2245:4,11
2246:12,14
built 2086:8
2241:1
2320:11,14
2336:9
bullets
2125:9
bunch 2054:13
2096:7
2259:15
burden
2086:14
burdensome
2062:14
Burns 2238:17
2241:8,13,16
,19,20,21
2242:4,8
2244:8,16,24
business
2074:18
2091:21
2092:4
2093:16
2094:11,23
2129:23
2131:23
2218:18
2252:16
2259:3
2265:15,17,1
8 2277:5
bust 2244:4
button
2436:22
Byce
2264:15,19
2265:2,5

————— C —————

cable
2256:14,25

2257:4,12
2258:3
2259:5
Cafer 2046:14
cakewalk
2276:4,6
calculations
2163:21
2238:19
2245:9
2321:16
2326:9
camera
2056:21
campus
2310:12,15,1
9
2351:6,8,12,
16,20
Canada
2276:25
Canyon
2050:17
cap 2065:13
capability
2213:7
2329:22
2330:20
capable
2180:1
2182:6
2430:13
capacity
2236:8,16
2281:9
capital
2202:21
2232:24
2233:11
Capitol
2044:7
2045:11
caps 2430:14
CAPT 2047:1
caption
2342:5
capture
2164:6
captured
2204:19
2274:24

car 2051:13
care 2125:24
2176:23
2182:11
2192:7
2359:6,10,23
career
2198:19
2385:6
Caribbean
2276:25
Carl 2044:10
2417:19
Carlos
2241:15,18,2
1,23
2242:8,10,14
,18,20
2243:1,3,8
carry 2086:14
CARTER
2045:10
Cary 2443:11
case 2076:4
2078:1
2084:15
2086:16
2089:9,12
2093:9
2101:12,13
2106:17,21
2116:20
2123:10,11,1
7 2124:16
2125:15
2130:3
2153:24
2202:12,19
2205:16
2216:15
2224:4
2225:21
2234:17
2249:9
2257:15
2258:17
2280:15
2285:18
2287:3,23,25
2288:10,19
2289:3,5,8
2291:9,11,14
,15 2292:2,8
2293:4,9,10,
16
2294:14,18

2297:22	2286:22	2135:12	**challenged**
2299:14	2287:8,13,17	2170:2	2202:21
2301:5	2290:12	2175:3,10	2217:25
2303:10,17	2291:20	2178:19	**challenging**
2309:6,22	2292:19	2188:17	2276:6
2310:4,10	2297:6,22	2194:7	**chance**
2311:22	2321:8,16	2223:19	2053:10
2316:9	2334:15,18	2275:8	2055:12
2317:1	2347:19		2189:15
2318:10	2384:23	**CCR**	2255:23
2323:21	2403:8	2043:23,24	2364:14
2328:24	2405:4	2440:4,18	**chances**
2332:20	2432:21	**Center**	2255:25
2335:11,18,2	2434:6,9	2317:25	**change**
4 2336:3,4	2436:12,20	2327:11	2057:5,12,16
2339:10,15	**catalytic**	2371:18	2059:7,10,12
2341:13,19,2	2406:10	**cents** 2090:16	,13,18
2 2344:14	**categories**	**certain**	2060:2,4,8,1
2346:8,11,14	2090:25	2043:12,16	4,17,18,20
,18	2377:14,17,1	2085:10	2061:14,16,2
2347:2,5,8,1	8 2424:17	2091:19,20,2	4
1,13 2350:2	2425:8	1,22 2161:15	2062:1,8,11,
2352:1	2431:15	2163:22	13
2356:7	2433:17	2204:22	2064:16,18,2
2365:15	2436:1	2205:4	4
2366:1,4,8,1	**categorize**	2228:24	2068:9,15,23
9	2110:17	2362:15	,25 2069:1
2372:17,18,2	2425:6	2404:25	2070:2
0,24	2436:2	**certainly**	2110:8
2373:7,12	**category**	2052:22	2112:9,12
2378:21	2261:23	2102:1	2113:22
2379:22	2378:25	2232:24	2114:19
2380:24	2379:14	2252:14,25	2115:19
2381:8	2380:15	2276:4	2116:9
2382:11	2381:24	2345:3	2120:11
2383:21	2382:25	2361:14,18	2123:5
2384:13,18	2383:3	2425:19	2125:23
2385:4,8	**cause** 2250:7	2432:14	2128:11
2402:15,16,2	2255:18,19	**certificate**	2131:17
3	2257:5,6	2156:8,19	2134:1
2403:11,15,2	2258:24	2157:4,16,22	2166:13
1 2404:1	2260:18	2440:2	2174:9
2405:13,22	2261:3	**certified**	2180:20
2406:8,14	2342:8	2281:14	2184:7,9,18,
2407:5	2362:14	2282:20	22,24 2185:3
2423:8	**caused**	2337:2	2186:18
2424:18	2234:17	**certify**	2193:17
2426:16	**causes**	2440:5	2213:2,3
2427:7,13,20	2258:22	**cetera**	2214:12,15
2428:1	**Cave** 2047:9	2273:17	2232:3,16
2430:12	**caveat**	**chair** 2278:19	2248:17,18,2
2431:1,3	2205:15	**chairman**	0
2432:7,14	**CBE**	2127:17	2249:3,4,5,8
2433:12,13,2	2133:15,21	**chairs**	,17 2250:11
2	2134:2,17	2278:18,20	2251:14
2434:1,9,12			2292:23
2435:2,3,6			2293:5
2436:5,9			2299:5,11
cases 2125:14			

2305:7
2320:16,17
2329:11
2332:1,3,9
2333:11,13
2347:21,24
2365:22
2366:2,5,8,1
0,11,14,16,1
8 2367:3
2374:24,25
2375:3,8,10,
14,16,19,21,
24,25
2376:1,2,3,7
,8,12,16,18,
20,24
2377:3,4,8,1
0,13,14,18,2
3
2378:13,14,2
0,25
2379:3,5,8,1
6,22,24,25
2380:3,8,13,
17,18
2381:7,18,19
,23
2382:2,11
2383:2,21,25
2384:13,19
2397:6,8,16,
22
2398:1,6,9,1
3,17,23,24
2399:4,10,11
,14,16,17,19
,21
2400:10,16,1
9,24 2401:3
2404:9,13,15
,20 2405:2
2408:9,11,21
2409:19,21
2410:2,5,8,1
0,12,13,24
2411:23
2418:22,23
2419:3,6,13,
18,22
2424:17
2425:11,12
2427:4,9,13,
15,18,23,25
2428:6,7,11,
14,15,18,22
2429:19
2430:10,17
2431:13,14

2442:21
2443:15

changed
2068:23
2172:12,16
2174:12,20
2248:15
2278:20

changes
2043:12,16,1
7
2059:7,15,17
2068:7
2099:8
2131:25
2132:4
2235:4
2261:20
2293:1
2347:18
2363:9,17,19
2375:4
2377:24
2378:5
2379:5,8,17
2380:5,9
2381:10,12,1
9 2382:18
2383:25
2384:3
2399:18
2404:22
2407:7,9,16,
18 2409:15
2413:19,20
2415:6
2419:8
2423:18,21
2424:5
2425:1,25
2426:22
2427:19
2428:3
2435:23

changing
2160:15

channels
2307:7

Chapter
2074:5

character
2092:9

charge 2109:2
2187:24
2198:8,10
2334:23

charged
2074:20
2105:22
2106:9
2107:14,22,2
3 2108:4
2110:21
2201:2
2401:17

charges
2043:12
2054:1
2063:18
2064:6,11,13

charging
2070:8

CHARLES
2046:10

Charlie
2182:22,23

chart 2286:3
2430:18

check 2080:5
2120:12
2344:15

checking
2361:15

chief
2048:1,2
2051:5
2056:7
2127:19
2285:24
2286:6,11
2291:7

choose
2352:11

Chris 2101:17
2289:14
2417:21

Christ 2247:8

Chuck 2315:25

Churchman
2077:7
2417:19

Churchman's
2077:25

circumstance
2061:6

circumstances
2060:19
2061:5,23
2065:8

2070:12
2106:1
2123:24
2128:22
2259:21
2347:17

cite 2236:23

cited 2237:4

City
2043:8,11
2044:8,16,20
,24,25
2045:2,3,12,
20,21
2046:2,3,4,7
,8,11,12,16,
19,23,24
2047:6
2048:7,11
2100:3,8
2130:1
2274:9,22
2414:19

civil 2116:6

claim 2059:11
2118:17

claims
2119:17
2125:24

clarification
2173:11,14,1
8 2202:15

clarify
2059:23
2192:6
2263:4
2321:21

clarity
2230:16
2272:24
2318:21
2438:6

**classificatio
n** 2425:11

classified
2054:2
2377:14
2381:11

classify
2431:14

claw 2117:14

Clayton
2044:12

clear 2072:24
2102:7
2114:2
2132:16
2160:14
2200:24
2202:7,12
2213:7
2217:11
2231:4
2245:16,17
2329:12,22
2330:19
2349:9
2364:4,19
2437:25
clearly
2087:14
2098:2
2118:9
2201:14
2251:15
2432:20
clients
2265:19
close 2168:5
2262:18
closed
2228:24
2250:8
2375:1
closely
2064:13
coaching
2171:20
coal 2236:16
2372:19
coal-fired
2049:24
2236:7
2239:18
code 2137:4,5
2191:13
2214:3,6
2215:11,14
codes 2249:12
code's
2249:14
Coffman
2047:12,13
college
2156:8
2157:16
Columbia

2045:6
column
2152:8,9,11
2430:13
columns
2125:10
2136:14
combative
2156:17
combined
2327:8
2371:15
2431:7
combining
2306:12
combustion
2371:12
2373:1
2431:5,6
2433:23
comes 2111:8
2260:20
2278:9
2309:23
2352:20
2436:22
comfortable
2278:21
coming
2165:5,20
2166:4,6
2171:10
Comley
2044:22,23
2045:1
commence
2298:4
commenced
2415:1
commencement
2302:24
comment
2244:15
commented
2128:17
comments
2077:22
2369:6
commission
2043:1
2048:5,8
2085:23
2086:11,15

2120:8
2121:2
2123:12
2126:9,15,16
,17 2127:19
2194:5
2201:19,22
2202:11
2206:8
2209:13
2233:2
2237:18
2280:12,15
2281:7
2283:7,11,17
2285:6,19,23
,25
2286:4,7,16,
20,22,23
2287:7,13
2290:2
2291:9,19,22
2292:2,7,18
2293:8
2294:12,15,1
6 2295:22,25
2297:24
2298:1,6,13
2308:21,22
2312:10
2316:8
2321:9
2329:6
2332:21
2334:14,19
2335:10,20
2337:3
2338:5
2341:18
2348:9
2352:9,10,15
,18
2353:16,18,2
2 2355:16
2370:7,12
2373:14,19
2384:18
2385:3,6,7
2402:14,24
2407:2,14
2417:15
2438:1
Commissioner
2089:3,5
2091:7,8,10
2101:20,22
2104:18
2117:2,18,22
2118:24

2119:19
2121:8
2122:18
2128:4
2441:4,5
Commissioners
2043:21
2102:1
2103:3
2129:13
2169:1,12
2172:3
2205:12
2233:13,18
2255:13
2260:5
2280:4
2283:13
2286:2
2290:2
2291:16
2292:14
2352:22
commissions
2101:14
2126:13
2127:17
2128:2
Commission's
2289:17
2292:14
2298:10
commitment
2130:21
2180:23
2216:19
commitments
2085:10,14
committed
2178:1
committee
2106:22
2112:1,10
commodities
2110:4
commodity
2203:12
2204:16
common 2060:3
2186:22
2187:1,6
2259:3
2273:1
2298:1,3,23
2299:4

2324:22
2333:13
2353:8
2355:17
2356:21
2373:6,9
2408:11

Commonplace
2252:15,16

Commonwealth
2264:7,10

communicate
2309:5

communicated
2216:15

communicating
2291:2

communication
2311:25

companies
2155:18
2277:6
2356:16

company
2043:12,16
2044:17
2045:13,21
2046:2,4,8,1
2,16
2063:21,23
2064:1,2
2080:14
2086:14
2128:20
2155:19
2200:18
2201:16
2202:8
2219:16
2244:8
2249:10
2279:9
2283:18
2295:23
2320:18
2340:25
2341:9
2342:4,9
2379:6
2402:10
2409:13
2418:3
2428:16

company's
2082:1
2086:12

2200:15
2325:13
2328:23
2329:7
2332:1
2416:15

comparable
2062:18

comparative
2192:22

compare
2159:19
2177:19

compared
2118:7
2171:10
2178:16
2224:21

comparing
2208:16
2274:17

Compel
2121:21,24

compensation
2059:13
2201:2

competent
2332:18

compiled
2226:25

complain
2257:14
2350:19

complained
2346:25

complaint
2078:4
2257:22

complaints
2346:16,20
2351:2

complete
2050:9,13
2080:14
2099:13
2101:10
2107:20
2186:5
2288:20
2290:22
2295:7
2296:11
2298:2
2401:11

2411:11

completed
2051:22
2080:21
2081:2,5
2084:2
2226:6
2297:24
2303:24
2378:7
2402:5
2404:6
2425:16,23
2426:7
2433:11
2435:6

completely
2180:24

completes
2290:9

completing
2288:14
2414:16

completion
2131:13
2217:20
2298:12
2353:19
2378:3

complex
2242:14
2265:21
2423:22,23
2424:9

complexity
2225:4
2276:5
2424:11

compliance
2125:20

comply 2337:6
2338:6

component
2246:15
2258:19
2365:19

components
2090:22
2105:4
2240:25
2241:1

comprehensive
ly 2375:9
2377:9
2380:14

2381:24

compression
2259:10,12,2
5 2260:15
2261:20

comprised
2285:11

computer
2086:22
2087:1

conceive
2084:25

concept
2293:22

concern
2342:8

concerned
2258:15
2339:17

concerning
2236:24
2244:13

concerns
2328:22
2333:12
2334:2
2408:10
2410:24
2411:22
2416:4
2419:22,24
2436:5

concise
2329:12

conclude
2075:8
2119:12
2303:13
2322:7,22
2323:3
2338:4
2370:10
2419:17,23
2422:9,21

conclusion
2244:13
2408:20

conclusions
2074:15
2097:8
2244:22
2334:7,9
2400:9

concrete

2240:22

condensed
2295:10

conditions
2059:9
2060:10
2110:5
2118:16

conduct
2122:3
2287:22
2301:18
2315:13
2371:3
2373:17,23
2374:3,6,10

conducted
2126:23
2283:2
2316:23,24
2326:15,21
2327:5
2335:7
2336:25
2337:16
2347:19
2348:11
2370:15
2373:14,18
2406:9
2407:13
2408:16
2423:11

conducting
2096:19
2308:1
2337:3
2351:25
2356:12

conducts
2347:15

conference
2127:16

conferring
2232:22

confidential
2098:10
2187:17
2385:12
2442:6,18,19
,21,22,23,25
2443:3,6,13,
15,20,23

confines
2292:4

confirm
2052:13
2136:7
2321:22
2371:2
2435:9

confirmation
2060:12
2437:24

confirmed
2324:10
2338:22

conflicts
2307:5,11,19

confused
2095:18
2096:5
2117:17
2128:5
2172:14

confusion
2322:19
2324:4
2404:3

congestion
2261:21
2262:6

conjunction
2320:9
2321:14

Connecticut
2126:15

Conrad
2044:6,7

conscious
2095:21

consequences
2085:17

consider
2061:2
2062:13
2070:7,9
2152:21,23,2
5 2153:2
2154:9
2158:14
2238:16
2263:15,18
2293:13

considerations 2288:17

considered
2155:6
2165:13

2286:6
2294:1
2358:18

consist
2366:14

consistent
2123:18
2252:11

constant
2255:9

constitutes
2059:13

constraints
2304:1

construct
2086:6

construction
2049:22
2079:18
2080:1,3,25
2115:18
2116:20
2119:17
2122:17
2123:12
2125:21
2127:1
2198:11,22
2203:18
2236:8,15
2252:8,13,20
2253:4
2259:22
2260:6,20
2262:8
2276:5,9,13,
20,22,24
2277:1,3,15
2282:24
2283:3
2287:17,22
2288:5,14
2289:5
2291:3
2297:4,25
2298:17,22
2299:3
2300:15,24
2301:19,24
2302:6,22,25
2304:5,8,16,
25
2305:16,21
2306:2
2308:2,9,12
2309:1,11,17
2310:23

2311:5,25
2315:14
2316:2
2317:23
2318:13,19
2319:19
2320:7,23
2321:4,9,13
2322:9,23
2323:5,21,24
2324:8
2326:3,14,16
,19,21
2327:2,5
2331:15
2332:15
2334:24
2335:6
2336:15
2339:17
2346:22
2348:4,17
2349:11
2353:1,11
2354:12,16,2
3 2355:10
2356:13,19
2364:14,15
2370:15,16,2
0 2371:3,6,7
2373:13,18,2
3
2374:3,7,14
2375:15
2376:9
2377:20
2378:16
2380:5,20
2381:12,15
2382:5,7
2383:15
2384:17
2385:5
2397:7
2399:25
2400:14,23
2401:6
2402:13,18
2404:7
2406:9,17,18
,19,25
2407:6,7,13,
17,24
2408:22
2409:4,7,12,
14 2412:6,12
2413:18,25
2415:5,25
2416:6,21

2421:3,8
2422:25
2423:10,20,2
4
2424:5,12,14
2425:15,21,2
2 2426:5
2427:3
2429:3,4,10
2430:8,25
2433:10
2435:7
2442:9,14
2443:6,8

consult
2411:1,24
2420:3

consultant
2088:8
2288:9,16,18
2289:14
2342:4
2346:11

consultants
2288:4,13,21
,24 2289:4,9
2342:10

consultant's
2346:14

consulted
2288:7
2354:19
2423:2

consulting
2053:22,25
2054:9
2056:6
2099:3
2125:10
2264:16,22
2265:6
2342:5

consumer
2086:15
2126:5

consumers
2047:15
2292:3,12

contact
2290:4

contain
2130:8
2241:6

contained
2066:5

2102:6,7
2137:18
2167:2
2195:10
2202:11
2220:19
2249:16,25
2266:17
2334:7
2357:19
2363:14
2385:17
2421:3,14
2422:16,23

contains
2154:3

contemplated
2259:17
2278:11

contents
2049:18
2223:18

contested
2317:5

context
2055:20
2110:7
2209:1
2259:14

contingencies
2106:23
2108:8
2209:23
2236:24

contingency
2099:22
2100:7,14,16
2104:25
2105:9,10,11
,12,22
2106:5,9,12,
13
2107:5,8,14,
17,21,22,23,
24
2108:4,9,10,
12 2109:4
2110:21,22,2
5
2111:1,6,11,
13,18
2112:7,21
2114:20
2130:21
2134:23
2135:6,7,14,
21 2166:20

2167:2,15,17
2169:22
2176:2,10,13
,17
2178:24,25
2179:2,4,7,9
,15 2180:12
2181:1,4,5
2182:15
2186:20
2189:24
2190:6,10,22
2191:1,7,8,9
,10,11,13,14
,17 2192:23
2207:13
2208:7,9,14,
24 2213:23
2214:1,6,8,9
,11,16,17
2215:2,7,18
2216:2,6,9

continue
2043:13
2224:9

continued
2049:10
2443:1

continues
2098:22

continuing
2096:16
2246:23

contr 2256:24

contract
2053:22
2054:17
2062:9
2063:10,19,2
2,23
2064:1,3,8
2068:14
2069:3
2079:25
2094:3,4
2119:21
2125:16
2128:9,10
2136:24
2207:8,9
2246:10
2248:24
2251:25
2252:19
2265:20,24
2266:1
2277:9

2376:1,4
2383:6
2384:1,9,10
2430:15

contracting
2125:13
2277:6

contractor
2057:13
2059:10,14
2060:15
2062:4,12
2091:15
2092:3
2239:21
2240:11
2252:21
2256:3,4,8,1
3,16,23
2257:11,22
2258:16
2264:21
2265:13
2276:15
2375:17
2376:14
2414:8

contractors
2245:14
2254:5,21
2368:1
2414:7

contractor's
2256:10

contracts
2060:11
2063:10,11
2064:6
2065:22
2070:9
2088:3
2109:7
2247:1
2375:18
2378:3,10
2382:19
2383:14
2384:4,5

**contract-
specific**
2137:6

contrary
2357:19
2358:19

contribute
2073:24

2074:25	2401:19,24	2305:14	2065:14,18
control	2402:2	2306:25	2068:18
2080:8,10	2416:15,17	2307:6	2073:2
2098:20	2428:2	2308:11	2074:6,9,12
2099:11,18	**controls**	2315:8,21,25	2082:20
2100:1,4,9,1	2112:2	2321:3	2086:20
3,15,21	2128:12	2322:8	2089:10,13,2
2101:1,5,14	2198:9	2323:4,16,25	2 2090:11
2104:18,20	2203:19	2373:24	2100:11,17
2108:7	**convenient**	**coordinators**	2105:6,9,12
2109:17	2101:23	2323:10	2112:24
2114:3,22	**conversation**	2350:3	2129:8,9
2116:11	2333:1	**copied**	2132:20
2122:1,5,12	2366:19	2225:11	2135:9,14
2125:22	2412:15	**copies**	2136:7
2128:11	**conversations**	2053:25	2137:9
2133:12	2088:9	2076:6	2152:24
2135:1	2171:3	2087:22	2153:20
2152:9,16,22	2374:1	2115:14	2157:5,23
2153:1,2	**converted**	2374:24	2158:21
2154:4,9	2384:5	2375:3	2159:25
2162:1,5,9,1	**converting**	**copy**	2160:16,19
1 2164:19,24	2384:9	2051:7,11	2161:16,20
2165:16	**convey** 2170:3	2053:9,14	2163:2
2167:1	2224:19	2055:5	2166:12,22
2169:22	**COOPER**	2071:18	2176:3,6,11,
2170:2,8,18	2044:15	2072:6,11	12 2183:25
2187:21	**cooperate**	2102:6	2193:15
2188:22	2353:17	2133:11,13	2208:8,15,19
2190:4	**cooperative**	2158:22	2209:11
2192:22	2414:15	2159:11	2211:8
2194:13	**coordinate**	2186:13	2212:22
2201:22	2299:13	2189:12	2213:3,4
2203:16,23	2302:6	2203:5	2218:14
2204:7,19,20	**coordination**	2266:12	2225:3,20,22
2208:17	2300:14,23	2295:8,12	2228:12
2209:14,23	2301:15,19,2	2330:6	2229:16
2210:2	3 2302:4	2359:9,12	2236:22
2213:8,13,18	2303:8,14	2369:1,3	2237:3
,20,21	2304:14	2401:8,11	2247:1
2215:7,15	2305:19	**copying**	2251:12,17
2217:23	2306:1,11,17	2059:24	2252:1,2
2218:10	2307:9,25	**corner**	2261:5,11
2219:13,16	2308:5,9,14,	2153:21	2280:12,13,2
2223:6	19 2321:1	2259:2	0 2281:21
2266:7	2323:12,15,1	**corporate**	2282:12,13
2271:9	8,19 2349:10	2080:23	2284:12,18
2274:10,11,2	2352:25	2125:10	2285:23
3 2293:17,24	2442:11	2355:16	2287:9,14
2295:23	**coordinator**	**corporation**	2288:12
2296:9	2302:21	2237:17	2289:15,22
2325:13,19,2	2303:11,17,2	**correct**	2290:5,6
5 2328:23	2	2050:10,20,2	2291:17
2329:2,7,15,	2304:6,14,19	3 2057:14	2294:9
20,23		2058:14	2298:15,19
2330:18,21,2		2063:12	2299:1
4 2331:14			2300:3,6,20
2332:23			2302:3,17,25
2356:18			2303:13

2304:13
2306:23
2307:9,17
2310:17,18
2313:22,25
2321:17
2322:7,22
2323:3,7,14
2324:9
2338:4,20
2339:24
2340:4
2345:20
2349:13
2353:6
2356:4
2363:18
2364:7
2366:9
2367:6
2368:2,3
2369:21
2370:10
2373:25
2374:4,17
2375:6
2377:11,16,2
1,25 2379:20
2381:5,12,16
,25
2382:13,22
2383:16
2384:22
2385:9
2398:7
2407:10,11,2
1 2408:13,24
2412:10
2415:22
2418:14
2419:15,16,2
0,23
2420:6,22
2421:1,7,21
2422:8,9,21
2423:1
2424:2,6,19,
20,25
2425:5,13
2426:20,23
2428:5
2431:12
2433:20
2434:4,7,11
2435:14
2436:7,11
corrected
2056:25
2365:22

2367:5
correcting
2212:18
correction
2212:17
corrections
2131:25
2132:21
2235:5,13,14
2363:9
corrective
2073:21
2074:24
correctly
2059:19
2242:23
2298:7
2345:19
**correspondenc
e** 2375:19
cost 2050:5
2081:15
2100:6
2105:22
2106:8,10
2107:7,15
2108:4,17
2109:14,25
2110:19
2112:2,23
2114:2,3,18,
22 2115:1
2116:3,10
2122:1,5,10
2124:3,5
2125:6
2128:11
2130:14,17
2131:6,10
2134:20
2137:4,5
2157:9
2159:14,23,2
4
2160:4,5,15
2161:19
2162:8
2163:1,4,9,1
3 2164:2,8
2165:13
2166:18,19,2
5
2167:18,20,2
2,25 2168:2
2169:21,23
2170:7,15
2174:21,25

2175:2,7,9,1
3,15,16,17,1
9,23
2176:3,9,14,
16,17,21,23
2177:3,9,14,
17,21,25
2178:3,5,9,1
2,16,23
2179:16,22
2180:11
2181:7,9,12,
17,18,22,25
2182:3,9,19,
21,24,25
2183:15,16,2
4 2184:1,2
2186:8,10,14
2187:19,22,2
3,24
2188:8,11,16
,19,25
2189:1,19,21
,24 2190:10
2191:1,5,13
2192:2,5,7,9
,12,13,21
2193:4,15,19
,22 2198:7,8
2199:1,2,3,6
,8,12,22
2201:15,22
2202:4,5
2203:10,15
2204:1,5,13,
20,21,23
2205:3
2206:15
2207:6,19
2208:4
2211:11
2213:8,13,18
,20,21
2214:2,6
2215:11,14
2217:23
2218:21
2220:10,12
2223:5,11
2232:23
2233:10
2237:5
2239:17
2240:12
2241:22
2242:9
2244:4,16
2245:2,19,20
,24

2253:2,22
2255:5,8,18,
19 2256:1
2257:5,7,19
2258:13,23,2
4 2259:7,8
2260:18
2274:10,11,2
2,23
2275:6,9,10,
11,12,15
2277:5,8
2294:13,16
2296:5
2305:6
2326:5
2328:23
2329:1,2,7,1
0,11,15,20,2
3
2330:17,21,2
4
2331:12,14,2
1 2335:1
2351:14
2355:1,5,8,1
2 2356:18,25
2362:24
2364:13
2375:4
2376:23
2384:24
2398:12,17,2
2
2399:7,8,12
2401:16,18
2403:1
2404:16,22
2405:3
2406:18,19,2
0 2410:12,14
2415:6,24
2416:15,17
2424:6
2425:2,7,11
2426:9,14
2427:8
2428:2
2433:17
2434:15
2436:2,14,23
costed 2246:1
costing
2105:21
2113:18
2180:10
costs 2059:14
2073:17

2074:23
2090:25
2091:1,23
2092:6
2116:14,23
2160:23
2161:2,3
2162:17,20
2164:6,16
2175:5
2179:14
2180:7
2181:18
2183:13
2184:4,6,8
2186:21,25
2188:13
2198:12
2199:8,14,23,25 2217:19
2218:5
2219:13,16
2224:16
2227:11
2228:22
2237:21
2238:20,21
2240:15
2241:10
2243:10,22
2244:4,23
2245:21
2249:17
2255:23
2257:23
2259:18,25
2260:25
2261:3
2275:17
2293:16,23
2304:8,10,16
2305:1,5,16
2321:10
2325:12,23,25 2333:3
2334:15,20
2335:14
2352:25
2356:22
2367:14,17,20,24
2368:2,4,5
2376:6
2382:20
2384:18
2385:8
2399:13,14
2401:23
2402:18

2403:10
2406:21
2407:7,17
2410:9,10
2413:20
2415:16
2416:2
2423:18,21
2424:22
2426:18
2428:17
2430:14
2434:3,9,14
2435:15

Council
2047:15

counsel
2048:1,2,3,4,5,10,12
2049:5
2052:13
2058:6
2063:1
2075:17
2076:2
2086:16
2102:3
2122:18
2136:16,19,23 2168:11
2213:22
2232:19
2233:25
2262:21
2263:5
2341:14
2345:12
2361:17,23
2414:21
2418:8
2437:15,19,24 2438:5
2440:10,13

counsel's
2303:10,16

count 2217:7

countries
2126:25

country
2276:25
2277:7,16

County
2249:11

couple
2056:18
2109:18

2110:5
2207:22
2230:11
2233:20
2272:13
2274:13
2376:19
2398:3
2417:24

course
2057:5,17
2079:5
2107:12
2108:11
2109:9
2131:22
2277:5
2334:3
2412:5

courses
2158:10

court 2043:24
2051:10,12
2052:5
2053:7
2055:4
2057:25
2063:5
2072:10,13
2076:8,15,17
2078:23
2081:22
2102:9
2230:24
2232:16
2265:22
2277:20

courtesy
2076:6

courts
2124:12,13

cover
2176:2,13
2313:6,7
2421:25

covered
2360:15

covers
2176:17

co-worker
2264:16,17

co-workers
2172:6

CP 2163:12

CPA 2263:13

CPEs 2217:9

CPs 2162:25
2163:1,16,25
2164:11,15,18,23 2166:2
2182:19,21,24,25
2183:12,15,19 2184:2,3
2228:16
2230:9

cradle
2176:25
2191:10

craft 2198:17

craftsman
2198:23

crane 2416:10

create
2161:23,25
2162:4,9,12
2164:12,25
2175:7
2219:7
2382:15

created
2179:7
2227:22
2228:13
2382:8

creatures
2265:20

credited
2106:14

Creek
2123:10,17
2218:19
2357:11
2433:12

Creek's
2218:18

crew 2257:15

criteria
2074:17

critical
2255:10,21,22,25 2360:1
2415:9

criticism
2076:14

criticized
2097:21

2328:23

cross 2125:2
2133:5
2168:6
2234:5
2236:2
2279:6
2344:8
2345:4,11
2360:12
2362:6
2365:9
2368:11
2437:11

cross-examination
2049:6,10
2075:25
2124:20
2133:9
2154:17
2169:16
2236:5
2263:1,4,6,7
2344:7
2346:4
2357:16,18
2365:11
2368:14
2441:3,4,8,9
,10,13,14,16
,20,21

cross-examine
2341:14
2345:20

cross-examining
2049:4
2168:23
2365:16

crowded
2257:9

crucial
2098:17

Culley
2308:21

cumulative
2179:4,6
2191:14
2214:9
2432:24

CUNNINGHAM
2046:6

current
2076:21

2077:6
2080:5
2161:25
2162:5
2164:12,19,2
5
2165:4,6,11,
13,17,18
2203:16,23
2204:7
2224:15,19
2229:4
2282:16
2284:16
2297:5
2320:7

currently
2282:8

Curtis
2044:11
2417:21

cut 2370:22

cycle 2327:8
2371:15
2431:7

cyclical
2110:3

Cygne 2328:9
2372:15
2406:10
2423:12
2424:24
2425:7
2426:4
2427:5,14
2431:15

D

D.C 2045:15

d/b/a 2044:17

Dale 2308:21

damage 2202:2

damages
2125:25

Dan 2314:12

Daniel
2234:10,14,1
6 2271:3
2441:12

data 2053:18
2063:7
2081:24
2082:1
2084:10

2086:25
2122:25
2123:1
2177:20
2187:8,10,18
2188:2,3
2203:2
2214:18
2240:5,19
2242:22
2251:5
2319:13
2442:19
2443:13,16,2
2

date 2070:19
2324:14
2348:18
2382:20,25
2383:7

dated 2203:20
2375:3

dates 2082:10

David 2302:12
2314:11
2320:23
2333:18
2362:12
2442:23,24
2443:3,10

D-a-v-i-d
2362:12

DAVID 2044:6
2362:7
2397:3
2441:19

Davis 2092:21
2094:6
2096:1
2117:10
2128:19
2207:7,23
2208:1
2226:12
2397:21
2398:5
2417:18

Davis's
2093:13
2095:7
2118:18

day 2052:25
2056:16
2080:22
2217:1
2233:24

2257:16
2259:6
2313:23

days 2056:18
2275:15
2331:25
2398:4

day-to-day
2175:4
2181:17
2182:10
2188:14
2207:5,17
2208:2

deadlines
2290:1

deal 2097:6
2098:10

deals 2090:7
2099:18

dealt 2198:12
2237:1
2316:1

DEAN 2044:15

Dearmont
2048:4
2168:12,16

dearth
2086:9,20,23

debrief
2171:6

December
2080:11
2098:23
2100:20,22,2
5 2194:13
2266:7
2279:24
2324:7
2368:21
2421:22
2422:7,16,24
2423:5

decide
2179:15
2180:11
2325:2

decided
2123:12
2288:12
2315:7

decision
2085:2
2093:25

2094:24
2095:13,21
2117:16
2119:1
2123:3,5,6
2288:9,18
2315:11,12
2336:2
2338:9,11
2383:11

**decision-
making**
2062:22
2073:20
2074:23
2092:4
2306:20

decisions
2086:17
2090:5
2091:20,22
2093:22
2094:12
2115:14
2116:24
2119:1
2128:2,12
2309:14
2350:12,15
2380:4

**decommissione
d** 2050:16

**decommissioni
ng** 2050:14

decrease
2374:25
2398:25
2425:3

decreases
2398:22

deduction
2376:6

deemed
2091:23

deeper 2193:1
2377:8

deficit
2135:2

define
2155:1,14
2156:11,18
2157:11
2167:24
2175:2
2176:23

2192:7
2265:16

defined
2074:14,18
2101:12
2180:18
2181:17
2182:3
2188:14
2209:9
2224:5
2306:11

defines
2081:9
2167:22

defining
2156:8,10
2181:11

definite
2101:5

definitely
2160:10

definition
2068:13
2099:4,17,25
2127:21
2157:5,6,18
2167:6
2169:23
2170:1,7,10,
14 2173:24
2174:6,21
2175:15,17,1
9,22,23
2176:15,19
2177:4
2181:8,21,25
2182:6,9,10,
12 2206:15
2223:5,13
2271:5,10
2272:1
2406:24

definitional
2068:12

definitions
2167:19
2170:4,9,13
2173:2
2175:14
2182:6,8
2207:3

definitive
2101:8,9,15,
17
2177:3,10,17

,22
2178:9,13,16
2187:20
2188:21,23
2208:16
2271:6,11,18
2272:17
2334:16,21

degree
2154:21
2156:20
2157:4,16,22
2281:11,13,1
4,16
2369:16,19

delay 2072:6
2255:4,19,20
,24 2257:20

delayed
2255:10

delays
2059:16
2255:4,5,7,1
7,21

delineated
2087:14

delve 2351:12

Denise
2417:19

denomination
2108:22

Denton 2046:6

department
2045:16
2047:7
2056:7
2136:20,23
2199:15,17
2282:3
2290:3
2301:1,25
2302:5,8,9,1
3,20,21
2303:1,5,10
2305:22
2306:4
2308:11
2323:19
2338:10
2353:2

departments
2306:13

department's
2304:20

depend
2176:15

depending
2061:11
2112:9
2168:24
2188:12
2206:8
2239:20
2260:24

depends
2056:14
2060:8,21
2061:4
2062:3,8
2065:8
2070:12
2105:24
2106:1
2111:24
2231:22
2239:13
2240:9,17
2259:20
2375:24

depict
2235:10

deposed
2155:7

deposit
2214:10

deposition
2055:21
2155:11,13,2
3
2156:3,12,23
2157:2,3,20
2170:1,24
2171:1,4,5,1
1
2172:13,15,1
6,19,24
2173:9,16,19
,22
2174:20,24
2201:13
2279:23,24,2
5 2280:7,17
2283:16
2284:2
2287:11
2291:12
2294:21
2296:23
2297:11
2300:18
2304:23

2305:11
2308:18
2315:16
2316:5
2317:3
2320:12
2321:7
2322:16,21
2324:11
2328:18,19
2336:10
2368:20,22
2370:19
2373:22
2377:19
2378:17
2379:19
2397:6
2399:23
2403:7
2405:20
2407:22
2409:9
2410:7
2412:21
2413:5
2415:13
2416:19
2420:7
2425:20
2428:24
2430:24
2432:5
2434:25

depositions
2176:21

Deputy 2048:1

describe
2053:19
2061:6,20
2069:2
2086:1
2087:17
2161:5,7
2228:18
2283:6
2284:5
2291:8
2299:10
2300:21
2301:17
2309:20
2310:2
2317:21
2325:18
2375:7
2407:12
2418:15

described
2050:2
2073:2,7
2092:24
2114:5
2136:15
2228:11
2284:15
2291:13
2299:18
2331:22
2407:23
2423:10

describes
2406:25

description
2137:10
2161:4
2163:6
2187:22
2249:5
2264:18
2284:8
2329:10
2407:23
2412:10

Descriptions
2442:8

deserve
2242:17

design
2050:17,18
2125:25
2245:7
2247:16
2248:10,23
2249:9
2251:2
2277:2
2310:3,6,11
2351:13
2377:23
2378:3,6
2379:25
2380:4,5
2381:20
2419:7,8
2425:16,22,2
5 2426:7

designate
2302:1,6,20

designated
2323:25

designed
2244:7
2252:19

2292:8
2320:15
2336:12

desired
2356:7,13
2414:12

detail
2057:19
2194:3
2240:15

detailed
2120:21
2187:22
2240:12
2245:14
2329:21
2330:19
2337:19
2415:5

determination
2399:13

determine
2061:15
2098:6
2192:12
2332:2
2406:18
2407:8,18
2411:2,25
2420:4

determined
2069:24
2097:19
2377:4
2382:20
2383:7
2410:23
2411:22
2419:12,17

determining
2287:21

Deutsch
2044:19

Deutsche
2056:5

develop
2162:5
2304:6,15,24
2309:6

developed
2080:7,12
2214:16
2296:10
2305:23
2397:15

2402:3
2420:20
2421:15
2422:18

developing
2106:15

development
2158:20
2289:20
2290:3
2328:12
2339:3

DFM2010-22
2251:8

Diablo
2050:17

DIANA 2045:10

Dietrich
2282:9
2307:16
2313:16
2374:9

differ
2376:12

difference
2090:16
2104:2
2105:20
2118:6

differences
2242:3,5,7
2353:9

different
2093:8
2094:20
2098:3
2112:3,6
2118:19
2152:21
2161:6
2172:3,17
2173:24
2177:24
2207:3,19
2227:5
2239:19
2249:12
2260:22
2262:3
2272:20,21
2285:11
2323:2
2347:16,25

differential
2238:18

differentiate
2373:9

differentiati
on 2087:25
2111:14,15

differently
2073:5
2373:12,17

difficult
2059:25
2086:19
2087:3

difficulty
2059:4

Dignam 2051:2

diligently
2360:4

dime 2277:19

dinner
2233:21
2345:2,11,18

direct
2063:24
2064:4
2078:6
2089:24
2124:24
2129:21
2158:25
2191:19
2234:5,11,17
2235:8
2236:12,15
2273:7,10
2276:8
2279:8,18
2285:18
2298:2
2319:17
2324:24
2337:9
2339:9
2362:9
2368:24
2405:21
2430:11
2432:7
2435:3
2441:7,12,16
,19
2442:22,24
2443:3

directed
2051:19
2213:25

2216:13
2247:12
2299:16
2312:10
2318:12
2353:17

direction
2298:6
2319:22
2440:9

directions
2319:7,11,13
2374:5

directive
2337:10

directly
2059:15
2159:7,16
2213:5
2265:8,14,19
,22 2283:12
2439:5

director
2127:18
2208:1
2278:24
2280:11,15
2282:7,19
2283:7
2285:3,22,23
2286:19
2287:6,19
2289:17
2298:11
2307:12,21
2315:13
2326:23
2331:20
2354:19
2356:3

directors
2100:19
2154:6,10
2266:5
2284:9
2294:4
2350:4
2352:13,19,2
0,21

director's
2312:6,22
2313:9
2442:13

directs
2215:20
2285:3

disagree
2334:6

disagreement
2119:4
2306:21

disagreements
2349:14

disallow
2293:16
2325:25
2356:22
2384:18
2385:7
2401:23
2434:3

disallowance
2083:24
2084:10,19,2
3 2085:24
2089:17,21
2090:9,15,21
2293:15,23
2318:13
2319:19
2321:9
2325:12
2335:2
2346:13
2351:8
2356:25
2402:17
2404:12

disallowances
2086:13
2089:13
2289:12
2309:18
2310:25
2311:7
2317:7
2328:13
2339:4,10
2403:17
2420:10,17,2
4
2421:3,9,14
2422:15,23
2423:3
2434:6
2436:4,9

disallowed
2092:8,20
2117:9
2293:8
2295:23
2332:23
2333:4

2334:15,21
2378:20
2379:22
2381:7
2382:12
2383:21
2384:13
2426:19
2434:15

disallowing
2325:19

disciplinary
2343:19

disclose
2341:24

disclosed
2096:21

discontinued
2271:13,15
2272:24

discovery
2083:20,24
2084:7

discreet
2110:16

discretion
2106:19,20

discuss
2120:24
2171:4
2200:16
2237:21
2246:24
2284:2
2294:5
2297:10
2318:18
2369:6
2380:25
2401:3
2416:2

discussed
2077:10
2081:15
2120:13,14,1
5 2213:15
2234:25
2235:10
2294:6
2311:1
2321:2
2368:20
2370:19
2375:14
2377:19

2378:16
2379:4,19
2380:21
2397:6,16,25
2398:25
2413:24
2414:9,21
2416:7,12,14
2418:21
2430:25

discusses
2276:9

discussing
2169:21
2215:5
2272:17
2298:24
2308:15
2309:17
2350:16
2374:2

discussion
2091:16
2092:2
2104:17
2106:6
2112:19
2117:1
2119:20
2128:4
2179:19
2210:25
2211:4
2217:9
2230:13
2266:4
2271:16
2305:2
2312:23
2313:12,20
2322:15
2370:25
2380:22
2397:23
2400:25
2409:20
2420:12,13,1
5

discussions
2088:21
2091:20
2115:18
2171:9
2266:8
2288:3
2296:6
2374:10
2399:20

2400:13,19,2
2 2410:2,6
2415:24
2420:8

dishonest
2361:1

disks
2088:2,12

dispensing
2072:1

displayed
2342:3

dispute
2092:11
2265:18
2276:19
2349:25
2350:2
2402:9

disputes
2259:22
2350:8

distinct
2285:10

distinction
2094:17
2108:12

distribute
2296:19

distributed
2215:11

District
2045:13

dive 2377:8

division
2282:7
2284:9
2287:19
2290:17
2291:2,3
2294:4
2307:11,12,2
0,22 2315:13
2326:22
2350:4
2352:13,19,2
0 2354:19
2356:2
2442:8

divisions
2284:15
2285:10,15
2290:16,21

docket
2050:19

document
2052:3
2053:17
2055:11
2059:24
2061:7,21
2076:19,20
2077:10,12,2
0 2078:9,25
2079:1
2081:3
2082:8
2115:5
2131:15
2152:6,14,21
,23,25
2153:5,8,13,
25
2154:1,2,3,8
2163:5
2166:8,10
2180:19
2190:8,11
2194:11,24
2266:10
2283:25
2284:6
2300:16,22
2301:3,17
2312:5,6,8,2
4 2313:2
2314:4,16
2330:7
2331:7,22
2342:18
2343:3
2359:11,17
2360:20
2362:21
2411:4,5
2436:14

documentary
2092:23
2094:19
2095:6
2128:8

documentation
2054:9,11
2060:19
2068:20,21
2078:14,17,1
9 2086:18
2088:11
2094:14
2095:12,15,2
1,24 2111:21

2115:23
2116:10
2117:15
2118:22
2119:13
2182:17
2186:17
2193:25
2203:9
2204:13
2219:9
2226:22
2325:23
2332:2
2366:17
2409:14
2414:1

documented
2107:23
2357:1

documenting
2217:13

documents
2054:2,6
2069:2
2075:25
2076:3,4
2087:19,20
2088:3,6
2096:18,20,2
4,25
2097:2,7,14,
17
2098:5,7,10
2111:24
2114:21,23
2115:13,14,1
5 2116:19
2121:13,17,2
1 2122:2,6,9
2131:21
2171:24
2186:19
2193:18
2213:21
2215:23
2225:10
2231:4,16
2232:7
2331:11
2362:15,17
2363:10,14
2404:20,25
2413:19
2415:4,15
2436:16,17,2
0

Dogwood

2044:13

dollar
2112:12,15
2176:24
2182:13,16
2190:2
2208:9
2229:3

dollars
2091:1
2112:22
2192:24
2214:21
2215:3
2239:9
2335:2
2428:13

done 2060:7
2061:1,9
2080:18
2086:4
2099:12
2101:9
2126:19,23
2163:18
2172:24
2180:24
2199:10
2219:5
2226:6
2239:17
2248:10
2253:24
2256:9
2274:5,8
2278:10
2339:16
2371:13
2376:14
2380:9
2399:5,11
2402:7,8,14
2407:1
2431:1

Dority
2045:18,19

Dottheim
2048:1
2156:24
2173:9,18
2313:8,16
2324:12
2355:19

double 2074:8
2344:15
2361:14
2403:23

double-dips
2229:1

DOUG 2044:2

down/bottom
2239:3

Downey
2207:16
2208:12
2341:2
2418:2

dozen
2199:10,24

Dr 2049:2,7
2053:12
2055:15
2063:25
2089:6
2091:11
2102:25
2104:9,16
2114:1
2124:22
2129:6
2169:9
2188:20,24
2232:21
2437:18
2439:6

Drabinski
2088:7
2096:12
2114:12,24
2249:18,23
2274:3,15,18

Drabinski's
2153:13
2235:1
2273:15,16

draft
2363:15,16

drafted
2313:2

draw 2056:1
2106:22
2111:19,22
2113:24
2181:3
2207:13
2214:10
2244:12,23

drawing
2366:1,25

drawings
2245:4,10,11
,16,25

2375:18

drawn 2106:4
2107:5,7

draws 2107:18
2108:12
2215:3

drive
2110:12,13

driven
2116:14

driver 2245:2

drivers
2218:16

driving
2227:11

drop 2277:19

drove 2245:4
2249:15

DRs 2216:3,5

Duane 2088:9

due 2060:18
2109:15
2225:4
2251:2
2253:22
2255:18
2257:20
2258:4
2359:6,9,23
2378:5
2380:4
2381:14
2409:25
2424:23
2425:25
2426:6,15
2435:19,23

duly 2440:6

dump 2176:10

duplicative
2202:10

duration
2224:9

during
2075:14
2127:10
2155:11,23
2156:3,11,23
2157:2,3
2171:4
2172:15,19
2173:9,19
2178:6

2198:15
2226:9
2245:6
2263:3
2301:4
2334:2
2346:11
2349:11
2352:1
2353:7
2354:4,23
2370:14,19,2
1 2380:5
2381:15
2402:24
2409:7,11,18
2410:7,8
2412:5
2413:17
2415:13
2416:8
2430:24
2432:5

———————
E
———————
E&Y 2079:3
2088:3
2224:25
2225:8

earlier
2100:24
2120:13,22
2154:3
2170:3
2174:25
2175:13
2176:8
2188:7
2194:12
2230:14
2234:25
2276:23
2321:2
2351:7
2404:11
2408:22

early 2080:19
2081:4
2084:17
2085:21
2116:1
2128:1
2277:17
2355:25
2402:7
2418:4,6

easier
2163:25

2288:19
2296:19

easily
2215:10

easy 2069:11
2437:2

Echo 2182:22

economic
2110:5
2290:3

economics
2056:7

economists
2056:7
2285:12

Edison
2264:7,10

education
2154:22
2369:8
2430:6

educational
2369:11

effect 2060:6
2164:23
2166:12
2301:15
2308:16
2321:2
2349:11
2353:5
2428:2

effectively
2092:12

efficiency
2258:4
2379:9

efficient
2163:23

effort 2093:2
2274:15

efforts
2306:13

eight 2081:10
2098:20
2180:25
2398:9

Eight-four
2127:2

eighty
2169:24

either

2063:18
2064:7
2071:7,18
2097:20
2103:5
2108:20
2110:25
2165:2
2166:11
2175:18
2243:20
2250:14
2260:25
2293:4
2360:14
2375:25
2376:4
2398:24
2438:3

elaborate
2127:12
2128:7
2329:14

elaborated
2320:13

elect 2103:17

electric
2043:13,17
2045:13
2199:10
2283:3
2369:23
2370:2
2384:25

elements
2116:1

Eleven 2159:8

elicited
2201:10

Elliott
2302:12
2303:4
2310:11,16
2314:12,22
2319:23
2320:23
2324:6
2327:4
2328:12
2331:25
2332:7,13,17
,20,25
2333:1,2,19
2338:22
2339:2,8
2355:14

2356:5,11
2361:11,12,1
4,15,24
2362:10,12,1
3 2365:12
2368:15
2383:5
2385:11
2397:5
2401:5
2402:12
2404:19
2405:18
2418:15
2430:5
2432:4
2433:16
2434:24
2438:25
2442:23,24
2443:3,10

E-l-l-i-o-t-t
2362:12

ELLIOTT
2362:7
2397:3
2441:19

Elliott's
2363:24

else 2076:1
2096:6
2102:20
2200:18
2201:11
2250:14
2259:2
2366:20
2434:13

elsewhere
2251:5
2331:16

emergency
2060:9,13,20
2061:20
2062:1,3

emergent
2061:11

Empire
2045:13
2327:8,11
2371:15,18
2372:23,25
2418:13

employ
2264:19

employed
2281:7
2369:22,23
2370:6,11
2440:10,13

employee
2053:24
2054:3
2076:23
2201:16
2264:16
2341:19
2440:13
2443:18

employees
2077:23
2078:10
2341:25

**employee-
specific**
2200:14

en 2272:6

encompassing
2081:12

encountered
2083:19
2084:13,14
2381:15

energy
2044:13,17
2045:16
2300:15,24
2301:1,18,25
2302:5,8,9,2
0 2303:1,5
2304:20
2305:22
2306:4
2317:25
2327:11
2353:1
2371:18

engage 2093:2

engaged
2218:8
2224:12
2299:8

engagement
2089:15
2180:21
2264:1
2299:11

engagements
2074:15

engaging

2224:20

engineer
2116:5,6,7,8
2158:17
2239:23
2257:25
2263:11
2282:22
2310:16
2323:18
2332:18
2349:18,19,2
3
2350:1,19,23
,24 2351:3
2370:2,11
2384:8
2402:20
2404:6
2428:21,25
2429:5
2430:7,21

engineered
2100:11,12
2109:19

engineering
2099:13
2101:10
2107:20
2116:17,24
2125:20
2127:1
2245:9
2272:7
2296:10
2301:1
2303:15
2304:20
2305:22
2306:3
2307:10,15
2308:10
2309:1,10,12
,18 2321:8
2333:8,11,12
,18,24
2334:2,3,10
2338:23
2349:15
2350:10
2354:5
2366:23
2369:17
2371:10,11
2374:23
2375:2,13,17
2377:4,24
2378:7

2383:8,12
2384:11,21
2399:6,9
2402:4,7,8,2
0,25
2403:18,19
2404:13
2407:9,19
2408:4,9,10,
16,20
2409:11,25
2410:24
2411:22
2412:7
2417:5
2419:13,18,2
1,24
2421:5,18,19
2422:11
2427:4
2428:12,23
2429:3,18
2430:9
2434:2
2436:5

engineers
2245:8
2285:12
2291:2
2302:15
2308:10
2309:5,6
2310:24
2311:6,9
2312:1
2314:13
2318:18
2320:3,7
2321:3,14,15
,25
2322:8,22
2323:4
2325:8
2333:23
2334:1
2346:17,21
2347:1
2348:13
2350:11,15
2353:10
2354:1
2410:25
2411:23
2412:4

engineer's
2334:9

England
2045:10

2127:15

English
2255:13

ensure
2290:11,15,2
0 2291:1
2304:10,16,2
5 2305:15
2306:6
2320:10
2412:6

ensuring
2289:23
2290:8

entail 2255:9
2259:19

enter 2336:2

entered
2053:22
2064:19,24
2365:22

enterprise
2106:17
2110:17

**enterprise-
specific**
2106:17

entire
2425:22

entirely
2425:16

entities
2290:4

entitled
2054:2

enumerated
2240:20

environmental
2080:17
2085:8
2203:14
2204:1
2298:3
2317:24
2353:19

EO 2433:13

EO-2005-0329
2336:3

EO-2010-0259
2316:6

EO-85-185
2433:13

equipment
2310:14
2365:23
2367:10,15
2370:17
2376:15
2381:21
2406:10
2435:23

equitable
2291:15

equity
2335:11
2357:5

ER 2435:3

ER-2006-0314
2431:2
2432:7
2435:4

ER-2007-0291
2405:22
2423:8

ER-2009-0089
2352:1

ER-2009-0090
2352:2

ER-2010-0355
2043:13

ER-2010-0356
2043:16

erection
2246:11

erector
2246:17

Eric 2048:4
2417:21

Ernst 2079:7
2137:13

error 2212:12
2310:3,6,11

escalations
2108:24

especially
2155:19
2292:19

essence
2092:1

essentially
2091:21
2123:23
2165:12
2188:17

2299:5
2399:24

establish
2111:18

established
2098:23
2100:14
2106:14
2111:7,12
2113:24
2188:7,9,10
2198:5
2292:13

estimate
2080:8,10
2081:15
2098:20
2099:11,18
2100:1,4,9,13,15
2101:2,5,8,9,14,15
2104:19,20
2108:7
2122:13
2131:13
2133:12
2152:9,17,22
2153:1,3
2154:5,9
2162:1,6
2164:19,25
2167:1
2169:22
2170:3,8,19
2177:3,10,18,23
2178:9,13,16
2181:12
2184:17
2185:13,20
2187:20,21
2188:21,23
2190:3,4
2191:12,18
2192:22
2194:13
2203:16
2204:8,19
2208:17
2209:15
2210:2
2217:20
2218:10
2223:6
2238:24
2240:8,10,18
2241:4,9,14

2242:13,15
2266:8
2271:6,9,11,18,19
2272:18
2274:11
2293:17,24
2296:9
2325:13,20
2326:1
2330:25
2332:23
2334:16,21
2401:24
2402:2,3,19
2434:10,14

estimated
2090:22
2100:6

estimates
2090:24
2099:19
2187:4,7
2238:19
2240:2
2241:22
2242:9
2246:6
2295:24

estimating
2125:23
2240:22
2241:10

estimation
2185:6
2241:17

et 2273:16

Europe 2277:1

evaluate
2070:18
2093:19,22
2122:23
2367:3

evaluated
2128:10

evaluating
2098:15,16

evaluation
2074:16
2088:6
2357:17,20
2358:15,18,21 2360:5
2366:13
2367:12

evaluations
2106:16

evening
2049:4
2091:15
2279:19,20
2345:17
2346:5,6
2368:15,16
2398:10
2437:17

event
2109:22,25
2306:21

eventually
2068:5

everybody
2200:18
2277:18
2385:14

everyday
2175:4

everyone
2218:24

everyone's
2202:4,5
2218:23
2233:14

everything
2077:5
2087:23
2092:12
2108:3
2122:24
2128:14
2209:14
2277:19
2325:19

evidence
2058:13
2061:1
2064:22
2074:16
2079:16
2083:14
2092:14,17,23 2093:11
2094:15
2128:8
2133:3
2181:24
2217:14
2231:12
2235:25
2284:25
2289:2

2297:18
2301:12
2312:18
2318:7
2344:6
2357:23
2358:10,16
2360:2,6
2365:7
2403:4
2406:6
2433:4
2438:24
2441:2,18

Evidentiary
2043:6

evolved
2060:9
2172:22

ex 2308:22

exact
2061:8,12
2092:8

exactly
2069:25
2240:19
2261:1
2315:16
2340:8
2383:9
2402:6

examination
2089:4
2091:9
2113:12
2129:21
2169:5
2205:21
2234:11
2272:14
2279:18
2360:18
2362:9
2441:6,7,10,11,12,14,16,17,19

examine
2169:2

examined
2245:25

example
2061:10
2062:5
2065:25
2110:7
2111:20

2118:11
2152:20
2193:21
2207:5
2208:12
2245:7
2249:1
2257:2,7,10
2258:9
2290:25
2293:14
2377:22
2416:10
2426:4

examples
2086:3
2110:8
2243:6,16
2247:16

exceed
2134:2,22
2135:12
2218:15
2325:12
2430:15

exceeded
2135:2,4,5
2203:17,18,2
4,25 2204:8
2218:9
2293:16,23
2332:22
2334:16,20
2401:23

exceeding
2135:11

exceeds
2117:21
2289:25

excel 2241:24

excellent
2094:2

except
2092:13
2285:17
2286:2

exception
2119:7
2121:7
2252:9
2284:11,14
2286:16
2402:15

exceptions
2090:4

excess
2065:6,17
2068:8

ex-chief
2051:6

excluded
2305:16
2350:20,24
2404:9

excuse
2079:14
2081:25
2237:7
2318:5
2363:23
2406:19

excused
2169:4

executed
2062:11
2093:24

execution
2060:18
2081:1
2128:14
2158:20

executive
2047:3
2106:21,22
2112:1,10
2125:17
2127:18,19
2207:16
2227:9,19
2229:15
2278:23
2280:11,15
2282:19
2283:7
2285:3,22,24
2286:19
2287:6
2289:17
2298:11
2312:6,21
2313:9
2331:20
2442:13

executives
2111:17

exercise
2205:6
2359:24
2428:10

exhausted

2191:15

exhibit
2049:19
2054:23
2055:3
2057:24
2058:2,11,12
2063:4
2070:21
2071:7
2075:15
2076:16
2078:22
2079:9,15
2081:21
2083:8,13
2102:6,7,10,
13 2124:8
2130:13,16,2
0 2132:2,24
2133:1,2
2153:20,24
2210:25
2211:2
2230:15,20,2
3 2231:11
2235:24
2251:4,8,15
2266:6
2283:16,19,2
1
2284:5,20,24
2285:10
2296:15,20
2297:2,11,14
,17
2300:8,10,14
,17,19
2301:8,11
2306:9
2308:15
2311:14,18,2
2 2312:4,17
2316:15
2317:8,14,19
2318:6
2336:17
2342:21
2344:5
2348:2
2349:6,7,10
2352:24
2353:13
2354:9
2361:20
2363:22
2365:6
2405:9,12,15
,19,20,25

2406:5
2431:21,23,2
5 2432:4
2433:3
2434:18,21,2
4 2435:1
2438:7,23
2442:3,5,7,9
,11,12,14,16
,17,19,20,22
,24
2443:2,5,7,9
,11,12,14,16
,18,19,21,23

exhibits
2049:15
2071:24
2076:1
2130:9
2219:20
2234:21
2235:8,10,18
,19,22
2442:1,2
2443:1,4

exigent
2060:19
2061:23

exist 2250:14
2383:14,18

existed
2061:23
2123:24

existing
2062:9
2155:17
2224:16
2303:25
2430:13

exists 2219:9

expand
2172:13

expect
2060:19
2061:21
2106:3
2109:11
2429:18

expected
2065:24
2224:9,20
2307:18

expects
2256:3

expedite

2353:20

expended
2167:18

expenditure
2166:15

expenditures
2309:11,17
2310:23
2311:5,24

expense
2095:23
2202:21
2351:8

expenses
2255:11

expensive
2091:24

experience
2062:17
2093:20
2098:9
2181:18
2198:11
2200:8
2201:9
2228:1
2239:22,24
2260:7
2264:12
2341:17
2348:22
2358:17
2369:12
2430:6

experienced
2332:18

experiencing
2416:3

expert 2124:3
2125:5,6,7
2158:15
2263:16,19
2273:20,21
2282:24
2309:10,16
2310:22
2311:4,23

expertise
2116:5
2124:10
2310:4,9

explain
2062:25
2091:2
2105:19

2110:11,15
2111:3
2113:15
2114:17
2115:1
2118:6
2122:10
2161:19
2162:8
2163:9
2172:21
2174:24
2175:9
2181:20
2193:14,19
2208:21
2213:8,13
2219:14
2225:7
2227:10,12
2248:10
2249:17
2253:21
2260:12
2274:23
2275:5
2276:23
2329:5,23
2330:21
2341:7
2355:1,5,12
2399:8

explained
2090:19
2110:9
2273:24
2330:25
2401:18
2436:14

explaining
2094:11,23
2208:5
2327:1
2329:2

explains
2193:4,6,7,15 2207:22
2376:7

explanation
2087:14
2094:16,18,19 2095:7,11
2114:6,7,10,15 2163:8
2166:23
2170:21
2182:17
2186:7,10,14

2189:19,20
2192:4,13,16
2193:22
2224:1
2225:17
2229:6
2250:2
2316:18
2329:12
2376:20
2427:19
2430:17,20

explanations
2128:21
2218:16
2398:12
2428:15

expressed
2336:10

extensive
2337:24

extent
2071:23
2279:24
2368:21
2372:18

external
2290:4

extra 2053:13
2105:21
2108:21
2166:15
2255:23
2257:23

extreme
2110:4

eyes 2059:5

———————
F
———————
facilitate
2063:1
2073:20
2074:23
2095:22
2310:13

facilitated
2119:23
2128:17

facilitator
2117:6

facilities
2062:10
2186:22
2187:1

2298:1

facility
2318:1
2327:15

fact 2050:3
2087:2
2095:14
2113:20
2216:11,22
2219:5
2244:24
2274:5
2375:7
2426:6
2428:20

factor
2351:10

factors
2262:7,9
2304:9
2305:5
2306:5
2424:23,24

facts 2064:21
2181:24
2184:15
2357:23
2358:10
2403:4

failed
2085:18

failures
2085:20,21

fair 2208:6
2286:1
2291:10,14,16,20 2415:19

fairly 2060:3
2097:6
2255:23
2397:15

faith 2360:4

fall 2261:21

familiar
2064:15,16
2104:20
2260:8
2263:21,25
2277:7
2280:4
2297:1
2317:14,19
2329:8
2333:21
2335:12,13

2401:5
2429:19

fashion
2164:7

fast 2252:4,7
2426:15

faster
2260:21

favoritism
2077:23
2091:5

Featherstone
2443:11

February
2054:12
2082:6
2203:20

federal
2047:3
2124:12
2252:9

feel 2078:1
2094:18
2414:14
2419:1

feelings
2288:24

fees 2054:1
2346:14

fell 2093:6
2378:25
2379:14
2380:14
2381:24
2383:2

fellow
2341:25

felt 2094:15
2095:7
2325:22
2416:20

female
2078:10

FERC 2435:19

field
2236:12,15
2337:18
2379:25
2380:6,10
2381:11
2382:7
2409:3,11,18
2413:18

Fifteen
2126:21

Fifty-seven
2294:24

fighting
2277:22

figure
2068:21
2098:6
2116:2
2174:8

figured
2238:22

file
2043:12,16
2084:8
2121:20,24
2130:5
2298:13
2299:17
2312:10

filed 2075:18
2092:20
2117:12
2126:4
2130:3
2212:14
2234:17
2235:5
2279:8
2297:22
2299:21
2324:11,13
2333:7
2337:13
2362:15
2400:3,7
2421:25
2432:12

filing
2181:11
2324:12

filings
2234:20

final 2060:16
2227:1
2288:8
2291:5
2305:6
2330:12
2352:22
2377:23,24
2378:3,6
2380:4
2382:20
2406:18,19,2

0 2425:16,22
2426:7

finally
2109:19
2278:24
2383:24
2419:11

financed
2085:12

financial
2097:22
2125:18
2281:14

**financial/
investment**
2125:18

financially
2292:9
2293:4
2440:14

financier
2085:7

financiers
2085:12

financing
2085:13

finding
2115:23

findings
2176:21
2420:25
2421:5,19
2427:3

fine 2069:6
2168:9
2174:16
2206:2
2232:24
2233:9
2278:22
2281:3
2361:14,18

finish
2103:13
2224:25

finished
2256:17
2263:1

Finnegan
2044:7

firm 2087:18
2265:13

first 2053:6

2074:8,11
2080:14,16
2082:5
2086:4
2090:7
2093:19
2094:21
2097:25
2114:4,14
2115:22
2116:14
2119:1
2192:2
2204:4
2205:23
2210:8
2217:22
2237:19
2275:7
2281:9
2294:14
2295:17,21,2
5 2301:15,22
2312:7,12
2314:7
2321:23
2335:6
2338:17
2344:17,18
2349:1,2,4
2351:11
2354:10

Fischer
2045:18,19
2053:9,13
2055:5,10
2058:5
2064:21
2069:6,13
2071:6,17
2075:17,21,2
3 2076:8,13
2079:12
2083:11
2113:11,13
2117:24
2118:5
2125:4
2129:3,5
2169:8,14
2200:12
2201:14,18
2279:13,15,1
8 2280:25
2281:5
2283:15,20,2
3 2284:19
2285:1
2295:5,11

2296:14,17,22
2297:13,15,19 2300:7,12
2301:7,13
2311:13,20
2312:13,19
2316:14,20
2317:6,10,12,16,18
2318:2,4,8,21,23
2319:2,6
2329:25
2330:2,5,11,14 2335:25
2342:18,23
2343:1,22,24,25 2345:8
2357:22
2358:9,11,14
2360:18
2361:4,6,12
2364:11
2365:3
2368:12,13,14 2385:10
2397:1,4
2403:5,6,12,14
2405:8,12,17,24 2406:7
2411:13,14
2429:17
2430:2,4
2431:20,25
2432:3,9,17,18 2433:5
2434:17,20,23
2437:8,12,21
2438:15,25
2441:6,16,17,20,21

Fisher 2201:5

fit 2092:3
2116:1

five 2096:14
2098:2,4
2106:3
2108:21,23
2169:24
2175:6
2231:23,25
2253:22
2259:13,14
2260:5
2262:6

2283:12
2286:2
2352:25
2381:3
2382:16,18
2383:3,21
2384:20
2413:14

five-million-dollar
2107:7

fixed 2367:10
2384:5,10

fixed-price
2106:2

FL 2047:2

flags 2245:23

flaw 2351:13

flipped
2096:9

focus
2163:17,22
2277:22
2360:19

folks 2103:5
2210:25
2325:7
2398:11

follow-up
2077:9
2078:6,7
2088:20,21
2104:16

footnote
2303:20
2306:10
2307:4
2333:16
2408:14

Force 2047:1

FORD 2047:11

forecast
2214:13

forecasted
2178:2

foregoing
2440:6

forensic
2218:20
2219:7

Forest
2234:15

forget
2071:13

Forgive
2095:18

forgot
2309:24
2330:6
2339:5

form 2161:1
2179:24
2227:5
2246:6
2249:5
2331:2

formal
2155:2,4,6,12,14,21
2156:2,5,8,10,12,16,19,20,21
2157:2,6,8,10,12,14,15,21,24
2158:2,5,8,11
2173:21,23,24 2397:18

format 2331:3

formulated
2243:5

Forrest
2129:25
2130:2
2152:3
2198:3
2206:24
2223:3
2226:2
2398:4
2417:19
2441:7
2442:4,6

forth 2086:14
2135:16
2206:16
2239:10

forum 2057:3
2152:2
2198:2
2223:2
2397:2

forward
2095:22
2099:16
2129:10

2217:18
2219:2,12
2253:9
2294:8

forward-looking
2161:11
2205:5
2253:7

Foster
2417:19

foundation
2072:1

foundational
2071:23

foundations
2251:25
2430:13

Fourteen
2126:13

fourth
2220:12
2313:7

frame 2191:16

frank 2259:22
2271:13

frankly
2052:8
2075:20
2317:3

fraud
2062:20,21
2126:1

free 2183:10

frequency
2225:1

frequently
2252:14

fresh 2072:25

Friday
2216:14,23,25

Fridays
2217:3

front 2184:16
2194:14
2201:22
2215:14
2225:11
2226:18
2312:3
2341:24

2348:3
2349:7
2353:13
full 2059:13
2096:19
2192:20
2206:20
2397:9
2401:8
2403:1
2417:1
full-time
2224:7
fully 2051:22
2172:18
2249:2
2338:6
2429:8
function
2255:11
2306:12
fund 2109:4
2110:22,24
2111:7,18
2113:24
2135:2,5
2167:2
fundamentals
2198:22
funds 2056:12
2108:13
2111:13
2125:18
furniture
2278:24
future
2091:23
2092:6
2183:3
2275:17
2413:25

———— G ————
GAAS 2338:15
2339:18
2348:14
2359:2,5
GAGAS
2051:7,11,18
,21,25
2052:22
2053:14
2070:20
2072:7,11
2073:2,7

2074:3,6
2075:2,9,11
Gardner
2327:14,15
2371:21
2431:4
2433:22,25
Garrett
2044:11
gas 2044:17
2327:15
2369:23
2371:23
gather 2173:5
gathering
2360:5
general
2058:20
2065:2,3,4,9
,21 2070:13
2084:6
2104:24
2106:8
2136:25
2167:6
2239:8
2293:22
2303:10,16
2319:11
2337:17
2340:1
2412:13
generally
2051:18
2056:17
2060:3
2079:1
2083:1
2087:21
2094:25
2095:1
2107:4,16
2239:2
2240:5,19
2252:8
2272:5
2288:25
2293:9
2320:14
2337:1
2348:12,15
2352:12
2354:7,22
2407:12
2414:15
2415:23
2417:1

2423:21
generated
2416:16
generating
2126:23
2236:7
2317:25
2370:2,16
2373:2
2433:11,13
generator
2243:9
2248:22
2250:8
2310:13
generators
2328:3
2372:9
2435:20
Gentleman
2343:12
gentlemen
2400:21
gets 2107:7
2228:13
getting
2168:5
2183:17
2262:18
2310:13
Giles 2289:14
2365:17
2417:21
Giles's
2101:17
2167:24
give-and-take
2092:24
given 2087:9
2100:19
2181:9
2182:8
2202:1
2224:16
2230:7,9
2244:17
2397:24
2414:11
giving 2182:1
2365:15
glanced
2104:4
glaring

2094:1
2118:11
glasses
2343:12,15
2358:6
GLENDA
2046:14
global
2053:22,23
2054:3,4
2096:21
2207:18
2277:14
GMO 2287:2
2297:6,23
goal 2407:16
goals 2336:8
go-between
2283:9
gone 2051:22
2109:20
2184:18,22
2185:7
2201:24
2259:2
2263:3
2360:11
2412:20
gotten 2088:8
2113:21
2367:9
Gould 2417:21
govern 2059:9
governance
2074:21
2125:11
government
2252:10
2277:15
governor's
2127:16
grad 2369:15
granted
2218:17
granularity
2193:2
Graph 2442:18
grave 2176:25
2191:11
great 2262:10
greater

2043:15
2111:22
2225:2

ground
2099:2,4
2198:20
2207:12

group 2163:19
2236:21
2304:20
2313:25
2318:17
2429:23

grouped
2152:15
2228:22

groups 2085:8

guess 2052:12
2076:5
2090:3
2103:14
2106:5
2181:6
2185:14
2186:1,2,5
2193:9
2200:3,4
2206:20
2217:10
2220:14
2228:7
2265:11
2283:9
2295:6,13
2307:15
2312:23
2313:14
2372:14,17
2402:15

guessing
2231:22

guesstimate
2185:11,16

guidelines
2300:25
2304:4

GUNN 2043:20

guy 2256:25
2257:3,8

guys 2257:19

────────────
────── H ──────

Hadaway
2232:21

2439:6

Hadaway's
2437:18

half 2049:23
2086:7
2200:4
2228:7
2257:16
2345:5
2432:13
2437:6

Hampshire
2126:16

hand 2086:12
2129:16
2136:2
2187:12,13
2189:12
2203:4
2217:7
2234:2
2247:12
2266:12
2279:3
2359:9
2362:2

handed
2057:11
2063:7
2152:7
2153:18
2154:3
2230:14
2360:20
2405:18

handled
2118:15

handrail
2248:22
2249:1,9
2250:8

hands
2085:22,25

hands-on
2276:14

hanging
2343:5

happen
2085:14
2256:6
2350:3,5

happened
2174:8
2188:17
2218:1

2226:13
2404:23
2415:21

happens
2169:3
2320:17

happy 2157:7
2278:9,12

Hardin
2050:22
2137:12
2189:10
2192:2,5,12
2194:7,23
2220:3
2224:5,12,20
2226:21
2231:18
2238:18
2264:25
2265:3,9
2289:12

Hardin's
2192:8,13

hate 2105:24
2168:4

Hatfield
2046:10
2129:9,22
2132:23
2133:4,6
2134:8,13
2160:2
2167:4
2171:7
2172:20
2174:2,14
2179:17,23
2181:23
2191:21
2194:16
2195:1
2200:6,9
2201:12
2202:7
2205:18,22
2206:1,4,10,
12,13
2211:18,25
2219:23,25
2220:14
2223:4,21
2230:17
2231:2,8,13,
14
2232:10,12
2234:6,8,9,1

1,23
2235:3,17
2236:1,3
2243:20
2247:6
2254:7,12
2272:12,14
2278:2,3,5,1
3,15 2359:12
2441:7,10,11
,12,14

haven't
2055:10
2071:17
2097:14
2098:8
2168:3
2236:17
2317:2,3
2350:7

having 2070:9
2075:24
2104:17,18
2115:22
2119:19
2161:3
2172:17
2193:9
2234:10
2279:16
2322:18
2338:19
2339:20
2345:4
2362:7
2375:4

Hawthorn
2327:20,22,2
4 2328:1,7
2372:1,3,5,7
,12 2431:6,7
2433:24

HC 2052:9,13
2054:25
2056:24
2058:8,9,10
2066:1
2068:4
2069:5
2075:15
2079:1,2
2133:1
2134:7,10,15
2137:14
2194:25
2195:2,4
2200:9,11,13
,21 2220:13

2235:20,23
2243:19
2266:13
2283:20
2362:19,20
2363:6,7
2364:7
2365:4
2405:12,13,20 2431:25
2434:19,20
2438:19
heading
2074:5,8
healthy
2292:9
Healy 2044:2
hear 2052:24
2206:8
2365:2
heard 2101:17
2114:11
2155:16
2168:3
2173:3
2211:10
2230:4
2266:3,8
2341:14,16
2365:16
2377:9
hearing
2043:6
2049:7
2071:15
2132:25
2171:14
2172:6
2201:19,24
2202:17
2205:14
2209:6
2235:22
2245:6
2263:3,5
2264:2
2271:7
2284:23
2297:16
2301:10
2312:16
2318:4
2406:3
2439:9
hearings
2155:16
2173:3

2218:17
2325:8,9
2355:15
heart 2098:13
2181:14
HEATHER
2046:1
heavy 2310:14
Hecker
2046:10
he'd 2326:22
2328:6
2335:7
Heinz 2044:11
held 2066:5
2072:19
2102:23
2137:18
2168:20
2170:5
2175:6
2195:10
2206:5
2220:19
2266:17
2282:8
2385:17
2414:18
he'll 2071:23
help 2073:16
2116:8
2162:5,12
2183:2
2198:12
2217:10
2265:20
2316:9
2433:22
helped 2175:7
2299:12
2427:22
helpful
2087:13
2376:22
2414:15
2428:21
2430:7
helps 2173:5
Henderson
2278:17,18
2279:1,16,19
2280:23
2281:6
2283:24

2284:4
2291:7
2296:4
2297:1,11,20
2298:11,12
2300:13,19
2301:14
2304:13
2312:20
2316:21
2317:13
2318:9
2328:21
2336:1
2340:6
2341:12
2343:3
2344:13
2345:20,24
2346:5
2352:7
2358:2,3,20
2360:9,12,19
2361:7
2374:6
2420:9
2441:15
Henderson's
2317:2
hereby 2440:5
herein
2059:16
here's 2219:4
2330:7
Hermison
2132:18
HERNANDEZ
2048:3
he's 2179:21
2182:1
2254:8
2264:15
2284:11
2340:25
2429:22
hesitant
2437:20
hesitating
2373:8
hey 2207:9
2219:6
high 2044:20
2065:23
2104:20
2108:9

2109:10,24
2110:12,14
2227:10
2271:20,21
2272:2
higher
2154:21
2170:5
2175:6
higher-level
2111:17
highest
2303:25
high-impact
2105:11
2108:10
2109:3
high-level
2152:14
highlighted
2415:7
highly
2187:17
2442:6,18,19,21,22,23,25
2443:3,6,13,15,20,23
high-probability
2109:21
hindsight
2123:20,22
hire 2240:2
2288:4,9,13,16,18
hired 2136:23
2175:9
2281:9
hiring
2240:3,4
historical
2214:17
2217:13
history
2214:15
hold 2056:8
2071:20
2154:21
2284:16
Holding
2263:22
2264:4
Holdings

2053:23

honestly
2072:9
2341:8

honesty
2361:2

Honor 2234:6

hooking
2251:13

hope 2059:23

hopefully
2262:12
2280:6

hostile
2280:23

hour 2056:17
2233:21
2345:5
2437:6

hours 2194:19
2331:25

HR 2078:4

HUMPHREY
2046:1

hundred
2214:21
2215:3

hundreds
2329:21
2330:19
2335:2

Hydebrink
2417:20

Hyneman
2315:25
2316:10
2324:14
2326:4,14
2334:25
2339:15
2355:21
2400:12
2417:12
2422:2
2423:4

hypothetical
2107:1
2108:21
2133:18
2134:9,12,14
2179:11,21
2365:15

hypotheticall

y 2342:2,7

hypotheticals
2108:16
2215:13

———————
I
———————

i.e 2059:15

Iatan 2054:20
2060:2
2063:18
2064:7,16
2065:7
2068:24
2069:20
2076:23
2079:18,23
2080:3
2082:4,5,11,
19,24,25
2087:18
2088:13
2089:20
2115:2,7
2121:10
2123:13
2130:17,21,2
5
2131:6,9,12
2136:4,8
2161:13,16,2
3 2176:5
2177:2
2184:10,11,1
8,22
2185:7,9,18,
23 2186:22
2187:1,19
2198:9
2203:8,9,14
2204:12,13
2206:22
2238:20,21
2241:10
2242:9
2252:4
2253:25
2254:11
2264:13
2266:1
2288:1,5,6,1
4
2293:17,18,2
4 2296:9
2297:23,25
2298:1,3,5,1
7,23 2299:4
2302:25
2305:20,23

2306:2
2308:1,9
2315:8,9,13,
14,21 2316:2
2317:25
2318:19
2319:9
2320:24
2321:12
2322:9,10,24
2323:5
2324:21
2325:13,14
2326:1,13,19
2328:13,14
2331:21
2332:3,4,14
2333:3,13,24
2334:3,12
2338:24
2339:11
2346:22
2351:23
2352:5
2353:5,8,20
2355:16,24
2356:12
2362:18
2372:18,19
2373:5,6,7,1
0 2379:11
2383:15
2400:1
2401:16,19
2402:3
2404:7,17
2407:25
2408:11,23
2409:5,8
2412:11,20
2413:7
2414:12
2419:19,22
2420:10,11,1
8
2421:6,10,19
,20
2422:7,15
2431:18

IBEW 2046:20

I'd 2055:11
2071:14,24
2075:24
2076:7
2080:5
2083:7
2117:1
2119:25
2124:7

2128:6
2137:15
2157:6
2158:25
2186:1
2192:6
2205:14
2230:14
2280:3
2283:15
2295:12
2296:14
2297:13,20
2300:7
2301:7
2312:13,20
2316:14
2318:2
2342:13,18
2343:25
2344:20
2358:2
2369:7
2370:22
2385:10
2405:8,24
2406:13
2410:15
2423:14
2432:9,11
2433:6
2434:17
2438:15

idea 2104:3
2185:9
2230:17

**identificatio
n** 2055:4
2057:25
2063:5
2076:17
2078:23
2081:22
2225:13
2230:24
2283:22
2296:21
2300:11
2304:7
2311:19
2317:9
2342:22
2361:21
2405:16
2431:24
2434:22

identified
2100:9

2110:9	2399:7,15	2084:4,6	2238:6,12,14
2130:13,17,2	2410:9,13	2087:19	,15 2242:6
1	2427:8,22	2095:18	2244:6,14
2131:3,6,9,1	2428:13	2096:4	2246:22
2,18 2136:15	**identifying**	2098:6	2247:2,4,5,7
2161:9	2051:19	2102:12,16	,13,19,22
2162:17	2077:19	2104:23	2248:5,9
2163:15	2132:5	2106:14	2250:13,24
2164:23	2275:17	2108:9	2251:13
2180:24		2114:1	2253:10
2192:24	**I'll** 2053:5	2116:6	2257:4
2217:24	2058:23	2124:18	2258:14,15
2220:1	2070:23	2125:6	2260:4
2229:3	2071:9,20	2133:20	2263:17
2329:2	2079:1,9	2137:1	2265:23
2330:25	2089:8	2155:4,13	2272:2,15
2359:2	2101:25	2156:1,3,10,	2274:12,13
2398:24	2118:1,3	17 2157:5,9	2276:14
2401:18	2124:25	2159:10,15	2277:7,9,11,
2408:15	2125:8	2160:3,9	24 2279:25
2416:6	2134:5,7	2161:24	2280:25
2424:17	2167:7	2162:2	2283:9
2426:21	2174:10	2165:18	2294:23
2427:13,15	2179:25	2166:22	2295:16
2428:18	2182:5	2167:4	2296:2
2436:14	2191:23	2170:5,14	2308:17
identifier	2205:16	2171:13	2311:2
2136:25	2211:20	2172:9,14	2312:25
identifies	2233:17	2173:17	2313:3,6
2099:9	2237:10	2174:2,7	2315:16
2100:3	2240:10	2175:9,10,21	2317:2,16
2159:23	2261:13	2177:24	2318:23
2182:13	2266:12,14	2178:10	2323:23
2425:10	2281:1	2179:17,18,2	2325:10,15,1
identify	2284:19	3,24	7 2327:12
2051:21	2335:23	2181:15,23	2328:15
2078:25	2358:22	2182:20	2329:8
2079:21	2368:22,25	2185:2	2330:8,13,16
2115:1	2429:13	2186:9	,18 2331:18
2122:9	2430:2	2187:13,16	2333:9
2159:24	2433:1	2188:17	2334:13,17,2
2161:2	**Illinois**	2189:12	2 2335:12
2162:7	2126:17	2192:10	2337:14
2166:5	2234:15	2193:9,14	2340:8
2178:12	2369:23	2202:3,5	2344:12,23
2179:6	**illustration**	2203:4	2349:1,2
2193:13	2188:1	2208:5	2356:8,14
2213:8,12		2209:16	2357:21
2223:11	**I'm** 2050:20	2211:1	2358:9,19
2226:15	2052:2,3	2212:10	2359:9
2227:12	2056:15	2215:12	2360:24
2274:10,23	2058:25	2216:4,25	2361:9
2275:5	2061:21	2225:1	2362:14
2312:4	2063:1,11,13	2226:10	2364:2,16,19
2329:22,25	,14,15	2228:4	2365:13
2330:20	2068:7	2229:24	2367:21
2355:1,5,11	2070:8	2230:6	2368:19
2398:17,22	2073:4	2231:22	2373:8
	2078:14	2235:6,16	2385:14

2398:19
2400:6
2401:10,13
2402:6
2403:22,25
2405:18
2410:16,17,1
8 2411:3,4,7
2412:13
2415:2
2417:23
2420:14
2424:21
2430:19
2437:19,25
2438:10

imagine
2086:25

immediately
2298:5

impact 2293:3

imparted
2242:16
2272:23

impeachment
2432:15

**implementatio
n** 2043:13
2123:4
2289:20

implications
2429:9

implicitly
2294:10
2296:4

imply 2261:2

importance
2128:6

important
2115:10,17

impossible
2076:4

impression
2242:16

improve
2073:10
2074:22

improved
2419:8

improvement
2070:11,15,1
7 2077:20
2078:11,16

improvements
2128:15

imprudence
2121:9

imprudent
2061:3
2333:4
2351:9,19
2434:15

inaccurate
2152:12,23
2153:6

inadequate
2084:14,16
2357:5

inappropriate
2202:20
2342:11

Inc 2053:25

in-camera
2052:15,18,1
9 2053:2,4
2066:5
2137:15,18
2195:6,10
2220:19
2266:17
2385:12,17
2441:4,8,9,1
0,11,14,21

incident
2342:16

include
2073:13
2082:15
2100:16
2123:20
2130:24
2234:20
2287:1
2289:11
2304:9
2306:18,20
2314:2
2325:23
2377:18
2415:23
2419:6,7

included
2070:4
2119:8
2122:6
2136:22
2229:6
2262:6

2293:10,18
2299:23
2305:16
2307:21,22
2321:23
2324:20
2377:23
2378:15
2379:18
2380:9,19
2381:19
2403:2
2415:8
2420:17
2421:9,11
2426:1,10,22

includes
2100:7
2220:2
2302:8
2359:25

including
2054:6
2100:14
2167:2
2204:23
2249:19
2332:1
2413:19

incomplete
2152:12

incorporate
2321:14

Incorporated
2089:16
2090:8
2263:24

incorrect
2096:11,19,2
3 2100:5,10

incorrectly
2100:3

increase
2107:3
2112:20
2135:20
2214:24
2245:21
2255:6,8,9
2257:5,7,19
2259:25
2374:25
2398:25
2425:2
2433:12
2435:19

increased
2161:3
2225:5
2376:23
2402:18
2424:23
2434:10

increases
2203:12
2204:16
2253:22
2255:18,19
2260:18
2384:24
2398:22
2399:8,9
2404:16,23
2405:3
2424:12
2425:7
2426:6,9,14,
18 2427:8
2435:14,22
2436:2,15,23

increasing
2416:3

incurred
2090:25
2113:20
2187:23
2203:15
2204:1,5
2401:17
2406:21

indeed 2169:6

independence
2045:15
2339:24
2340:3

independent
2265:13
2340:10,13

index
2120:3,5,17,
24 2442:1
2443:1

Indiana
2236:10

indicate
2054:5,15
2065:13
2096:17
2118:9
2120:17
2121:16
2173:22

2298:10
2302:19
2303:7,8,21
2304:4
2314:11
2315:2
2330:17
2333:10
2360:25
2411:21
2413:17

indicated
2058:6
2176:8
2319:23
2324:12,19
2325:6
2336:15
2353:4
2358:17
2377:2
2407:5,23
2410:8
2418:21
2422:1
2435:17

indicates
2285:9
2301:23
2304:6
2306:10
2315:7
2326:4
2333:17
2336:24
2340:1
2380:13

indicating
2357:14

indication
2199:21
2375:25

indirectly
2059:15

indirects
2133:22
2163:20
2215:21

individual
2163:15
2239:22
2248:14
2252:21
2337:20

individuals
2082:15,19

2306:13
**individual-
specific**
2202:16

indulgence
2200:23
2252:24

industry
2062:17
2099:15
2123:2
2125:16
2168:1
2198:11
2239:1,8,25
2252:13
2254:9
2260:20
2262:8,10
2271:11,18
2277:17,20
2278:12

inform
2112:10
2173:10
2233:1
2438:1

informal
2128:21

information
2073:16,19,2
4 2074:21
2075:1
2085:13
2086:20,23
2087:2,6,10,
15,18
2088:1,17,20
,21
2093:2,23
2095:7
2166:9
2173:5,6
2187:17
2189:9
2193:18
2200:13,14
2201:15,20,2
5 2202:10
2205:7
2226:24
2235:10
2239:8
2240:13
2249:16
2283:17
2284:7

2285:4
2289:16
2316:21,23
2342:14,15
2357:19
2410:25
2411:24
2416:21

**infrastructur
e** 2414:20

inherently
2383:6
2384:8

in-house
2288:20

initial
2069:20
2070:4
2351:12
2371:13
2375:8
2377:3

initially
2068:17
2316:7
2320:15

initiate
2073:21
2074:24

inlet 2050:12

inlets 2050:9

in-person
2082:22
2083:2

input 2309:5
2328:11,16
2339:9
2422:14,22

inquired
2088:10

inquiries
2399:3

inquiry
2316:19

inspectors
2249:11

installed
2430:14

instance
2077:21
2208:23
2215:12
2240:4,21

2241:9

instances
2082:13
2119:22
2201:23
2309:19,20
2341:11

instead
2107:14
2135:18

institute
2154:22
2337:2

institution
2157:17,22

instruct
2183:5

instructions
2373:16,22
2374:13

insufficient
2093:17
2094:20,24
2095:8,10

integrated
2081:10,17

integration
2081:7,11
2158:9

integrity
2360:5

intended
2068:17
2069:10,19
2070:16
2162:23
2183:22
2292:2

intense
2056:17

intent
2340:14

intention
2104:3

interact
2303:15

interaction
2303:9
2328:15

**interchangeab
ly**
2101:6,8,18

interested 2440:15	2064:13	2306:14,19,2 2 2307:2	2298:20 2299:2
interesting 2110:3	**investigated** 2226:16 2228:23 2328:18	2310:17 2313:24 2323:15	**issue** 2050:18 2057:20 2084:7
interests 2292:11	**investigation** 2097:15	2328:6 2339:2,16 2341:13,18,2	2090:8 2117:5 2119:3
InterFab 2057:12,13 2058:15,19	**investing** 2056:12	2 2349:2 2350:21 2355:24	2128:23 2201:6,18,19 ,21
interface 2249:10	**investment** 2055:22 2056:6,12	2357:10 2370:3 2371:6	2202:13,19,2 3 2233:9,11 2241:25
interference 2414:9 2419:8	2337:24 2338:6,11 2357:8	2372:11,22 2402:16,23 2403:15,21,2	2242:25 2243:4 2244:7
interim 2085:2 2117:13	**investors** 2055:22	5 2433:21 2436:13	2246:25 2248:24 2294:5,13,17
interior 2256:14,17	**invited** 2401:1	**involvement** 2351:3	2296:6 2298:18
internal 2136:20 2189:10	**invoice** 2065:16 2214:13	**involves** 2335:1	2303:24 2306:14,20 2309:22
2308:20 2347:21	2231:17,18 2354:1	**involving** 2078:10 2293:7	2317:1,4 2328:25 2335:1
international 2125:13	**invoices** 2053:12 2054:1,7,11,	**Iowa** 2369:15,23	2338:13 2341:10 2412:17
interpret 2168:2	13,14,15,18, 19 2058:15,19	**ironworker** 2198:20,21	2432:13
interpretatio n 2157:13,15	2068:8 2075:16	**irrelevant** 2200:7	**issued** 2063:22 2064:2
interpretatio ns 2337:20	2090:24 2184:7	2202:9	2297:5 2298:18,25
interrupt 2168:4	2185:17 2186:23,24	**ish** 2276:17	2299:6 2316:3,8
2262:19 2280:21	2193:3 2194:2	**Island** 2086:11	2337:1 2376:13
interview 2050:21,25	2353:19,21,2 2 2354:6	**isn't** 2058:16 2094:12	**issues** 2051:19,22
2051:1	**involve** 2052:7	2120:14 2165:5	2084:3 2086:13
interviewed 2082:19 2083:4,5	2239:12 2240:21	2250:11 2258:3 2294:20	2119:14 2124:16 2128:8
2264:3	2255:9 2297:23	2305:21 2306:3	2248:23 2250:8
interviews 2082:24 2088:22	**involved** 2068:14 2088:18	2333:16 2397:14 2398:3	2286:8,12,17 2287:25 2298:24
intimately 2277:7	2119:16 2122:25	2417:18 2426:2,7	2319:5 2321:8
invade 2200:22	2276:10,19 2277:11 2287:21,24	2431:12 2434:8	2329:4 2333:24
investigate	2298:22	**isolate** 2116:23	2334:10
		issuance	

2338:23
2382:8
2402:20
2408:21
2412:5,14
2414:8,9
2415:25
2416:6
2419:8,13,18
,21 2420:5
2421:6,19
2427:4
2429:4
2430:8
2432:21

item 2093:4
2105:1,15
2108:17
2110:16
2116:15,16
2117:9
2118:11
2134:17,22
2135:1
2137:6
2176:9
2179:14
2180:7,16
2211:11
2214:20
2226:15
2231:5
2243:10
2253:22
2259:13,14
2261:24
2274:19

items 2077:10
2081:14
2092:10
2105:5
2106:12,23
2108:1
2110:20
2118:13
2161:9
2163:12,13,1
6,19 2179:3
2207:18
2247:18
2248:8,14,19
2249:25
2262:5
2274:14
2329:13,21
2330:19
2382:24
2383:7

it's 2052:8
2053:11,18
2059:25
2062:18
2068:22
2072:25
2075:15
2076:4
2086:19
2087:13
2088:15
2089:25
2093:1
2096:9,15
2099:10
2100:10
2101:12
2102:6
2103:20,22,2
3 2107:2
2108:20,21
2109:19
2112:22,25
2113:2,3,15
2119:5
2120:11,12
2124:21,23
2125:14
2126:24
2128:21
2134:9,12,14
2136:8,24
2137:5
2153:19
2154:2
2155:6,18
2156:1
2159:14,21
2166:8,13,16
,17 2168:25
2170:22
2174:5
2175:18
2179:6,21
2180:12,16,1
8,20 2181:16
2183:9
2189:24
2190:19
2191:5,7,9,2
1 2192:7
2200:6,8,17,
19
2201:6,8,21,
23
2202:9,10,14
,17,18
2209:9
2214:11

2219:5,12
2220:2,7
2228:19,21
2233:6
2238:5
2241:12
2242:21
2246:5
2250:1,4,15
2251:2,4,6,1
1
2252:7,13,17
2257:24
2258:22
2261:23
2266:5
2271:19
2277:1,2,3
2278:22
2283:16,20
2284:8
2293:10
2295:17
2297:3
2302:4
2305:13
2312:12,23
2313:6,14
2314:5,7,9
2330:2,8
2336:11,18
2344:25
2345:1
2348:3
2359:5
2361:12
2401:7
2405:12
2410:23
2411:9,21
2419:6
2430:1
2432:14
2435:1
2437:21

I've 2058:22
2063:7,15
2072:1
2076:20
2084:13
2085:13,14,2
0 2097:1
2111:24
2114:4
2119:16,23
2127:6
2128:17
2153:18
2155:5,16,17

,18 2156:22
2158:10
2173:2,3,14
2174:1
2175:6
2176:20
2181:9,10
2182:8
2187:10
2198:10,12
2199:10
2202:24
2216:7,8
2217:3
2238:8,13,14
2248:6,10
2250:21
2251:23
2273:4
2283:25
2300:13
2312:3
2341:16
2405:18
2410:17
2411:5

—————————
J

Jack 2051:2

JACOBS
2044:14

JAIME 2048:2

JAMES
2045:9,18

January
2043:7
2155:8,24
2156:4
2172:16
2174:21
2280:12
2439:10

jargon
2429:19

Jarrett
2043:19
2089:3,5
2091:7
2121:8
2441:4

Jefferson
2043:8
2044:8,20,24
2045:2,12,20
2046:11,23
2047:6

2048:7,11
2414:19

Jeffrey
2315:21
2317:25

Jennifer
2043:23
2048:3

job 2109:6,9
2181:18
2198:6
2244:7
2278:9,12
2282:8
2332:14
2373:11

jobs 2276:24
2284:16

John
2047:8,12,13
2051:2,5
2314:12

join 2124:25
2400:13,18

joint
2265:19,23
2418:12

Jonathan
2117:6

Joseph
2046:24

Joyce 2284:10

JR 2044:19

judge 2043:19
2049:1
2052:4,10,14
,19,24
2053:3
2054:24
2055:8,10,13
2056:22,23
2057:2,9,23
2058:3,10
2066:3
2069:6,8
2070:25
2071:3,7,9,1
5,17,20,22
2072:3,9,14,
20 2075:23
2078:21
2079:11,13
2081:20
2083:9,12
2089:2

2091:7
2101:22
2102:14,19,2
4
2103:14,20,2
4
2104:4,8,12
2113:7,10
2118:1
2124:18
2125:4,8
2129:5,10,19
2132:23,25
2133:6
2135:25
2137:16
2152:1
2153:15,16
2154:13,15
2167:7
2168:4,9,14,
17,18,21
2169:11,15
2174:2,10,14
,16 2179:25
2181:23
2182:4
2183:4,7
2190:13,14,1
7 2191:22,23
2194:4,8
2195:7
2198:1
2200:6,10,12
,25
2201:4,10,12
,14,17
2202:3,24
2205:10,20
2206:1,2,6,1
2 2211:1,20
2219:23,24
2220:16
2223:1,17,20
2230:18,19,2
5 2231:2,10
2232:11,12,1
7
2233:4,8,12,
17
2234:4,7,9,2
3 2235:17,19
2236:3
2237:9
2252:25
2254:12,14
2262:16,25
2266:15
2271:1

2272:11,13
2278:2,4,15,
25
2279:5,10,13
,15
2280:21,24
2281:3
2283:15,18
2284:19,21
2296:14,16
2297:13
2300:7,9
2301:7,9
2311:13,16
2312:13,15
2316:14,16,1
7
2317:10,15,1
7 2318:2
2335:23
2342:19,20,2
4 2343:24
2344:2,7,11,
15,21,23
2345:3,6,17,
22 2346:2
2357:24
2358:8,12,22
2360:10,16
2361:6,9,13,
22,25
2362:1,4
2363:21,23
2364:3,6,9,1
8,23
2365:1,4,10
2368:7,9,12,
13
2385:10,13
2397:1
2403:5,6
2405:9,10,14
2406:1,3
2429:13
2431:20,22
2432:1,2,17,
18 2433:1
2434:18,19
2437:5,10,14
,23
2438:3,4,8,1
2,17,19,21
2439:3

judging
2073:14

judgment
2095:13
2310:5
2367:24

2428:10

judgments
2309:10,16
2310:22
2311:4,11,24

July 2275:10
2297:6,7,8
2298:21
2299:2,22
2313:13,24
2314:3,10,18
,19
2315:6,19
2318:16
2319:25
2336:14,19
2348:3,18
2354:11
2375:4

juncture
2316:17

June
2159:11,15
2177:12,13,2
2 2353:23

justification
2116:3
2226:17

justify
2095:23
2320:16

justifying
2094:11,23

———————
K
———————
K-1 2069:1

Kansas
2043:11
2044:16,25
2045:21
2046:2,3,4,7
,8,12,16,19
2087:23
2088:8
2089:9
2090:12,17,2
1 2092:20
2093:9
2098:17
2100:3,8
2121:18,23
2123:10
2130:1
2274:9,22
2327:15,18
2328:4

2355:15,16
2371:24
2372:9
2373:3

KARL 2046:5

KCC 2325:7

KCP&L 2043:15
2055:3
2057:24
2058:12
2063:4,9
2068:9
2073:10
2076:16
2078:22
2079:15
2081:21
2083:13
2090:5
2091:21
2092:7
2094:22
2118:16
2119:15
2129:19
2131:22
2133:2
2136:20
2137:12
2153:20
2165:4
2189:10
2193:4,15,16
2204:22
2213:7,12
2216:12
2230:23
2231:11
2233:5
2235:24
2241:11
2254:25
2283:19,21
2284:21,24
2289:9
2296:16,20
2297:17
2300:10
2301:11
2311:18
2312:17
2317:8
2318:5,6
2342:21,24
2344:5
2361:20
2365:6
2397:19

2405:15
2406:5
2431:23
2433:3
2434:21
2438:23
2441:2
2442:2,3,5,7
,9,11,12,14
2443:5,7,9,1
1,12,14,16,1
8,19,21

KCP&L's
2062:13
2065:7
2089:19
2114:3
2122:5
2187:20
2279:10

KCPL
2244:17,24
2254:22
2257:15
2258:17
2264:1
2265:9
2266:6
2275:16
2277:13
2287:2
2289:4
2297:6,15,23
2300:9
2301:9
2311:17
2312:15
2316:9,16
2327:14
2329:22
2330:20
2332:8
2336:7,20
2341:3,4
2342:20
2344:4
2346:25
2348:6,20,24
2349:7
2353:17
2354:25
2355:4
2356:17
2357:14,18
2366:20
2367:9,25
2368:12
2372:18
2374:24

2375:3,14
2378:2
2397:7,16
2398:1,11
2399:3,20
2400:13,22
2401:2,24
2405:10,14
2406:3,8
2414:7,14,19
,24 2415:14
2416:7,20
2418:17,21
2419:1
2427:7,9
2431:3,22
2434:19
2436:21
2438:19

KCPL's
2254:20
2301:5
2318:10
2329:1,20
2330:17,18
2331:17
2333:11
2401:18
2405:22
2408:9
2433:11
2435:3

Keith 2316:1

Ken 2417:20

Kenney
2043:20
2091:8,10
2101:20
2104:18
2117:2,9,18,
22 2118:24
2119:19
2128:4
2441:5

Kentucky
2237:21
2238:13,15

KEVIN 2043:20
2048:2

kilowatt
2239:9

kinds 2119:13
2155:17
2249:7
2292:25

KINDSCHUH

2047:8

Kissick
2068:13
2069:3,15,25
2070:3
2251:25

Kliethermes
2048:3
2049:3,8,11
2051:10,15,1
7
2052:2,6,12,
22
2053:1,5,11,
15,16
2054:22,25
2055:1,7,17
2056:20,23
2057:4,8,10,
21 2058:1,18
2063:3,6
2064:23
2066:1
2068:2
2069:4,9,11,
14
2070:20,23
2071:1,2,11,
13,22
2072:5,9,17,
21,22,23
2075:20,22
2076:9,18
2078:20,24
2079:9,17
2081:19,23
2083:7,15
2088:25
2102:5,12,16
2103:18
2113:8,9
2115:5
2116:4
2117:21
2118:3
2121:12
2124:2,25
2361:25
2362:5,9
2363:21
2364:2,5,8,1
6,21,25
2365:8
2403:3,9
2406:2
2437:5
2438:5,6,10,
13,18,20

2441:3,4,19

Kliethermes's
2127:9

knew 2208:20
2228:24
2294:2

knock 2437:17

knowledge
2060:1
2081:9
2289:6
2360:2
2363:5

known 2054:11
2200:17,19
2231:5
2262:8

Knudsen
2236:18

KRIS 2068:1
2441:3

KS 2046:15,19
2047:10

—————————
L
—————————

La 2328:9
2372:14
2406:9
2423:11
2424:24
2425:7
2426:4
2427:5,14
2431:15

Label 2230:25

labeled
2082:8

labor 2108:23
2109:10
2203:10
2204:14
2237:21
2238:18
2241:1

lack
2065:12,13
2272:25

lacking
2226:23

ladder 2227:3

laid 2249:13

Lake 2234:15

Lane 2047:2

Lange 2302:12
2303:4
2319:24
2320:23
2324:6
2328:12
2332:11
2333:19
2338:23
2339:2,9
2355:15
2397:11,13,1
4 2408:15
2417:5

Lange's
2314:22

language
2060:4,6

large 2056:12
2099:22
2119:17,24
2253:3
2265:21
2383:14

largely
2233:1

larger
2088:18
2423:21
2424:8

largest
2199:8
2430:10
2435:18

LARRY 2045:18

last 2049:5
2050:21
2056:16
2091:15
2092:13,24
2110:5
2117:18,23
2119:20
2175:5
2217:2
2233:20
2236:7,14
2261:19
2297:21
2301:5
2302:18
2316:9
2318:10
2344:9,20
2372:17

2402:14
2407:1
2433:12

late 2262:20
2279:21
2355:24
2368:17

late-filed
2235:1

later 2052:16
2062:11
2071:24
2075:18
2093:21
2109:18
2202:13,16
2214:23
2316:9
2321:22
2353:23
2370:3
2382:20,25
2383:7,11

law 2043:19
2044:2,6,10,
14,15,19,22
2045:1,5,9,1
0,14,18
2046:1,5,6,1
0,14,18,22
2047:1,5,8,1
2 2123:11
2249:13
2265:13
2292:4

lawyer 2172:8

lawyers
2260:6
2417:15,16
2429:1

lay 2071:25

layman 2260:9

laymen's
2261:14

laypersons
2429:1

lead 2069:1
2315:24
2322:8,12,13
,14
2323:16,25
2354:12,16
2373:23

leadership
2227:1,19,23

2228:2
2229:15,19
2322:23

leading
2280:22
2289:18

learned
2163:14
2198:22

least 2065:13
2092:7
2103:25
2108:5
2111:19
2115:7
2169:4
2194:19
2217:3
2228:7
2232:22
2233:15
2239:7
2334:23
2345:2
2398:10
2413:8,12
2432:25

leave 2071:9
2200:15
2273:5

Lee's 2045:3

left-hand
2124:17
2136:14

legal
2048:2,3,4,5
2136:15,19,2
0,22,23
2286:16

Leibach
2043:23

Lena 2302:9
2303:1

length
2370:20

lengthy
2415:4

Leon 2314:12

less
2050:9,12
2062:16
2090:25
2116:21
2344:13

2413:14

lesson
2163:14

let's 2113:14
2128:3
2135:4,17
2165:1
2168:10
2179:13
2212:12
2224:25
2239:16
2240:3,7
2262:22
2295:21
2301:22
2302:18
2303:20
2304:3
2306:9
2358:7
2361:18
2374:18
2418:19
2423:7

letter
2180:21

letting
2069:2

level 2104:21
2110:12,14
2111:22,25
2112:9,11,14
2193:1,2
2207:16,20
2211:14,24
2212:2
2224:8
2227:11
2240:14
2303:25
2305:15
2329:5

levels 2108:8
2112:7
2224:17
2242:6

Lewis 2045:5
2048:9

liaison
2290:1

life 2175:4
2182:10

Light 2043:11
2045:21

2046:2,4,8,1
2,16 2100:3
2274:10

Lighting
2086:12

Light's
2100:9
2274:22

likely 2169:4
2365:22
2423:23
2424:12

limit 2135:12
2202:1

limited
2176:22
2285:21

line 2052:9
2090:4
2105:1,5,15
2132:5,6,9,1
2,17
2134:22,25
2152:17,18
2159:25
2160:4,15
2179:1
2188:15
2211:11
2212:16
2214:3,6,20
2215:12,18
2220:12
2243:10
2251:7
2260:5
2273:6
2295:13,16
2316:19
2327:8
2329:21
2330:19
2371:15
2375:13
2401:14
2402:10
2412:3
2413:17

line-by-line
2212:4,6,8

lineman
2198:14

lines 2096:16
2159:6
2246:23
2247:13

2248:1
2250:20
2251:18
2330:3,4,8,1
5 2337:15
2374:22
2406:16
2407:4
2408:6
2410:22
2411:19
2418:20
2423:14
2433:6
2435:11,18

list
2063:9,21
2082:8
2083:4
2120:24
2124:10,14
2175:1
2187:19
2227:1,8
2248:2,20
2299:17
2314:2
2320:1
2322:2
2344:16
2361:13
2364:1
2397:18,24
2442:21

listed
2049:21
2077:14
2096:7
2115:6
2134:18
2248:19
2249:25
2255:5
2261:23
2284:10,16
2299:23
2314:16
2324:7
2337:18
2339:23
2422:5
2425:1,8
2430:11

listing
2082:10

lists 2054:13
2063:17,20
2064:1,6

2314:17,23
2338:15
2397:15

litany
2248:14

litigated
2277:18

litigation
2091:22
2092:4
2093:16,20
2094:12,24

little
2075:18
2103:11
2117:17
2128:3,5
2129:13
2161:5
2168:7
2170:20
2213:23
2254:16
2255:12
2273:3
2275:18
2276:1
2278:7
2295:20
2299:8
2320:13

LLC 2043:24
2044:13
2046:14
2047:13

LLP 2045:5
2046:6,10
2047:9

load 2085:22
2236:16

loads 2430:14

Locals
2046:20

located
2166:9
2206:21
2371:23

location
2239:9

locked 2218:2

log
2107:17,24
2114:20,21
2130:22

2179:9
2190:7,22
2191:1,8,10,
13 2213:23
2214:1,6,9,1
8 2215:2,10
2216:9

logs 2110:11
2186:20
2214:9
2216:2,6

London
2056:10

long 2086:11
2112:20
2168:25
2199:6,7,21
2231:21,22
2281:6
2345:8
2397:15
2398:4
2437:22

longer
2091:12

look-ahead
2166:9

loss 2258:4
2261:14,15,1
7

lost 2075:16
2096:8
2257:15

lot 2076:3
2172:1
2173:3
2187:10
2206:15
2230:13
2231:4
2238:25
2260:2

Louis 2047:14
2169:9

low 2110:9,10
2292:3
2335:17,19
2435:20

low-dollar
2065:23

lowest
2240:14

**low-
probability**

2105:12
2108:10
2109:4,22,25

LUMLEY
2044:10

lump 2341:19

lumped
2427:16

lunch 2103:9
2168:24
2169:20

Lutz 2398:4

M
---

ma'am 2215:1
2263:12,14
2264:5,8,11,
14 2266:2

Madison
2045:19
2048:6,10

magnitude
2227:25
2332:2

Maiman
2083:16
2264:10,13

main 2046:7
2050:16
2129:25
2351:10,14

maintain
2178:18

maintained
2131:22
2199:22
2214:17,18
2227:8
2229:17
2232:7
2340:3

maintaining
2254:2

maintenance
2109:5,6
2370:2
2379:10
2419:9

major 2056:5
2286:21
2292:17,18
2293:1
2299:5

2365:19
2424:17

majority
2417:25
2418:22

Majors
2316:1,10
2324:15
2326:8,15
2339:15
2361:9,13
2400:13
2417:12
2422:3
2423:4

male 2077:23
2078:10

man 2123:23

manage 2212:5

managed
2212:1,7
2254:22

management
2074:20
2079:4
2080:15,16
2081:9,16
2094:2,4
2096:2
2098:25
2099:3,20
2106:13,15,2
0 2111:16
2116:17
2118:23
2119:6
2120:12
2125:10,11,1
3,17,21,22,2
3 2128:11
2152:20
2154:25
2155:3
2156:5,16
2157:9,25
2158:3,6,12
2163:17
2181:19
2186:8,11,15
2203:17,24
2208:2
2216:12,13,1
6
2227:3,5,6,8
,13
2236:8,16
2253:3

2275:20
2277:3
2278:8
2282:25
2285:4
2301:1
2307:7
2341:23
2361:1
2411:1,25
2412:16
2420:4
2443:20

manager
2132:17,19
2198:7
2199:2,3,6,8
,12,15,17,22
2200:1,3
2257:15
2258:18
2282:2
2287:19
2301:25
2302:5,10,20
2303:2,15
2307:10

managers
2207:8
2352:20

manager's
2307:16

managing
2254:19
2288:20

mandated
2155:19

MANGELSDORF
2047:5

manner
2161:11
2290:9,13,18
,23 2374:15
2429:5

Mantle 2302:9
2303:1
2417:6

March 2082:6
2275:11

mark 2044:22
2045:1
2058:9

marked
2054:23
2055:3

2057:22,24
2058:10
2063:4
2076:16
2078:22
2081:4,21,25
2132:1
2153:19,23
2230:15,23
2235:7
2266:6
2283:16,21
2284:4
2296:15,20
2297:11
2300:8,10,13
,14
2311:14,18
2312:4
2316:15
2317:8
2342:19,21,2
3 2361:21
2362:18
2363:3
2385:12
2405:9,15,19
2431:21,23
2432:5
2434:18,21,2
5 2435:1
2442:1
2443:1

market
2109:14,16

Marks 2117:6

mark-ups
2059:14

master's
2097:6
2281:14,16

match
2153:1,6,8

material
2061:9
2201:7
2202:18
2258:5
2317:1
2357:18
2384:4

materiality
2316:19
2432:12

materials
2061:13,16

2079:4
2203:13
2204:17
2240:25
2381:20
2384:9
2443:20

matrices
2106:15

matrix
2099:20

matter
2043:11,15
2076:5
2111:9
2170:11,15
2181:15
2182:14
2214:12,15
2349:16
2432:22
2440:6,11

matters
2079:2
2098:14
2111:7
2158:15
2261:8
2263:16
2316:2
2337:4
2340:2

maturation
2245:7
2247:17
2248:11,23
2249:9
2251:2
2419:7

may 2050:4
2052:9
2053:6,7
2057:8,9
2060:13
2061:4
2062:4
2063:3
2064:3
2075:22
2076:2,9
2078:20,21
2081:5,19,20
2088:24
2093:20
2107:2,22
2109:9
2123:5

2126:4
2129:6
2135:24,25
2153:15,16
2161:18
2163:12
2180:22
2184:19
2193:16
2198:12
2200:10
2205:15
2206:9
2207:8
2217:21
2218:3
2219:19,22,2
4 2226:23,24
2232:13
2238:4
2243:12
2248:15
2254:8
2255:20
2257:9,10,23
2258:24
2259:20
2260:6,7,24,
25 2261:3
2275:9
2278:16
2280:21
2311:16
2344:13,16
2365:16
2366:2
2376:5,19,24
2383:9,11
2409:20
2410:1
2416:11

maybe 2056:16
2060:12
2082:6
2220:2,5
2226:12
2231:23
2255:15
2276:1
2322:18
2324:4
2343:13
2403:12
2437:13

MC 2241:20

McCarty
2046:11

MCCLOWERY

2048:5

McDonnell
2238:18
2241:8,13,16
,20,21
2242:4,8
2244:9,17,24

MCNEILL
2047:1

mean 2076:13
2080:1
2098:3
2110:13
2122:18
2165:24
2172:8,23
2178:11
2181:9,15
2183:8
2185:21
2193:10
2194:1
2195:2
2200:4
2202:4
2224:14
2239:2
2240:24
2248:9
2249:24
2256:10,18,2
0
2259:9,11,13
2261:1
2276:3
2293:12
2305:14
2306:24
2340:7,11,16
2342:13
2344:25
2403:20

meaning
2082:11
2106:18
2155:14
2273:1

meanings
2174:25
2272:21

means 2086:2
2156:2
2160:23
2179:19,20
2181:17
2340:9
2430:22

meant
　2157:1,2
　2173:23
　2175:2
　2184:22
　2208:21
　2304:24
　2305:5
　2340:14
　2403:24
　2404:1
　2438:11

measure
　2099:5,10
　2165:15,16
　2207:12

measured
　2099:24

measures
　2074:18

mechanical
　2116:7
　2369:16

meet 2085:18
　2239:5
　2409:12

meeting
　2056:16
　2168:25
　2211:7
　2226:19,20
　2266:5
　2313:13,24
　2314:3,10
　2315:5,7
　2318:16
　2319:5,25
　2354:11,13
　2415:15

meetings
　2056:16
　2082:22,23
　2114:13
　2131:19
　2189:5
　2216:7
　2298:24
　2299:12,13
　2310:24
　2311:6
　2314:15,17
　2315:3
　2321:22
　2322:4
　2350:12
　2401:1
　2414:6,12,18

　2415:23
　2416:2,8,12,
　18
　2417:10,13,2
　2 2418:1,4,6

meets 2289:25

megawatts
　2413:2

MEGHAN 2048:5

member
　2302:20

members
　2050:24
　2129:14
　2287:15
　2289:2
　2303:11,15,1
　7,23 2307:1
　2313:14
　2337:3
　2343:5
　2417:4
　2418:11

memory 2216:4
　2228:4
　2299:19
　2324:22
　2380:24
　2415:22

memos 2092:25

men 2258:5

mental
　2340:3,8

mention
　2249:9

mentioned
　2276:18
　2382:14
　2412:19

Meramec
　2327:6
　2371:12

merger
　2335:14

mesh 2255:2

meshing
　2254:25

messed
　2130:12

met 2313:15
　2417:2

Metcalf

　2047:9

method 2242:1

metric
　2099:23

metrics
　2099:6

Meyer
　2232:14,19
　2234:1,14,16
　2235:4,9
　2236:6
　2262:15
　2263:8
　2264:16,21
　2265:6
　2271:5
　2272:15
　2278:6,16

M-e-y-e-r
　2234:14

MEYER 2234:10
　2271:3
　2441:12

Meyer's
　2136:3
　2152:7
　2153:14

Michael
　2045:5
　2046:18
　2132:18

mid 2252:9
　2277:21
　2341:23

mid-'80s
　2123:19
　2127:10

middle 2049:3
　2239:5
　2430:18,19
　2437:20
　2438:14

mid-level
　2341:23

MIEC 2047:11

milestones
　2413:25
　2415:9

million
　2091:1,14
　2092:2
　2104:25
　2105:10,11,1

　6,21,22
　2108:17,18
　2109:3,12
　2111:20,23
　2112:21
　2133:22,25
　2134:18,21
　2135:18
　2165:8,20,23
　2166:2,4,6
　2176:5
　2178:7,9
　2191:15
　2203:16
　2215:7,17,20
　,21 2277:11
　2317:6

millions
　2335:2

Mills 2048:9
　2103:9,10,16
　,22
　2104:1,7,12,
　13,15
　2113:5,7
　2124:18
　2125:2
　2126:3
　2152:4
　2153:15,17
　2154:13,15
　2194:12,19
　2263:2
　2360:11,13
　2365:10,11
　2368:7,9
　2418:7
　2429:11,21
　2441:5,9,20

Mills's
　2113:16
　2211:2

mind 2071:12
　2072:25
　2095:23
　2106:6
　2205:25
　2206:1
　2309:23
　2340:12,21
　2360:1

mine 2277:21

mine's
　2225:11

mini 2232:23
　2295:5
　2305:13

2439:6

minor 2080:4

minute
2212:13
2218:8
2219:19
2220:8
2272:12
2295:22
2345:2
2374:18
2412:19

minutes
2072:16
2103:2
2117:2
2211:3
2231:23
2232:1
2261:19
2437:13

misdrawn
2367:1

misheard
2102:17

mismatch
2094:1

miss 2372:22

missed
2103:14
2104:5

missing
2071:4

Missouri
2043:2,8,15
2044:17,21
2045:7
2046:24
2047:7,15
2048:8
2087:24
2090:18,23
2091:5
2114:9
2115:25
2121:17
2122:3,7
2123:10
2130:1
2239:18
2285:6
2286:4,22
2287:12
2331:16
2370:7

2440:5

Missouri-
Columbia
2281:20

mistake
2367:4

mistakes
2096:7

Mister
2397:21
2417:5

mitigated
2187:25

MITTEN 2045:9

MJMEUC 2044:4
2418:13

MO
2044:3,8,12,
16,20,24
2045:2,6,12,
20
2046:3,7,11,
23 2047:6,14
2048:7,11

mobilized
2258:6

modify
2381:20

moment
2052:10,14
2056:22
2066:3
2072:7
2077:13
2088:24
2137:16
2195:7
2201:5
2220:17
2252:24
2266:15
2278:20
2339:13
2359:11
2361:17
2385:14

Monday 2056:8

money 2059:11
2164:10
2176:10
2225:8
2249:7
2257:23
2293:7

2342:6

monitor
2099:6

monitored
2254:23

monitoring
2161:1
2207:17
2370:3

Monroe
2044:23
2045:2

Monte
2241:15,18,2
1,23
2242:7,10,14
,18,19
2243:1,3,8

month 2231:18

monthly
2298:13
2312:7,22
2313:10
2321:23
2325:6
2354:10

months
2414:25

morning
2049:1,12,13
2056:9
2089:6,7
2154:19,20
2172:9
2233:19

Morris 2088:9

Morrison
2046:10
2236:18

mostly
2376:18

Motion
2121:20,24

move 2072:1
2096:5,12
2098:19
2132:23
2205:11
2227:2
2230:12,21
2235:17
2245:8,9
2277:21
2281:1

2284:19
2297:13
2301:7
2310:12,15
2318:2
2343:25
2405:24
2430:2
2432:9
2438:15

moved
2310:1,19
2351:13

moves 2096:15

moving
2188:15
2205:14
2255:3
2310:14

multiple
2414:7

multi-prime
2246:25
2253:25

myself 2097:4
2171:19
2216:14

────────────
N
────────────
nameplate's
2413:3

NARUC 2123:19
2127:9,13,24

Natelle
2307:16
2313:15
2374:9

NATHAN 2048:1

nation 2199:9

national
2109:6
2127:24

Natural
2047:7

nature
2060:1,2,22
2088:10
2110:3
2122:21
2332:8
2428:22

nearly
2369:20

necessarily
2082:14
2113:23
2239:11
2261:3
2287:11
2292:22
2293:11
2337:18
2352:7
2367:14
2375:21

necessary
2080:24
2098:7
2115:17
2116:10
2224:13
2245:18
2304:10
2306:5
2338:1
2353:19
2366:18
2405:1

negative
2166:12
2403:13

negatives
2403:23

negotiate
2060:16

negotiation
2117:13
2119:23
2125:25
2128:18

negotiations
2062:12
2093:3
2113:21

neither
2162:25
2239:25
2361:1
2440:10

neutral
2291:14
2347:10,12

Nevermind
2172:20

newly 2297:22

Newman
2044:23
2045:1

nice 2178:17

Nielsen
2049:2,7
2068:1
2082:2
2089:6
2091:11
2102:25
2104:9,16
2114:1
2129:6
2169:9
2441:3

Nielsen's
2124:23

night 2049:5
2050:21
2092:13,25
2117:18,23
2119:20

nights
2233:20

nine 2081:9
2096:11
2210:10
2233:23

Nipsco
2236:10

nobody
2169:12

nobody's
2182:3

non-audit
2075:2

none 2049:7
2071:16
2113:9
2121:25
2133:1
2261:1
2263:5
2284:23
2297:16
2301:10
2312:16
2318:5
2353:12
2406:3

non-engineers
2429:7,20,24

Non-
Proprietary
2442:4
2443:8

non-
responsive
2277:25

noon
2101:24,25
2103:3
2129:13
2168:5

nor 2204:8
2306:20
2440:10,14

normal
2099:15

normally
2098:9,25
2099:10
2101:9
2354:1

North 2044:3

Nos 2235:24
2352:1
2361:20
2365:6
2443:17

notation
2184:21

notations
2184:20

note 2052:16
2066:4
2096:20
2137:17
2184:19
2195:9
2220:18
2266:16
2378:2
2385:16

noted 2052:16
2055:13
2057:2
2223:19,20

notes
2102:8,14
2171:24
2397:19

nothing
2104:11
2164:3
2205:8
2319:14
2360:8
2422:13

notice

2206:10
2257:21,24
2284:10

noticed
2429:1

November
2054:12
2136:4,9
2159:14
2166:7
2275:12
2326:3
2329:19
2330:11
2333:6
2334:8
2337:12
2362:24
2364:14
2368:25
2374:19
2377:1
2384:16
2401:6
2408:4
2411:7,8
2421:8,14
2422:24
2423:4

NP 2132:2
2133:2
2235:20,23
2362:19,20
2363:6,8,22

nuclear
2086:5
2123:11
2127:14
2433:12

number's
2295:20

numerous
2370:15

———————
O
———————

oath 2049:8
2104:10
2169:17
2232:18
2279:1
2345:25
2361:24

object
2124:18
2134:14
2167:4

2174:3
2179:17
2181:24
2200:6
2254:7
2277:24
2429:11,21
2432:11,23

objecting
2179:23,24

objection
2055:11
2058:4
2064:21
2071:5
2079:11,12
2083:10,11
2102:11
2117:21
2125:1
2194:6
2202:8
2211:16
2223:18
2231:1,3,9
2233:15,16
2235:21,22
2254:12
2284:22
2297:16
2318:4
2335:22
2357:22
2358:9,10
2364:12
2365:2,3
2403:3
2406:1,2
2437:19
2438:17

objections
2055:9
2071:15,24
2132:25
2301:10
2312:16
2344:3
2364:10

objective
2073:9
2074:19
2291:20
2360:5

objectives
2075:5
2305:23
2324:21

obligations
2085:19
2254:20

obstacles
2381:15

obtuse
2095:19,20

obvious
2093:5

obviously
2271:15
2272:22

occasionally
2083:22
2206:23

occur 2258:6
2423:24
2424:13

occurred
2177:1
2218:21
2258:8
2307:19
2373:6
2416:11
2427:14

occurring
2275:6
2409:15

o'clock
2076:11
2233:23
2262:19
2398:9

October
2079:3
2282:5

offer 2054:23
2058:2
2070:20,23
2071:14
2079:9
2083:7
2102:5
2217:6
2363:22,25

offered
2055:8
2058:3,11
2071:4
2077:23
2083:9
2102:8
2231:1
2235:20

2284:22
2297:15
2301:9
2312:15
2344:2
2364:6,7,11,
19,24
2438:7,9

offering
2273:21

office
2046:14
2048:10,12
2087:20
2207:8
2303:10,16
2342:3

officer
2051:5,6

official
2157:16

oh 2050:16
2052:22
2063:14
2090:19
2102:16
2115:20
2124:17
2155:9
2164:1,17
2171:17
2173:12
2193:12
2245:22
2247:22
2248:5
2261:22
2276:11
2323:23
2364:2
2438:10

Ohio 2126:16

okay 2050:7
2052:10
2059:21
2069:8
2072:14
2075:21
2091:3
2093:1
2094:17
2095:5
2100:21,24
2101:11,19
2104:7,23
2105:14,25
2107:6,12

2108:6,20
2109:13
2110:7,19
2111:5,9,11
2112:18
2113:1,5
2116:23
2120:20
2122:21
2123:14
2124:7
2126:3,22
2129:2
2131:2,18
2132:16
2133:17,19
2134:6,7,12,
19
2135:7,17,19
,23
2136:5,12
2137:5,14
2152:19
2153:5,9,15,
23
2154:4,8,12
2155:7,23
2156:7
2157:15
2159:5,18
2160:11,21
2161:7
2162:16,22,2
4,25 2163:11
2165:1,10
2168:9,14,18
2169:10
2172:21
2173:13
2174:23,25
2175:19
2177:2,7,24
2178:5
2179:12
2180:7,9,17,
23 2181:2
2182:12
2183:18
2184:5
2185:2
2186:4
2187:8,15
2188:18
2189:13,17
2190:1,6
2192:9
2195:7
2198:19
2200:25

2204:12
2207:21
2209:16
2215:22
2217:8
2218:22
2219:4
2220:8
2224:24
2226:11
2227:4
2228:9
2233:25
2236:18,23
2238:8
2241:8,25
2242:3,19
2243:2,15
2244:3,12
2246:21
2248:6,7
2250:19,21
2251:23,24
2253:20
2256:5,6,7,1
5,16,18
2257:3,13,25
2258:1,9
2259:4,18
2260:10,11,2
3 2261:6,12
2262:4,5
2263:13
2265:25
2266:3
2271:17
2272:16
2274:7
2278:19
2280:8
2281:3
2282:11
2290:7
2291:7
2293:6,14
2294:12
2295:1,23
2296:13
2299:10
2301:2
2305:10
2307:18,24
2308:5,8,24
2310:21
2312:3
2313:1,12
2315:19
2316:25
2317:13

2319:3
2320:12,22
2322:3
2324:2,3,5,6
2331:3,19,24
2333:10
2336:14
2337:15
2339:13
2340:15
2343:14
2344:23
2345:6,14
2348:9,22
2353:16
2356:11
2358:12
2361:15
2365:20
2366:4,7,13,
22,24
2367:3,7,12,
21,23
2368:6,23
2369:4,6
2371:9
2373:4
2374:21
2375:23
2378:19
2399:17
2401:11,13
2404:3,5
2405:8
2406:15
2410:19,21
2411:11,12,1
6 2413:1,14
2420:16
2423:9,16
2428:5
2433:8
2435:12
2438:10

O'Keefe
2044:11

ones 2075:17
2124:14
2238:12
2248:17
2382:4
2404:25

ongoing
2051:19
2214:19
2415:25

onsite 2207:5
2309:25

2404:19
2410:3
2414:14

onto 2276:8
2419:5

open 2238:19
2281:1
2340:12,21

opened
2415:17

opening
2439:6

openings
2232:23

operating
2051:5,6

operation
2073:10,11
2207:5
2290:16
2379:10
2419:9
2435:20

operations
2043:16
2074:22
2282:7
2285:4
2290:16
2291:3
2307:12
2323:19

opinion
2094:13,22
2098:24
2100:17
2108:15
2170:12
2172:9
2218:19
2274:18
2310:3,18
2335:3
2341:4
2353:9

opinions
2273:21

opportunities
2077:24
2110:16
2161:2,9

opportunity
2071:8,25
2076:12
2103:4

2131:3
2160:19,22,2
3 2189:8
2202:1
2217:11
2219:21
2220:3
2414:11

opposed
2105:1
2111:23
2153:14
2248:23

order
2059:7,10,12
,13
2060:8,14,18
,20
2061:14,16,2
4
2062:1,11,13
2063:12,19,2
3
2064:2,8,16,
18,19,24,25
2065:5,7,11,
12,17
2068:9,25
2091:23
2113:22
2134:1
2163:16
2166:24
2180:20
2192:20
2212:11
2214:1,12,13
2216:23
2232:21
2248:20
2249:5,8
2250:11
2255:2
2296:17
2297:3
2298:18,21,2
5
2299:3,6,9,1
6,18 2310:1
2315:17,20,2
2 2316:3,8
2317:23
2318:10,25
2320:17
2336:14,23
2348:3,9
2365:21,22
2366:2,5,8,1
0,11,14,16,1

8 2367:4
2375:22,24,25
2376:1,3,5,7,11,12,13,21,22,24
2379:3,24
2380:9
2383:11
2397:22
2398:1
2399:16,17,19
2410:10,13,24 2411:23
2418:22,23
2425:12
2429:19
2430:17
2442:9,14,21

ordered
2059:16
2315:22
2318:11

orders
2057:5,12,13,16 2059:19
2060:2,4,11
2063:10,11
2068:9,15,23
2069:1
2070:2,10
2110:8
2114:20
2115:19
2116:9
2131:17
2184:7,9,18,23,24
2185:3,7,10
2186:18,19
2193:17
2232:3,5
2248:18,19
2249:3,5,17
2251:15
2292:15
2305:7
2320:16
2329:12
2332:1,3,9
2333:11,13
2353:17
2374:24
2375:3,8,10,14,16,18,19
2376:16,17,18,19,21
2377:3,4,8,1

0,13,14,18,23
2378:13,14,20,25
2379:5,8,16,22,25
2380:3,8,13,17,18
2381:7,18,23
2382:2,11
2383:2,21,25
2384:13,19
2397:7,8,16
2398:6,9,13,18,23,24
2399:4,10,11,14,21
2400:10,16,19,24 2401:3
2404:9,14,15,20 2405:2
2408:9,11,21
2409:19,21
2410:2,5,9
2418:22
2419:3,7,13,18,22
2424:17
2427:4,9,14,15,18,23,25
2428:6,7,11,14,15,18,22
2430:10
2431:13,14
2443:15

ordinary
2131:22

organization
2075:3

organizational 2286:3

organized
2313:20

original
2068:19
2086:6
2108:23
2123:6
2178:19
2187:20
2190:4
2191:17
2215:3,17
2227:8
2278:11
2376:1
2402:18

2434:10,14

originally
2109:17
2225:2
2259:16
2351:16
2367:1

Osawatomie
2327:17
2371:24
2431:5
2433:23,25

others 2132:8
2306:19

otherwise
2128:25
2440:14

Ott 2048:2
2154:16,18
2160:6
2167:13
2168:7,12,23
2169:16,19
2173:8
2174:7,17,19
2179:21
2180:6
2182:2,18
2183:4,14
2190:13,21
2191:25
2194:9,18,21
2195:2,5
2198:2,4
2200:8,25
2201:2,8
2202:14,25
2203:1
2205:8
2209:12
2212:11,21
2213:16
2214:1
2215:4
2217:12
2219:21
2230:12,21
2231:6,7,15
2263:5,7
2266:13
2271:2,4
2272:9,18
2279:6,7,12
2280:21
2295:3,7,10
2318:21,25
2319:3

2329:25
2330:4,10
2335:22
2344:19,21,22,25
2345:5,19,21
2346:2,4
2357:24,25
2358:3,6,14,25
2359:14,15
2360:8,10,20
2361:11
2441:9,10,13,14,16

Ott's 2209:2

outages
2050:3,4,7

outcome
2291:10
2293:3
2440:15

outline
2096:11

outside
2117:6
2118:15
2128:16
2136:22
2152:20
2288:4,9,13,18,20
2289:13

outstanding
2084:2,10

overall
2081:11
2107:4
2113:18
2202:17
2227:1
2254:1
2305:23
2336:7
2409:13

overcome
2086:22

Overland
2047:10

overrule
2118:2
2125:8
2167:7
2174:10
2179:25

2182:5
2191:23
2211:20
2306:19,25
2308:25
2335:23
2349:19,23
2358:23
2429:13
2433:1

overrun
2105:23
2106:8,10
2107:7,15
2108:4
2109:14
2112:23
2162:8
2166:16,18,25
2167:18,20,25 2168:2
2170:7,15
2174:22,25
2175:2,7,13,16,18,20,23,25
2176:16,17,18,23
2177:1,4
2178:9,13
2179:16
2180:11
2181:7,9,12,17,19,22,25
2182:9,15
2183:16,17
2187:22,23,24
2189:19,21,25 2190:10
2191:1,5
2192:2,5,7,9,12,14,21
2193:21,22
2206:24
2207:6,10,19,20
2208:4,10,13,21,23
2209:3,14,21
2223:11
2243:11
2294:13,16
2296:5
2326:5
2335:1

overruns
2114:2

2115:1
2122:10
2159:24
2160:5,16
2161:10
2164:24
2167:22
2169:21,23
2176:14
2177:3,10,17,22
2178:4,6,16,24
2182:3,19,21,25
2183:15,24
2184:1,2
2186:8,10,14
2187:20
2188:8,12,16,25 2189:2
2193:5,15,19
2203:10,15
2204:2,5,14
2206:15
2209:17,19
2210:15
2213:3,8,13
2218:21
2219:4,8,14
2223:5
2274:11,23
2275:6
2305:6
2329:3,11,23
2330:21,24
2331:12,21
2355:2,6,12
2356:25
2401:16

overrun's
2176:22

Overruns
2210:22

oversee
2073:21
2074:24

oversight
2074:21
2106:21,22
2112:10
2152:20
2236:9
2298:12,16
2316:22
2326:13,19
2334:24

overtime
2260:1

overview
2229:8
2306:12

Owen 2051:2

owner 2060:15
2240:14
2254:3
2265:14
2275:19
2278:7
2355:11

owners
2418:12

owner's
2105:10
2108:8
2110:21
2133:22
2136:15,19
2254:4

—————————
P
—————————

P.C 2045:19

P.O 2045:11
2046:2,23
2047:5
2048:6,11

PA 2046:18

package
2192:25

packages
2219:7

page 2066:6
2074:2,5
2082:7
2090:3,14
2096:10,14,15,16 2097:25
2098:20
2118:10
2120:1,2
2130:11
2132:5,6,9,10,14,15,17
2136:10,13
2159:1,3
2160:2,3
2204:10
2212:13
2225:11
2238:6
2246:20,24
2247:2,24

2250:3,5,6,12,15,17
2251:7,18,19
2253:16
2273:6
2294:20,22
2295:13,16,19 2297:21
2298:9
2305:10,12
2312:23,25
2313:7
2314:7,8
2322:20
2330:2,6,7,8,13
2333:7,17
2337:13
2338:14,15
2359:17
2374:20
2375:12
2377:2,13
2378:24
2401:7,12
2406:13
2408:6
2410:15,17,20 2411:17
2413:16
2418:20
2419:11
2423:14
2433:6
2435:10
2436:19

pages 2089:24
2091:2
2120:5
2137:19
2195:11
2220:20
2237:20,25
2246:23
2266:18
2294:25
2385:18
2436:19

paid
2065:6,9,17
2068:5
2091:14
2092:2
2118:17
2262:11
2317:3
2351:19

Paola 2327:18

2371:24

paper 2061:19
2251:16
2438:14

papers
2204:23
2385:11
2399:22
2400:6,8
2438:14

par 2397:13

paragraph
2249:3
2250:11
2297:21
2298:9
2301:22
2302:18,19,2
2 2303:7,14
2304:3
2313:15
2315:7
2318:11
2336:16,23
2348:5,10
2360:20
2419:11

paralyzed
2277:20

parameters
2241:7
2300:25
2304:5

paraphrase
2271:19
2272:20

pardon 2072:6

parens
2053:23

parenthesis
2374:25
2375:1

Park 2047:10

parlance
2081:7

partial
2083:24
2084:9,19,23

participant
2417:9,10

participate
2103:8
2279:22

participated
2089:9
2370:21
2371:7
2373:5

participating
2103:6

participation
2224:8

particular
2060:10
2068:4
2078:6
2093:15
2096:13
2105:16
2108:17
2109:18
2110:20
2128:23
2134:25
2159:6
2176:9
2179:14
2191:20
2194:23
2201:21
2224:24
2231:17
2239:24
2249:8,15
2274:19
2301:3,19
2302:3
2339:18
2371:4
2410:3
2433:18

particularly
2091:16
2123:21
2124:15
2187:11
2302:5

particulars
2260:24

parties
2059:8
2073:20
2074:23
2085:7
2093:21
2101:24
2102:1
2103:2
2169:4
2193:10

2206:10
2232:22,23
2233:6,8
2265:23
2266:1
2277:10
2417:16
2418:9
2440:11,14

party 2163:18
2173:4
2291:14

pass 2226:23

passed
2172:23
2249:10

past 2228:2
2292:20
2334:14,18
2384:23
2436:13

path
2255:10,21,2
2,25 2415:9

patience
2439:1

pay 2063:24
2064:4
2181:4
2351:15
2368:1

paying 2092:5
2351:17

payment
2063:24
2064:3
2065:14

payout
2065:24

PC 2044:23
2045:1
2046:22

PDR 2242:11

Pegasus
2053:22,23
2054:3,4,9,1
5,19 2075:16
2082:2
2096:21
2124:11
2263:21
2264:3

pending
2071:10,21,2

4 2083:24
2084:10,19,2
3 2102:10
2194:6
2287:8
2356:6
2358:9

Pennsylvania
2126:17

pension
2341:20

pensions
2200:19

people 2083:3
2119:4
2163:22
2172:25
2188:13
2207:2,3
2226:2
2240:1
2245:5,19,20
,25 2249:12
2257:9
2272:5,21
2277:19
2284:16
2314:3
2320:10
2415:16
2417:24
2426:15
2429:1,23

PEP
2081:2,3,4

per 2239:9
2240:23
2246:8
2430:15

percent
2099:12,19
2100:11
2101:9
2217:3
2218:5
2243:11,12
2271:22,23
2272:7
2278:11
2296:11
2335:17
2357:4,7
2402:4
2404:16

percentage
2272:3

2402:7

perfectly
2096:2
2233:9

perform
2085:4
2087:3
2098:1
2350:25
2354:1
2356:13
2360:4

performance
2052:1
2059:17
2073:1,3,7,1
0,11
2074:9,12,14
,19,22
2075:2,5
2077:1,2
2087:15
2093:18
2125:12
2200:20
2341:15
2357:17
2358:17,21
2359:7,10
2370:4

performed
2059:9,12
2060:17
2068:17
2069:20
2075:9,10
2083:21
2085:3
2242:11
2243:1
2275:9,10,11
,12 2333:18
2338:1,18
2339:19

performing
2060:24
2062:19
2079:6
2086:23
2087:15
2240:18
2306:12

perhaps
2073:5
2296:23
2299:22
2385:12

2417:6

period
2054:11
2136:9
2161:16
2178:6
2259:16
2329:11
2409:8

periodic
2237:5

periodically
2224:12
2245:6
2246:8

permission
2437:14

permit
2205:16
2334:25

PERRY 2045:14

person 2202:2
2225:15,17
2226:16
2240:10,18
2286:14
2316:22
2334:23
2338:18
2339:20
2341:23
2343:15

personal
2076:14
2201:24
2335:3
2341:15
2416:22,24
2418:16

personally
2076:10,24
2083:18
2170:4
2194:1
2276:10
2283:2
2288:23
2292:17
2293:15
2296:8
2298:22
2300:1
2315:13
2318:17
2324:24
2327:1

2339:16
2406:9
2416:20

personnel
2115:18
2122:24
2203:11
2204:15
2224:7
2287:12,22
2290:21
2299:17,23
2300:5
2305:22
2306:3
2312:8
2332:8
2337:25
2338:6
2375:15
2397:7,17
2399:3,20
2400:14,23
2401:2
2409:12,13
2414:7,14
2418:17
2419:1
2427:9

persons
2240:18
2338:18
2422:6

perspective
2099:1
2116:17
2118:7,20,21
,23,25
2123:3
2168:1
2207:25
2292:1,6
2320:6
2331:19
2351:7
2383:8
2384:7
2399:6,9
2403:18,19
2405:2
2412:7
2416:22,24
2428:12,23
2430:9
2434:2

persuade
2434:13

pertain
2053:20

pertains
2077:18
2152:15

pertinent
2353:18

Peterson
2044:7

phone
2082:22,24
2216:17

phones
2114:12

phonetic
2051:2

phrase 2073:5
2165:14
2304:24

physical
2080:1,3

physically
2206:21
2417:25

pick 2215:19
2216:17
2243:9
2437:17

picked 2172:1
2243:11
2409:23

picks 2215:23

picture
2207:18
2342:4
2343:7
2442:16

piece 2061:19
2251:16
2258:19
2365:23
2367:9,15
2376:15

pile 2397:22
2430:14

placed
2053:17
2301:15

places 2250:1

plainer
2255:13

plan 2043:14

2080:15,16
2081:1,16
2158:20
2232:19
2233:1,3,23
2336:4,7
2348:20,23
2349:4
2357:1
2414:22

plane 2169:9

planned
2262:12

planning
2103:11
2125:20
2289:19

plans 2356:17

plant 2050:9
2085:4
2086:5
2126:22
2127:15
2236:7
2239:18
2246:15,16
2248:12
2283:4
2297:23
2298:1,3,23
2299:4
2304:8
2320:10,14
2324:22
2327:6
2333:13
2334:16,20
2336:9
2353:8
2355:17
2370:4
2372:1,19,23
,25
2373:2,6,9
2403:1
2408:11
2412:24
2425:16,23

plants
2049:21
2085:22
2086:5
2127:4,6
2240:13,16
2306:6
2321:4
2327:6

2370:16
2371:4
2384:25

Platte
2249:11

played
2056:23

pleading
2299:21
2313:7
2324:11
2421:25

please
2052:11,14,2
0 2053:21
2054:8,10
2056:22
2059:3
2066:3
2074:2
2082:10
2088:16
2129:11,17,2
4 2132:5
2137:16
2157:12,18
2159:2
2177:7
2180:5
2183:5
2187:19
2195:8
2203:8
2204:12
2220:17
2234:2,13
2237:11,13
2246:20
2248:4
2251:21
2255:14
2262:22
2266:15
2279:3
2362:2,10
2364:17
2385:14
2425:18

plus 2181:13

PMBOK 2081:8

point 2066:4
2078:6,7
2097:25
2098:24
2099:16
2100:8,24
2124:22

2134:14
2137:17
2177:11
2184:13
2189:3
2191:14
2195:9
2205:11
2210:6
2213:25
2220:18
2226:23
2246:3
2248:15
2253:13
2258:19
2266:16
2275:25
2365:18
2366:25
2367:4,9
2383:12
2385:16
2417:25

pointed
2410:4,5

pointing
2189:7

policies
2080:20,22
2286:10,15
2292:13
2308:20
2347:21

policy
2289:19
2292:17,23
2293:7
2294:16
2296:1
2352:8,12,14
,18 2354:25
2355:5,9

policymaker
2286:7,11
2291:8

pool 2135:14

portfolio
2189:5

portion
2052:17
2053:2,6
2069:25
2230:16
2362:21,23

portions

2097:2

POs 2185:15

posed 2112:25
2113:4

position
2277:9
2281:24,25
2282:4,14,16
,18 2283:7
2292:23
2294:13
2295:23
2296:5
2311:23
2325:12,18
2332:22
2335:10,13
2346:7
2347:10,13
2354:20
2356:6
2427:2

positions
2286:21
2287:1
2292:25
2306:19
2307:1
2308:25

positive
2166:11

possible
2113:2,3,15
2169:1
2292:3
2303:25
2429:6

possibly
2084:25
2430:1

post 2171:4

poster 2342:2

potential
2102:10
2161:10
2164:24
2275:17
2380:10

potentially
2160:22

power 2043:11
2045:21
2046:2,4,8,1
2,16
2100:3,8

2126:22
2127:4,6
2199:10
2252:16
2274:9,22
2283:4
2321:4
2334:15,20
2336:9
2370:4,17
2384:25

practical
2430:6

practice
2070:8,9
2078:15
2253:3
2265:12
2276:24
2356:21

practices
2074:18
2077:20
2078:9
2106:13
2125:16

predict
2218:4,12,14

predicted
2223:11

pre-engineered
2106:2

prefer
2174:18

preference
2344:17,19

pre-filed
2279:8
2280:18
2327:1

preliminary
2088:3
2313:20

premiere
2277:6

Prenger
2182:22

prep
2171:12,16,18

preparation
2061:25
2079:24

2172:6
2229:8

prepare
2061:24
2171:21
2186:7,9
2226:3,12
2362:13,14,20,23 2363:2

prepared
2077:7
2080:10
2225:13
2228:2

preparing
2171:14

preprocess
2113:18

prescribed
2290:1

presence
2311:9
2417:22

present
2154:4
2169:3
2253:13
2282:17
2292:2
2319:24
2347:12
2350:13

presentation
2115:24
2127:24

presented
2153:11
2154:5,10
2227:18
2352:21
2397:19
2415:16

president
2341:3
2418:3

Presiding
2043:18

press 2436:22

presume
2077:25

pretense
2153:10

pretty 2052:8

2259:3
2437:16,25

prevented
2356:6,12,14

preventing
2096:18

prevention
2125:24
2356:9

previous
2155:5
2189:5
2292:14
2373:14,18
2374:15
2377:20
2378:15
2379:18
2380:20
2382:4
2385:5
2432:21

previously
2264:6
2292:20
2326:15
2338:5
2382:6

price 2060:16
2109:14,16
2112:20
2376:2
2384:5,10

prices
2203:12
2204:16
2382:24

PRIDGIN
2043:18
2049:1
2052:4,10,14,19,24
2053:3
2054:24
2055:8,13
2056:22
2057:2,9,23
2058:3,10
2066:3
2069:8
2070:25
2071:3,9,15,20
2072:3,14,20
2078:21
2079:11,13

2081:20
2083:9,12
2089:2
2091:7
2101:22
2102:14,19,24
2103:14,20,24
2104:4,8,12
2113:7,10
2118:1
2125:8
2129:5,10,19
2132:25
2133:6
2135:25
2137:16
2152:1
2153:16
2154:15
2167:7
2168:4,9,14,18,21
2169:11,15
2174:10,16
2179:25
2182:4
2183:7
2190:14,17
2191:23
2194:8
2195:7
2198:1
2200:10,25
2201:4,10,17
2202:3,24
2205:10,20
2206:2,6
2211:20
2219:24
2220:16
2223:1,20
2230:19,25
2231:10
2232:12,17
2233:4,8,12,17 2234:4,7
2235:19
2236:3
2237:9
2252:25
2254:14
2262:16,25
2266:15
2271:1
2272:11
2278:2,4,15,25

2279:5,10,13
2280:24
2281:3
2283:18
2284:21
2296:16
2300:9
2301:9
2311:16
2312:15
2316:16
2317:10,15,17 2335:23
2342:20,24
2343:24
2344:2,7,11,15,21,23
2345:3,6,17,22 2346:2
2357:24
2358:8,12,22
2360:10,16
2361:6,9,13,22 2362:1,4
2363:23
2364:3,6,9,18,23
2365:1,4,10
2368:9,12
2385:13
2397:1
2403:5
2405:10,14
2406:1,3
2429:13
2431:22
2432:2,17
2433:1
2434:19
2437:10,14,23
2438:4,8,12,17,19,21
2439:3

primarily
2085:21
2120:11
2136:19

primary
2290:4
2298:12,16
2306:4
2316:21
2321:18
2326:12,18
2334:24

Primavera
2158:10

prime 2245:7
principally
2326:9

principle
2053:24
2054:3

printing
2059:25

prior 2056:25
2060:7,18
2061:1
2099:16
2157:20
2198:9,25
2199:4
2223:18
2240:13
2256:24,25
2257:3
2271:17
2296:3
2298:20
2299:8
2315:19
2321:12
2348:17
2354:12
2369:22

privacy
2200:22

privilege
2097:5
2098:11

privileged
2098:9

probability
2110:9,10
2112:15

probable
2108:9

probably
2052:3
2056:20
2103:7
2118:13,24
2119:22
2128:1
2168:16
2186:1
2187:12
2200:11
2226:13
2228:7
2233:20
2265:16

2266:14
2293:2,12
2299:7
2305:13
2311:14
2313:6
2315:4
2322:20
2366:12
2411:5
2437:3

problem
2058:6
2083:25
2086:23
2102:19
2114:14
2155:22
2167:12
2181:15
2193:9
2215:6
2218:1
2244:9,18
2261:16,18,25 2342:7
2368:18
2437:21
2439:2

problematic
2242:21

problems
2083:20
2244:25
2246:25
2380:10
2381:15

procedure
2289:20
2301:15
2302:4
2303:8,14
2304:9,14,21
2305:19,25
2306:1
2307:5,10,25
2308:5,9,13,14,19 2321:1
2349:11
2352:25
2355:1,4,5,9

Procedure-5
2300:14,23
2442:11

procedures
2080:21,22,23,24 2081:12

2087:8
2093:22
2122:24
2300:25
2304:7,15,25

proceed
2072:21
2247:12

proceeding
2085:8
2121:13,24
2155:15
2353:21
2354:5
2358:15

proceedings
2043:5
2127:4
2157:4

process
2061:14
2062:14
2068:12,13
2069:2
2070:18
2075:18
2092:11
2095:25
2107:10
2112:4,6,8
2113:18
2117:14
2119:21
2128:9
2163:14,17
2164:4
2190:19
2214:24
2216:8
2218:8,12
2219:19
2226:9,14
2228:11,18,21 2229:2
2241:17
2244:15,23
2289:21
2293:5
2431:16,17

processed
2290:12

processes
2061:17
2081:12
2087:8
2093:17,22
2431:13

2507

procurement
  2158:3

product
  2256:4
  2258:19
  2285:5
  2289:24

productivity
  2203:10
  2204:14
  2240:12
  2246:24
  2261:14,15,17

professional
  2081:7
  2158:17
  2263:10
  2285:13
  2289:24
  2290:9,12,18,22
  2359:6,10,17,23,24,25
  2360:3
  2418:18
  2428:10
  2429:2,8
  2430:5

professionals
  2285:11

proficiency
  2338:19
  2339:21

profile
  2099:21

program
  2073:10,11
  2074:22
  2125:21,23

progress
  2409:13
  2413:25
  2414:6
  2415:5

progresses
  2423:25

progressing
  2275:3

project
  2051:19,23
  2054:16,20
  2060:4
  2061:19
  2063:18

2064:7
2068:24
2069:21
2070:5
2078:3
2079:19
2080:12,19
2081:1,8,9,13 2084:4
2085:11
2086:10
2088:14,18,19 2089:21
2092:6,12,15
2094:4
2095:22
2096:2
2097:3
2098:25
2099:3,5,17,18,21,23
2100:6
2105:4
2106:18,19
2107:13,16,19 2110:17
2111:10,16
2112:3
2113:19
2116:17
2118:23
2119:6,17
2122:25
2123:13
2125:12,21,22 2128:11
2135:11
2154:25
2155:3
2156:5,16
2157:9,25
2158:3,6,9,12,20
2161:13,16
2164:8
2165:5
2175:5
2182:16
2186:22
2187:1,24
2198:9
2199:4
2201:3
2203:15,19
2204:1,21
2206:19
2208:1,2
2211:10
2217:18

2224:8,9
2225:4
2226:13
2227:13,22
2228:2
2229:12,14,19 2232:8
2236:11
2241:10
2245:19
2252:4,5,19
2253:14,25
2254:1,2,6,9,11,21
2255:2,21,22,25 2257:20
2260:18
2271:14
2275:2,6
2276:5
2277:23
2278:10
2296:10
2303:18,24
2306:14,20
2307:2
2327:17
2333:3
2346:22
2351:23
2355:11
2356:13,19
2365:18
2371:24
2372:15
2375:15
2376:9
2383:15
2397:7
2400:14
2401:16,17,19
2406:18,19,21
2407:8,10,17,19 2413:21
2415:5,10,15
2416:3
2418:12
2423:12,22,23
2424:8,9,12
2425:15,21
2427:14
2431:5,6
2435:15

projected
  2091:1

projection

2163:4,10,13
2275:9,10,11,12

projections
  2163:1
  2164:2
  2165:11
  2182:24
  2219:12
  2237:6
  2275:15

projects
  2050:2,10
  2056:12
  2085:11,16
  2119:24
  2127:1
  2185:12
  2199:11,24
  2204:21
  2238:14
  2253:4,7
  2264:7,10,13
  2265:22
  2266:1
  2276:9,13,21,23
  2277:2,4,10,15 2331:15
  2354:23
  2415:1
  2423:18,21
  2424:5
  2431:8
  2433:11
  2436:10,15

project's
  2080:7,20

project-
specific
  2080:24
  2106:16

prolonging
  2342:7

promoted
  2281:25
  2282:1,4,12,15

promotion
  2281:22

proper
  2127:21,22
  2304:10,16,25 2305:15
  2306:6
  2325:23

properly
2242:13
2246:1

property
2258:20

proposal
2352:23

propose
2420:10

proposed
2293:15
2299:17
2310:25
2311:7
2328:13
2339:10
2352:9
2401:15,23
2422:15
2423:3

proposing
2325:25

provide
2053:21
2073:9,16,19,24
2074:15,19
2082:10
2088:16
2187:19
2189:6
2203:8
2204:12
2237:24
2238:10
2248:21
2291:10,14
2318:12
2319:18
2414:24

provided
2062:9
2063:9
2075:3
2076:1
2087:22
2203:18
2205:6
2216:2
2248:13
2256:24
2283:25
2353:22
2412:7

provides
2065:9

providing
2353:18
2416:21

provision
2084:19,23
2133:21
2258:4
2353:20

prudence
2050:19,22
2057:6
2060:24,25
2062:22
2077:3
2083:20
2085:3
2086:4,12,17,19,24
2087:3
2089:9
2093:18
2096:3,19
2097:16,19,22
2098:1,5,14
2115:11
2116:21
2118:25
2119:6,10
2122:3,7,16,22,23
2123:8,16
2124:15
2125:11
2126:9
2127:22,23
2237:17
2273:20,21
2283:3
2287:17,23
2288:15
2291:4
2297:4,25
2309:1,11,16
2310:23
2311:5,24
2315:14
2316:1
2318:14
2319:20
2320:8
2326:16,22
2327:2
2332:15
2335:6
2336:15
2346:23
2348:4,17
2353:11

2370:21
2371:4
2373:13
2374:3,7
2399:25
2402:13
2407:25
2421:4
2423:11
2442:10,15
2443:6,8

prudency
2170:15
2305:8

prudent
2061:7
2090:5
2274:19
2317:24
2406:22
2407:9,18
2425:14,21
2426:1

PSC 2131:19
2284:9
2285:2
2369:22

public 2043:1
2048:5,8,10,12 2052:21
2057:1,3
2058:24
2073:25
2074:25
2126:8,20
2127:17
2152:1
2198:1
2223:2
2237:17
2263:5
2265:21
2271:1
2281:7,16,18
2282:20
2285:6
2286:4,22
2287:12
2292:8,12
2337:2
2360:3
2370:7
2397:2
2414:21
2418:8

pull 2163:22
2177:13

2194:2
2248:18
2273:11

pummeled
2249:18

purchase
2060:11
2063:9,12,19,22
2064:2,7,19,25
2065:5,7,10,12,17
2070:10
2106:2
2180:20
2184:6
2185:7,10
2186:18
2193:17
2214:12
2232:5
2375:18
2376:4,11,13,15,17,19,21,22

purchased
2382:24

pure 2430:1

purports
2079:3

purpose
2051:18,21,25 2064:14
2073:12
2201:25
2239:14
2261:4,7
2262:2,3
2273:19,23
2274:1
2412:23

purposes
2152:5
2237:5
2280:5
2304:17
2305:1,17
2306:7
2310:20
2379:10
2432:15
2433:9

pursuant
2193:7

pursue

2061:16

putting
2280:5

—————————
Q
—————————

**qualification
s** 2124:23

qualified
2078:2
2124:12
2203:11,13
2204:15,17

quality
2116:15
2123:3
2157:25
2303:25

quantify
2272:3

quantities
2244:4,16,24

quarter
2216:13,21
2217:24

quarterly
2414:18,24
2415:3
2416:12
2417:10,13

question
2062:24
2063:16
2065:15
2073:5,15
2078:8
2084:12
2086:17
2088:13
2094:10,21
2106:6,7
2107:25
2113:4,16
2115:4
2117:25
2122:18
2125:4
2133:18
2134:4
2137:1
2155:10,25
2156:11
2157:14,19
2162:15
2164:14
2166:24
2167:5,9,11

2170:22
2173:6,10,20
2174:4,15,23
2177:8
2179:18,24
2180:2,3,5
2181:6
2182:5
2183:5,6,8,9
,12
2190:13,15,2
0 2192:10
2195:5
2202:9
2203:6
2207:15
2209:2
2229:24
2230:6
2237:10,13
2238:9,10
2243:2
2244:20
2249:2
2253:24
2254:16
2255:16,17
2256:21,22
2257:4
2259:24
2276:8
2278:1
2281:1
2295:14,17,2
1 2322:21
2323:3
2339:6
2341:5
2351:14
2398:20
2423:17
2425:17,20

questioning
2113:15
2117:25
2360:1

questions
2049:11
2056:11
2082:2
2089:3,5
2091:10
2101:21
2104:13,15,2
4 2113:6,13
2117:22,23
2121:12
2122:15
2124:20,24

2125:3
2127:9
2129:22
2133:10
2154:18
2169:7
2171:21
2172:1,15,18
2173:4,14
2174:7
2205:13,16,2
2 2206:23
2207:23
2209:12
2216:15,24
2230:11
2231:16
2243:5
2272:9,13
2278:14
2280:22
2343:22
2360:17
2363:14
2365:12
2368:19
2369:1
2397:15,24
2398:12
2415:17,18
2419:2
2432:19
2441:4,5

quickly
2250:22,25
2280:6

quite 2084:16
2115:7
2162:2
2168:6
2182:5
2259:22
2271:13

quote
2159:7,20
2160:8
2243:13
2250:8
2273:8

quoting
2159:12,17
2160:9
2212:19
2213:6

—————————
R
—————————

R&O 2114:20

2163:5
2190:23,25
2191:4,8,20
2192:25
2193:20
2220:6,10
2223:10
2224:24
2226:5,7,12,
15 2227:15
2228:13
2230:13
2231:5
2443:23

R&Os 2160:18
2161:1,8,12,
19,22,25
2162:4,7,18,
20
2163:11,15
2164:12,15,1
8,23 2166:2
2183:23
2184:2,3,21
2225:12
2227:17,21
2228:1,6,19
2230:7,13

radar
2093:6,7

railcar
2134:9

railcars
2133:22,25

raise 2129:16
2164:18,19
2234:2
2279:2
2362:1

raised
2086:16
2328:22
2412:5,14

random
2243:9,10,11

range 2099:20
2277:11

rapid 2203:12
2204:16

rate
2224:15,19
2280:14
2287:2,17
2290:12
2291:9,11,14

,15,20
2292:7,18
2293:4,9,10
2297:5,22
2301:5
2303:17
2304:11
2309:6
2310:4
2311:22
2316:9
2318:10
2321:16
2323:21
2334:18
2336:6
2339:15
2341:13
2346:11,14
2352:1
2402:16
2405:13,22
2406:8
2427:7,12
2430:12
2431:1,3
2433:12
2436:9

rate-base
2305:17
2434:15

rate-making
2304:17
2305:1,17
2306:6
2352:8

ratepayers
2164:10
2219:17
2291:24
2347:5
2351:15
2367:25

rates 2292:3
2332:24
2378:15,21
2379:18,22
2380:19
2381:7
2382:4,12
2383:22
2384:13,24
2403:2
2404:10
2426:2,10,19
,22 2434:3

rather

2262:19
2265:13
2288:20
2344:18,20
2420:21
2421:15

rationale
2092:22
2110:11
2318:12
2319:18

re 2398:19

reach 2274:18

reached
2408:19

reaction
2174:5

readdition
2089:20

reader
2273:8,10

reading
2063:13,16
2169:25
2171:23

reads 2213:6

ready 2049:9
2072:21
2102:25
2129:20
2198:2
2205:18
2206:11
2232:14
2234:7
2257:8
2271:2
2278:17
2279:14
2317:11
2346:3
2397:2

realize
2093:20

really
2060:5,21
2085:6
2095:13
2101:8
2104:1,23
2108:14
2163:21
2201:19
2217:21
2229:1

2240:17
2245:4
2261:8,10
2271:12
2276:3
2312:21
2413:12

re-arranged
2278:18

re-ask
2171:13
2177:7
2180:3,4
2229:24
2398:20

reason 2092:9
2105:20
2106:8
2107:6,11
2108:22
2109:13
2111:14
2112:20,22
2169:11
2249:6
2260:4
2334:6
2358:20
2376:8
2385:7
2399:8,18
2402:9
2418:23

reasonable
2061:25
2062:7
2084:9,22
2090:5
2094:16,18
2099:19
2103:25
2119:4,5
2123:23
2128:20
2367:8
2426:1,10

reasonably
2123:2

reasons
2107:4,18
2116:3
2228:10
2234:25
2261:18
2274:13
2288:22
2331:11

2332:3
2375:16
2376:23
2397:8
2399:5,19
2400:15,23
2419:5,6,7
2425:6
2427:13,22
2428:7
2434:2

rebuild
2328:7
2372:12

rebuilt
2304:8

rebut 2274:3

rebuttal
2049:14
2089:25
2090:1
2118:10
2119:25
2120:4
2130:3,6,8
2132:1
2158:25
2234:17,18,2
5 2235:8
2238:4,5
2246:18
2247:20,21,2
4,25 2253:19
2273:24
2276:9,11
2442:4,6
2443:10

recall
2049:18
2051:3
2057:18
2068:12
2070:25
2077:11,19
2081:4,5
2083:4
2085:23
2086:11
2099:12
2115:8
2121:14,25
2122:17
2126:6
2211:3
2236:24
2237:22
2266:9

2273:17
2299:24
2305:1,4
2318:9
2321:7,10
2329:24
2345:19
2370:25
2400:25
2416:14
2418:2
2420:8,12,13
,14 2421:23
2428:4
2431:2,8
2436:17,24

recalled
2205:15
2413:6
2437:1

recalling
2050:20

re-
categorizat
ion 2381:1

REC'D 2442:1
2443:1

receive
2281:19,22

received
2054:11
2058:12
2071:6,17
2079:15
2083:13
2133:3
2186:13
2231:11
2235:25
2281:12
2284:24
2297:17
2301:11
2312:17
2318:6
2344:5
2351:2
2365:7
2369:19
2375:2
2406:5
2413:20
2428:16
2433:3
2438:23

receiving
2119:15

2244:18

recently
2097:7
2252:10
2372:14

reception
2244:25

recess 2052:5
2072:15
2102:21
2168:10,19
2206:3
2232:15
2262:24
2345:14,16
2439:7

recognize
2077:21
2153:25
2154:1
2283:24
2300:15
2343:10
2405:21
2417:23,24

recognized
2106:10
2107:15
2108:6
2157:17

recollection
2059:18
2068:3
2076:21
2077:6,15
2080:6
2082:12
2086:2
2188:10
2241:12
2378:18
2413:8
2417:14,17
2418:5
2422:3,4
2434:7

recollections
2094:8

recommend
2084:9,22
2090:8,15
2332:21
2334:25
2378:19
2379:21
2381:6

2383:20
2384:12
2434:13

recommendatio
n 2085:2
2305:6
2335:19
2403:10,11

recommendatio
ns 2287:7
2292:7,18
2309:7
2321:15
2333:2
2403:1
2405:5
2420:23
2427:20

recommended
2083:23
2084:18
2089:13
2090:21
2228:9
2286:15
2293:8
2318:13
2319:19
2334:19
2382:10
2384:16
2402:17
2404:8,12
2420:17,24
2421:10,13,1
8

recommending
2090:18
2356:24

reconcile
2178:10

reconciled
2178:8

reconciliatio
n 2178:15,21

reconvene
2262:22

record 2049:2
2056:25
2072:20
2074:13
2075:23
2102:2,25
2128:18
2129:24
2168:11,15,1

7,22
2202:8,11,15
,16 2206:7
2214:11
2219:20
2231:3
2232:18,25
2234:13,24
2251:9
2262:23
2263:1,4
2280:5
2295:15
2296:18
2317:21
2339:14
2341:24
2345:18
2359:22
2361:18,19,2
3 2362:11,15
2364:17
2371:3
2438:2,5
2439:4,8

recording
2304:7

record-
keeping
2084:15,17
2085:5,19

records
2061:8,13
2084:20,24
2086:10
2087:18
2093:19
2332:1

record's
2160:14
2202:12

recross
2102:3
2103:1
2169:7
2205:17

recross-
examination
2104:10,14
2441:5

recurring
2216:3

redacted
2097:2

redaction

2097:3

redirect
2103:1
2113:10,12
2124:22
2169:7
2205:11,15,1
7,19,21
2206:7,9
2272:11,14
2360:17,18
2437:16
2441:6,10,11
,14,17

reduce
2073:17
2074:22
2161:2

reduced
2135:8
2164:7
2440:9

reduction
2406:10

Reed 2285:18

Reed's
2285:18

reemphasize
2262:2

reevaluate
2107:19
2113:23

refer 2082:2
2124:7
2152:15
2163:12
2193:1
2240:4
2279:24
2297:20
2368:21
2411:17
2423:14
2433:6
2435:10

reference
2190:22
2191:8
2249:20
2251:2
2254:10
2364:12
2410:18,23

referenced
2117:24

2120:21
2127:9

references
2249:22

referencing
2238:13
2241:18
2245:13

referred
2078:15
2218:9

referring
2084:4,5
2087:19
2102:13
2123:14
2153:13
2215:5
2274:8,12,13
2318:22

refers
2238:24

reflect
2063:9
2160:8
2339:14
2364:17
2376:5

reflective
2070:4

reforecast
2130:17
2131:7,10
2161:19,23
2163:12
2164:5
2166:8
2186:19
2193:18,25
2204:23
2205:4
2210:18
2214:14,24
2217:13,16,1
7,21,22
2218:3
2220:10
2226:9
2227:18

reforecasted
2210:5,8
2220:12

reforecasting
2218:8

reforecasts

2163:18
2164:9
2204:21
2217:9
2253:2

refresh
2077:14
2082:12

refurbished
2304:8

regard 2107:6
2127:1
2275:19
2319:9
2407:9,19,24
2419:2

regarding
2082:13
2114:8
2117:3,15
2128:5
2171:3
2297:3
2317:23
2319:8
2321:3
2336:14
2346:16,20
2348:4
2351:3
2354:20
2374:6
2397:15
2408:21
2419:13,18,2
2 2420:9
2442:9,14

regardless
2060:4
2112:19,22

regards
2106:25
2114:11
2127:7
2128:16
2161:12,18,2
2 2170:25
2173:21
2174:21
2347:1

registered
2263:10

regularity
2262:10

regulatory
2043:13,19

2085:8
2336:4,7
2348:20,23
2349:4
2357:1
2414:22

relate
2178:24

related
2054:19
2057:13,19
2058:15
2059:16
2115:1
2127:4,21
2189:9
2203:10
2204:14
2244:4
2276:20,22
2288:17
2289:8,13
2316:2
2324:12
2325:13
2328:13
2331:15
2334:8
2343:17
2349:16
2375:19
2377:5
2382:18
2383:25
2384:24
2398:17,23
2404:21
2409:14
2413:19,21
2419:18
2420:10
2427:4
2430:12
2436:9
2440:10

relating
2090:14
2170:15
2340:2

relationship
2169:21
2170:25
2341:3
2346:17,21,2
2 2347:1
2418:16

relative

2440:12	2093:21	2374:19	2277:6,8

relatively
2245:17

release
2169:10
2180:19

released
2206:9

relevance
2316:18
2335:22
2432:12,19

relevant
2080:9
2093:25
2097:15
2124:15
2200:10
2201:1,8,21
2414:1
2416:21

relocated
2351:18

relocation
2309:23
2351:6,9,15

rely 2128:20

relying
2128:6

remain 2096:5
2299:5

remainder
2075:15

remains
2179:5

remember
2059:20
2077:24
2086:3
2091:24
2092:21
2126:14
2155:7,10
2230:2
2294:22
2328:10
2339:6
2397:23
2413:11,12
2416:10
2436:19
2437:4

remembrances

remind 2103:2
2194:5

reminder
2129:12

removal
2089:19

remove
2072:12

repairs
2381:20

repeat
2161:24
2425:17

rephrase
2134:4,5,7

report 2069:1
2070:14
2073:2,7
2090:23
2111:25
2130:14
2133:13
2136:4,8
2159:7,12,14
,16,23
2160:12
2177:13
2178:14,15,1
7,18,20,23
2179:1,8
2209:20
2212:19,21,2
5 2213:6
2249:4
2251:6
2283:12
2285:15,18
2312:7,22
2313:10
2321:24
2324:8,13,19
2325:6
2326:4
2329:19
2330:1,10
2333:6,23
2334:8
2337:13
2338:14
2354:10
2359:1,6
2362:18,24
2364:13,14,1
5 2368:25
2369:5,7,12

2375:12
2377:1,12
2379:4
2380:12
2384:17
2400:7,11
2401:6,22
2408:4,22
2409:1,25
2410:18
2411:8,10,11
2413:16
2416:17
2418:20,21
2419:12
2420:16
2421:4,9,14,
23
2422:2,7,10,
12,13,16,23,
24,25 2423:5
2442:13

reported
2043:23
2204:19
2359:5

reporter
2051:10,12
2052:5
2055:4
2057:25
2063:5
2072:11,13
2076:17
2078:23
2081:22
2230:24
2440:2

reporters
2232:16

REPORTER'S
2052:16
2066:4
2137:17
2195:9
2220:18
2266:16
2385:16

reporting
2043:24
2075:1
2203:9
2204:13

reports
2114:18
2186:19

2298:13
2312:9
2337:6
2363:15,16
2400:3
2401:10
2414:20,25
2415:3,8,24
2416:16

represent
2137:4

representativ
e 2053:24
2054:4

representativ
es 2200:15
2418:8,12

represented
2404:16

representing
2238:14

represents
2190:11
2343:3

reputation
2083:17

request
2053:12,18
2063:7
2081:24
2082:1
2187:9,18
2188:2,3
2200:12,23
2202:1
2203:2
2355:18,19,2
1
2443:13,16,2
2

requested
2059:6
2087:20
2088:1,6,11,
20 2169:13
2355:15
2374:23

requesting
2376:14

requests
2187:10
2319:13

require
2111:19

2260:1,2
2297:24
2337:24

required
2229:8
2303:9
2357:1
2381:21

requirement
2321:16,20
2435:19

requirements
2074:17
2085:13

requires
2065:4
2303:14
2359:23

requiring
2078:11,16

rescinded
2308:19

reserve
2055:11
2071:7,18,25
2135:15
2166:20

reserved
2111:17

reset 2214:16

resolution
2062:1
2083:24
2092:11
2307:13
2350:3,4,6

resolve
2307:19

resolved
2084:8
2307:6

resource
2304:1

resources
2047:7
2224:12

respect
2093:3,16
2105:2
2112:18
2128:13
2238:20
2239:1

2240:15
2242:11
2254:5,6,19
2275:16
2277:14

respond
2076:9
2188:2

response
2054:6
2077:17
2078:1
2082:1
2094:10
2155:13
2187:14
2203:14,18
2204:18
2205:1
2235:1
2358:13
2411:2
2412:1

responses
2063:8
2420:4
2443:16,22

**responsibilit
ies** 2300:4
2324:20
2407:24

**responsibilit
y** 2073:21
2074:24
2077:4
2236:12,15
2254:1,4
2275:19
2283:8
2286:9,25
2287:20
2290:11,15,2
0,25 2298:16
2301:24
2302:4
2304:15
2305:15
2306:5
2407:6,13

responsible
2152:16
2254:24
2256:11
2258:16
2286:15,20
2287:16
2289:18,23

2290:8
2303:22
2324:13
2363:10
2422:1,6

responsive
2054:8,10
2124:19
2237:8

rest 2055:6
2092:9
2233:23

restate
2156:7

result
2255:5,7
2261:15,17
2400:11

results
2076:22
2077:16
2239:6
2250:10
2327:2
2384:25
2399:24

resume
2103:11
2104:9
2345:11
2439:4

resumes
2049:6
2169:16
2345:23

resuming
2103:12

Retailers
2044:21

retain
2265:20

retained
2056:5
2265:23,25

retired
2051:6
2284:11
2341:19

retrieve
2072:11

retrofit
2199:11,24

return

2335:10
2357:4,7

returned
2181:1

revenue
2321:15,20

reverified
2212:24

review
2050:22
2054:14
2055:12
2057:5,16
2058:19
2071:24
2076:22
2077:13
2079:4,5,6
2089:9
2107:12
2115:13
2117:7
2119:9
2122:3,7,16,
22,23 2123:8
2124:15
2163:17,23
2170:16
2204:24
2226:3,19,21
2229:18
2241:15
2265:18
2276:19
2283:3
2287:23
2288:15
2291:4
2292:17,22
2293:1
2309:2
2315:14
2320:8
2326:16,22
2327:2
2328:7,9
2332:15
2333:11,18
2334:4
2335:6
2341:15
2346:23
2348:17
2352:8
2353:11,23
2359:11
2366:15,18
2371:10,11

2373:1,6	2126:22	2301:4	2237:4
2374:3,7	2128:16	**Roberts**	**RTAs** 2186:19
2375:8	2163:18	2091:17	2193:17
2376:16	2318:14	2092:24	**rule** 2055:14
2377:3,13	2319:20	2093:9	**run** 2051:14
2384:21	2354:2	2119:20	2103:23
2385:8,9	2370:21	2417:20	2224:15,19
2397:12,20	2371:4	**ROE** 2233:10	2256:13
2398:16,21	2373:13	2335:17,18	2257:12
2399:2	2402:13	**ROGER** 2046:1	**running**
2400:1	2407:1	**Rogers**	2413:1
2404:13	**revise**	2314:12	**runs** 2168:25
2406:17	2226:25	**role** 2207:24	**run-up** 2110:4
2407:7,16,18	**RFP**	2277:1	**RUSS** 2045:9
,25	2246:1,10,11	2283:6	**Ruth** 2044:23
2408:9,17	**right-hand**	2286:19	2045:1
2409:13,14,1	2153:21	2291:9,13,19	
9 2410:8	**rights**	,22 2292:1,6	———————
2421:4	2059:10	2299:3	S
2422:11	**rigor** 2062:18	2318:18	**S&A** 2167:23
2423:11	**rigorous**	2320:7,22	2170:6
2431:13	2062:16	2321:3,18	2176:20
2433:18	2107:9	2322:8,12,13	2182:11
2443:6,8,20	**risk**	,14,23	2218:25
reviewed	2080:15,16	2323:4,12,16	**safe** 2245:24
2057:18	2081:16	,18,19	2361:19
2058:21	2099:20	2326:13,19	**safer** 2379:10
2076:19	2106:13,15	2334:24	**safety**
2079:7	2110:17,18	2354:16	2132:13,19
2209:6	2113:23,25	2365:14	2310:20
2225:19	2125:11	**roles** 2324:25	2413:21
2228:23	2131:3	2325:4	2414:8
2331:14	2158:6	**rolled**	**salary** 2200:5
2333:14	2160:18,21	2080:23	2202:4,5,20,
2335:9	2161:3,8	**RONALD**	22 2289:13
2337:19	2189:8	2043:18	2341:25
2375:9,17	2219:21	**room** 2129:15	**Sand** 2047:2
2376:18	2220:3	2200:16,24	**Santa** 2047:2
2377:7,10	2324:21	2201:20	**Sarah** 2047:5
2380:14	**risks** 2110:15	2266:4	2048:3
2381:24	2113:17	2343:10	2055:15
2404:9,15,21	**River** 2373:1	2415:17	2058:9
2408:12,21	**Riverton**	2417:1	**SAS** 2337:20
2413:19	2372:23	**Rosa** 2047:2	2338:7
2414:1	2373:2	**roughly**	**sat** 2173:2
2416:18	**RO** 2110:11	2104:5	2275:14
2419:14	**road**	2165:8	2299:13
2434:9	2055:18,22	2198:21	**satisfy**
2436:15	2056:1,2,19	2200:4	2075:5
reviewing	**roadmap**	2215:20	**save** 2160:23
2059:18	2121:2	2233:18,21,2	2164:9
2127:23	**Robert**	2 2281:8	
2164:4	2043:20	2345:9	
2331:25	2047:16,17	**Rowe** 2236:23	
2354:5			
2428:10			
reviews			
2125:19,20			

saved 2092:6

savings
  2166:15

saw 2077:22
  2078:19
  2092:20
  2097:11
  2128:8
  2194:18,19
  2217:25
  2410:3

scarcity
  2203:12
  2204:16

scenario
  2240:11

scepticism
  2359:18,24,2
  5

Schallenberg
  2301:4
  2313:16
  2315:8,12,18
  ,20 2316:6
  2323:25
  2324:14,25
  2325:2
  2326:21,25
  2339:14
  2354:11,15,1
  8,22 2355:23
  2357:10,25
  2358:19
  2373:24
  2374:2
  2400:12
  2417:8
  2422:2
  2423:3

Schallenberg'
  s 2324:20

schedule
  2080:12
  2081:15
  2086:7
  2092:6
  2130:13,16,2
  0
  2131:2,6,9,1
  0,12,15,18
  2136:2
  2153:14
  2253:23
  2254:2,6,20,
  23 2257:14
  2258:2,18

2275:19,23
2276:1,3
2278:7,8,10
2413:20
2415:6,10,11
,15
2425:3,8,10
2426:21
2427:11
2428:18
2430:11
2437:25

scheduled
  2401:3

schedules
  2234:21
  2235:9
  2250:1,4
  2251:3
  2254:25
  2255:1
  2273:12
  2274:25
  2415:24

scheduling
  2255:18
  2257:20
  2261:16,18,2
  4 2414:8
  2416:4
  2437:24

Schiff
  2050:21
  2137:12
  2189:9
  2192:2,4,8,1
  2,13
  2193:21,24
  2194:6,23
  2220:3
  2224:5,12,20
  2226:21
  2231:18
  2236:9,10
  2238:18
  2264:25
  2265:3,9
  2289:11

Schiff's
  2193:22

Schwarz
  2044:19
  2104:10,11
  2133:7,8,10
  2134:11,16
  2135:24
  2136:1

2152:6
2153:12
2176:8
2194:4,11
2195:3
2201:6
2202:18
2211:16
2223:17
2236:4,5
2237:14
2243:22,24
2244:2
2247:7,10
2252:23
2253:1
2254:10,18
2262:14,16
2263:1
2273:3
2275:18
2277:24
2278:23
2316:17,25
2344:8,9,12,
20 2360:14
2368:10,11
2432:11,23
2441:8,13

science
  2369:16

scope 2050:22
  2068:19,24
  2069:20,24,2
  5 2070:3,5
  2116:14
  2117:22
  2120:11
  2124:24
  2158:12
  2180:17,18,2
  4,25 2224:20
  2225:1
  2277:25
  2305:24
  2315:9
  2324:22
  2435:23

scopes 2225:5
  2299:18

Scott 2417:20

SCR 2328:9
  2372:15,18,2
  5 2423:12
  2426:4
  2427:14

screen

2093:6,7
2277:14

second
  2118:12
  2127:25
  2136:10
  2159:2
  2181:8
  2189:14
  2202:25
  2217:24
  2248:3
  2313:24
  2325:6
  2339:23
  2340:6
  2359:17
  2382:14

secretary
  2308:22

section
  2074:11
  2075:13
  2081:11
  2159:16
  2223:22
  2251:9
  2333:8,22
  2359:2,20
  2369:3
  2374:19
  2384:16
  2401:9
  2408:4,25
  2422:11

sections
  2052:1
  2363:15,16

security
  2132:12,18

Seebrook
  2127:14

seeing
  2172:25
  2181:15
  2303:22
  2413:6

seeking
  2173:7

seem 2054:18
  2121:25
  2172:12
  2380:22

seems 2063:25
  2092:5

2098:4
2180:1
2181:14
2182:5
2215:6
2302:19
2303:21
2304:4
2313:9

seen 2055:10
2063:15
2076:20
2077:5
2085:14,18,2
0 2097:14
2098:8,16
2110:8
2111:21,24
2187:8,10
2189:8
2194:17
2201:23
2203:2
2266:10
2346:10

segment
2057:1

selected
2375:14
2406:10

selectively
2377:7

send 2246:6

senior
2043:19
2186:8,10,14
2198:7
2199:2
2227:3,4,6,7

sense 2106:9
2112:11
2153:5
2175:12

sensitive
2200:14

sent
2087:20,21
2088:12
2245:11

sentence
2225:1
2306:24

separate
2105:9
2107:3

2108:8
2111:13
2126:23
2400:22

September
2370:7
2375:2
2409:21

sequence
2260:22
2261:20

Sequoia
2234:14

series 2054:5
2231:15

serve 2290:1

serves 2290:3
2380:24

service
2043:1,13,17
2048:5,8
2075:3
2126:9
2201:15
2202:4,5
2237:17
2240:2
2281:7
2285:6
2286:4,23
2287:13
2362:24
2364:13
2370:7

services
2056:4
2059:12
2089:16
2090:8
2137:12
2264:25
2265:3,6
2285:5
2290:17
2291:1
2307:21
2320:10
2376:14

session
2058:24
2066:5
2068:4
2137:18
2195:10
2220:19
2266:17

2385:17

sets 2300:24

setting
2340:18

settlement
2091:19,20
2092:10,16
2093:3
2109:10
2117:3,14,19
,20
2118:8,12,14
,15
2120:6,15

settlements
2091:22
2118:7
2119:9,10
2120:10
2277:9,12,14

seventeen
2090:2

several
2050:8
2054:7
2090:21
2114:11
2170:4
2175:14
2201:23
2213:22
2216:7
2239:19
2242:5
2314:15,19
2414:10
2430:25
2436:16,19

Sewer 2282:2

S-H 2224:4

share 2334:2
2410:25
2411:23
2419:24

shareholders
2292:12
2367:25

Sharm 2086:5

Shawn 2302:12
2314:22
2320:23
2332:11
2333:19
2408:15

SHAYLA 2047:1

sheet 2189:9
2219:22
2223:9
2295:4
2314:9
2436:22

sheets 2400:2

she's 2167:5
2174:4
2302:9

Shewmaker
2417:20

shift 2277:21

shop 2238:20

short 2072:10

shortages
2110:4

shorter
2259:16

shortly
2079:24
2080:13

shot 2103:25

shoulder
2211:2
2253:8

showed 2115:5
2189:2
2212:21
2219:21
2366:1

showing
2211:1
2361:9
2415:9

shown 2376:24

shows
2055:19,22
2056:1,3
2258:16
2432:20

shuffle
2075:16

Sibley
2315:21
2317:25

sic 2167:14
2215:1

sign 2245:15
2315:4

signatories	2290:17	2266:4	2207:7,16
2414:22	**sir** 2049:8,12	**situation**	2226:15
2416:8	2090:6,13	2060:10,13	2258:6,23,24
2417:16	2091:18	2061:11,12,2	2304:19
signatory	2120:2	0 2062:2	2338:10
2418:9	2121:15,22	2084:13	2358:16
signature	2122:14	2085:1	**someone's**
2058:25	2124:1,9	2365:21	2200:22
2059:1	2129:6,16,19	2367:13	**someplace**
signed 2227:2	2169:17	**situations**	2239:5
2313:8	2205:20	2423:24	2259:2
significance	2206:11	2424:13	**sometime**
2098:23	2234:5	2429:25	2191:16
2100:2	2241:5	**six** 2127:15	**somewhere**
significant	2279:3,14	2169:24	2130:25
2052:8	2311:3	2377:14,17	2185:5,14
2096:25	2342:24	2381:3	2220:6
2293:3	2361:7	2382:16	2250:14
significantly	2362:4	2384:12,20	2343:5
2068:5	2398:21	2404:8	**sooner**
signify	2403:24	2433:24	2163:18
2136:18	**sit** 2173:3	**Sixteen**	**sophisticated**
2137:3	2397:21	2090:2	2092:10
sign-in	**site** 2078:19	**Sixth** 2046:15	**sorry** 2052:2
2314:9	2082:4,5,9,1	**size** 2246:9	2058:25
similar	1 2088:19	2276:5	2061:21
2054:1	2092:23	2423:19	2063:11,14
2062:10	2114:10	**Sizing**	2068:8
2228:16	2115:7,10	2243:23	2070:8
2240:13	2132:18,19	**skill** 2360:2	2073:4
2249:23	2175:11	**skipping**	2078:14
2333:22	2176:16	2225:1	2102:12,16
2382:3	2188:13	**SLACK** 2048:4	2108:9
2384:24	2192:8	**slapped**	2125:2
2385:1	2206:22	2085:23	2137:1
2408:19	2224:8	2086:1,11	2155:4
2431:12	2256:3	**slash** 2375:17	2159:10
simple 2050:6	2258:7	**Smith** 2045:5	2160:3
simplify	2309:11,17	**SNR** 2046:6	2161:24
2164:22	2310:23	**solid** 2119:21	2162:25
simply	2311:5,25	**solution**	2171:13
2076:12	2343:6	2291:15	2173:17
2106:9	2398:8	2342:6	2175:21
2107:14	2409:4,7	**somebody**	2178:10
2109:14	2410:4	2225:19,23	2182:20
2112:15	2412:20	2258:2	2186:9
2134:22	2413:7,18	2367:20,21	2192:10
2202:23	2414:2,12	2437:20	2220:15
single	2424:14	**somehow**	2226:10
2330:25	2429:10	2317:1	2229:24
2331:7,22	**siting**	**someone**	2238:6
2409:22	2351:12	2153:11	2244:14
2436:14	**sitting**		2247:2,4,5,1
singular	2172:24		3,19,22
	2179:22		2248:1,5
	2209:5		2250:24
	2218:17		2253:10

2254:13
2261:12
2280:25
2294:23
2295:16
2311:2
2313:6
2317:16
2318:23
2323:23
2330:8,18
2344:24
2358:3,9,19
2362:14
2364:2,16
2367:22
2398:19
2401:10
2403:22
2410:16,18
2411:3,4
2420:14
2438:10
sort 2056:1,2
2085:17
2104:24
2191:13
2224:15
2276:12
sorts 2061:21
sounded
2092:22
source
2153:12
2180:19
2331:10
sources
2240:5
southeast
2109:15
Southern
2044:17
Southwest
2046:15
space 2257:9
spare 2435:23
speak 2075:13
2170:25
2171:2
2172:5
speaking
2094:25
Spearville
2328:3

2372:9
2431:7
2435:7,15,19
special
2097:5
specific
2059:24
2074:17
2085:24
2093:3
2103:12
2105:3
2106:8,25
2122:25
2134:17
2211:11
2287:16
2298:6
2299:24
2300:4
2318:12
2319:7,18,21
2324:20
2333:3
2337:19
2339:3
2397:24
2398:23
2412:5,17
2415:2
2421:2,13
2422:22
2423:3
2427:13
2429:25
specifically
2062:21
2104:23
2216:5
2243:3
2294:2
2315:17
2319:14
2337:9
**specification
s** 2079:25
specificity
2242:16
specifics
2320:15
2329:15
specified
2065:10
specify
2087:9
2107:10

specs 2320:11
speculate
2211:19
speculation
2211:17
2429:12,22
2430:1
speed 2344:16
spell 2362:11
spend 2164:8
spent 2165:23
2176:25
2177:1
2182:13,16,1
7 2192:24
2198:21
2207:14
2331:25
2332:7
2398:3
splitting
2380:23
spoke 2121:8
2172:8
spreadsheet
2331:1
2436:22
Springfield
2044:3
squish
2260:13,14,1
5,16
squishing
2259:15
St 2046:24
2047:14
2169:9
stacking
2257:7
staff
2048:2,8
2055:5
2075:25
2078:3
2086:15
2087:23,24
2088:7
2096:8,11,17
2097:20,21
2098:18
2100:2,19
2114:13
2115:25

2121:17,18
2122:19
2131:19
2160:4
2172:2
2186:13
2187:8,18
2203:2
2204:24
2205:7
2215:6
2216:1,3,5,8
,15,16,24
2230:7,9,19
2266:6
2274:4,8,14
2275:16
2283:9,10
2285:13,23,2
5
2286:7,16,20
,22
2287:2,7,12,
15,16,20,22
2288:5,13,19
2289:3,24
2290:2,8,21
2291:8,9,19,
22
2292:2,7,18,
20,23 2293:9
2296:5
2298:2
2299:12,14,1
7,21 2301:18
2303:11,16,1
7,23 2307:1
2308:1,4,8,2
1,24
2309:1,4,5,9
,15,18
2310:2,22,24
2311:3,6,9,1
0,22 2312:7
2313:25
2314:9
2318:11,17,1
8 2319:8,17
2320:7
2321:2,13,14
,18,24
2322:3,8,22
2323:4
2324:7,13
2325:7,18,24
2328:7,22
2329:1,6
2330:1,10,23
2331:10,14,1

6 2332:21
2333:7,12,18
2334:1,19
2337:3,9,13,
16 2338:5
2339:3,9
2341:4,10,14
2342:3,4,8
2343:4
2344:17
2346:13
2347:4,7,10,
12,15,21
2348:16
2349:6,7,15,
18,19,22,23
2350:11,12,1
5,16,19,23,2
4
2351:3,11,22
,25 2352:4
2353:10,18,2
3 2354:11,19
2356:21,24
2357:3,13
2358:20
2360:15
2374:23
2375:2,13,17
2384:23
2401:2,6,7,1
5,21
2402:19,25
2403:16
2404:6
2408:10,16
2409:12
2411:1,8,24,
25
2412:4,15,16
2413:6
2414:21,24
2416:7
2417:5,15
2418:17,19,2
1
2419:12,17,2
5
2420:3,9,17,
21
2421:9,15,18
2422:1,6,19
2426:5,9,14
2427:2
2434:5
2436:8
2443:4
staffing
2224:16

staffs 2126:9
Staff's
2088:7
2096:17,23
2097:15
2159:7,11,16
,23
2160:8,11
2192:8
2212:19,21,2
5 2213:6
2274:9
2293:15,18
2294:13
2310:25
2312:9
2322:9,23
2325:11
2328:13
2329:18
2334:7
2335:10,14,1
6 2336:2
2346:7
2352:23
2353:7
2354:20,23
2355:24
2358:14
2359:1,6
2406:17
2422:15
2423:4
2433:10
2441:18
2443:6,8
stage 2116:1
2194:4
2258:15
2277:25
2360:15
2432:16
stages
2080:19
stake
2099:2,3
2207:12
stakeholders
2085:15
2086:15
stand 2049:2
2102:21
2103:1
2137:2
2160:18
2163:1
2168:10,19

2206:3
2211:1
2345:14
2439:6,7
standard
2123:7,9,15,
16,24
2125:23
2170:5
2175:6
2252:8,13
2253:3
2254:9
2271:18
2339:18,23
2340:1,7,16
2359:3,5
standards
2127:21,22
2271:11
2289:25
2337:1,3,6,1
7 2338:7,15
2340:19
2348:12,14
standing
2094:12,19,2
4 2257:19
standpoint
2096:3
2097:16,23
2118:23
2343:19
2366:23
2383:12
2384:11
stands
2160:21
2234:5
2279:6
2362:6
start 2061:22
2079:18
2113:14
2116:18
2135:4
2206:14,18
2214:20
2365:15
started
2080:4
2198:19,20
2252:10,20
2271:14
2276:23
2298:4
2378:6

2426:6
starting
2090:4
2253:13
starts
2096:14
2120:18
2251:7
state 2043:2
2046:19
2059:19
2070:14,17
2078:11
2098:2
2124:13
2129:23
2234:12
2237:17
2307:4
2327:8
2362:10
2369:15
2371:15
2374:22
2375:13
2401:15
2412:3
2419:5,12
2433:9
2440:5
stated
2050:21
2051:25
2055:21
2059:17
2065:16
2074:17
2075:4
2252:3,7
2397:5
statement
2054:1
2070:13
2075:24
2102:17
2204:4
2285:7
2329:18
2403:9
statements
2053:25
2174:5
2237:25
2238:11
2424:3
states 2047:1
2126:11,13

2127:15
2203:9
2204:13
2306:16
2338:17
2353:17
2401:7
2406:17

stating
2180:1

station
2370:3
2433:13

status
2298:13
2312:7,11
2321:24
2354:10
2414:20,25
2415:8
2442:13

statute
2123:11

statutes
2128:2

stay 2053:3
2169:13
2247:11
2385:15

stayed 2398:8

staying
2368:17

steam 2248:22
2250:7

steel
2109:15,25
2244:10
2246:11,17

STEINER
2046:1
2055:15
2058:8
2233:3,6,10,
16 2243:23
2244:1
2438:3

Steinmeier
2046:22

step 2129:6
2216:11
2232:13
2278:16
2325:3

Steve 2048:1

2285:18
2313:16

STG 2250:8

Stinson
2046:10

stipulation
2167:21,22
2193:7,11
2209:7
2336:2,4

stop 2358:7,8
2437:20

stopped
2261:11

stops 2287:5

story 2331:21

Strained
2341:6,7

strategic
2091:21
2092:4
2093:16
2094:11,23
2125:20
2289:18
2414:20

streamline
2163:17
2228:22

streamlined
2163:14
2229:2

Street
2044:23
2045:2,6,19
2046:7,11,15
2048:6,10
2129:25

strike
2244:13,14
2253:23

strong
2291:23

structural
2244:10

structures
2243:25

STUART 2044:6

stuck 2061:18

studies
2125:19

stuff 2080:4
2172:11
2226:23
2251:15
2259:21

subcommittee
2127:16

subcomponent
2079:22

**subcontractor
s** 2254:23

subject
2059:24
2261:8
2298:6

submitted
2054:2
2117:5

subsection
2251:6

subsequent
2091:2
2216:5
2226:20

subsequently
2256:8

subset 2073:3

substance
2307:5

substantial
2050:4
2289:7
2293:7
2332:7

substantive
2286:7,15
2287:6
2289:25
2307:1
2422:14,22

substitute
2073:1,6

subtle
2094:17

success
2336:6

suddenly
2173:24
2174:8

suffice
2050:6
2065:20

sufficient
2074:16
2087:10
2094:13
2099:4
2219:3
2224:22
2226:17

sufficiently
2086:16

Sugar 2047:2

suggest
2136:3
2324:24

suggested
2246:2
2305:4
2329:1

suggesting
2128:25
2202:19
2250:14

suggestion
2403:17

suitable
2278:24

Suite
2044:7,11,23
2045:2,19
2046:7
2047:9

sum 2341:20

summaries
2331:11

summarize
2227:9
2399:24
2419:16

summarized
2331:6
2369:11

summary
2152:14
2227:9
2291:18
2415:21

summation
2130:14

Summit 2045:3

supercritical
2372:19

supervision

2285:21

supplement
2204:11

supplemental
2234:18,24
2237:20
2238:4
2247:19

supplemented
2123:11

support
2094:19
2095:16
2115:15
2237:25
2238:11
2249:3
2331:11

supported
2097:8
2346:13

supporting
2093:2
2095:25
2097:17
2366:16
2430:13

supposed
2103:20,22,2
3 2193:13
2224:1
2256:12,13,1
6,23
2257:12,17
2291:13
2309:4
2320:9

sure 2063:1
2069:13
2076:7
2091:3
2114:1
2130:11
2157:5
2202:12
2203:4
2207:23
2212:17
2217:1
2223:18
2230:4
2238:2,12
2242:6
2245:23
2246:1,22
2248:5,9

2251:13,22
2254:24
2309:22
2310:10
2311:12
2313:3
2315:16
2320:14,17
2325:15
2327:12
2340:8
2359:14
2363:24
2364:3,18
2369:10
2370:24
2400:6
2402:6
2412:13
2417:23
2430:19
2436:18
2437:3,25
2438:1

surprise
2083:3

surprised
2245:20

surrebuttal
2235:9
2237:21
2238:5
2301:4
2363:2,24

surrounding
2248:11

survey
2076:23
2077:17
2127:20
2443:18

SUSAN 2046:6

suspect
2103:5
2137:14

sustain
2202:3,6

sustained
2202:24
2278:4

SW 2045:15

swear 2058:22

Swearengen
2045:9,10

sworn
2129:11,16,1
7,18 2174:9
2234:1,3,10
2279:3,4,16
2362:2,3,7
2440:7

system
2064:16
2065:4,7,9
2068:10
2095:24
2099:9
2114:3,16,22
2116:11
2122:6
2128:11
2176:24
2182:12,13
2204:20
2213:19,20,2
1 2217:23
2220:6
2231:23
2274:10,23
2328:23
2329:2,7,15,
20
2331:15,17
2355:8
2401:19
2416:15
2428:2

systems
2087:7
2122:24
2125:22
2237:1
2356:18

T

T&M 2062:5

tabbed 2072:7

table 2076:2
2161:2
2174:4
2253:21
2261:7
2262:2,3
2272:23
2299:23
2378:23
2442:19

tabs 2072:12

take-off
2245:15

taking 2217:1
2232:20
2335:14
2356:6

talk 2090:4
2091:13,14
2135:17
2155:16
2165:1
2212:12
2225:15,16
2240:1,3,7
2247:14,16
2266:14
2296:19
2354:8
2405:20
2429:22
2431:11
2435:13

talked 2114:8
2188:19
2207:24
2213:22
2223:25
2273:15
2275:22
2280:7
2319:4
2328:19
2381:3
2399:23
2403:7
2424:18
2425:19
2428:24
2431:4,8
2432:5
2434:25

talking
2075:19
2084:6
2106:24
2108:16
2112:12,15
2113:19
2117:10,18
2165:18
2173:1
2175:11
2176:7
2180:13,15
2188:5,12
2207:11
2241:2
2251:24
2258:10
2261:19

2271:22
2273:5,6
2278:6
2280:1
2287:8
2312:2
2323:20
2351:6
2368:22
2427:9

task 2316:7
2340:12,21,2
4

tasks 2163:15
2414:16

Taylor
2043:24
2440:4,18

team 2050:24
2082:11,16
2106:20
2111:16
2115:8
2204:21
2226:18,21
2227:1,13,23
2228:3
2229:12,15,1
9 2236:11
2416:21

technical
2255:12
2289:19,24
2309:24
2338:19
2339:20

technically
2199:7

technology
2239:10
2285:5

telephone
2172:25

ten 2072:15
2261:19
2280:18
2338:15
2345:10

tender 2133:4
2236:1
2365:8

tends 2424:9

tens 2185:25
2186:2

2231:24

tension
2135:10,15

term 2099:2
2167:6
2182:7
2245:6
2271:13
2272:6,19
2273:1
2309:24
2377:9

terminations
2353:1

terminology
2239:1

terms 2059:8
2060:10
2110:19
2112:2,21
2118:16
2260:8
2261:14
2271:7,25
2272:23

terrible
2253:23

terribly
2109:1

Terry 2043:19
2417:18

testified
2068:1
2114:7
2127:3
2152:3
2198:3
2223:3
2234:10
2237:16
2271:3
2279:16
2280:14
2349:10
2362:7
2373:21
2397:3
2402:19
2413:6
2415:14
2416:20
2420:7

testify
2093:9
2279:21

2339:1

testifying
2100:25
2357:19

testimonies
2181:10
2234:24

testimony
2049:15,16
2073:1,6
2082:18
2084:1,8
2089:24
2090:1
2092:19
2093:13,15
2094:11,22
2095:3,16
2096:9,10
2101:17
2112:22
2114:5,8
2117:11,12
2118:10,19
2120:4,22
2121:3
2124:8,21
2126:5
2128:6,22
2130:3,5,8
2132:1,17
2136:3
2152:8,11,13
2155:24
2156:1,6,15
2158:22,25
2160:1,7
2167:24
2174:9
2212:12,14,1
9 2213:5,9
2218:23
2234:18
2235:1,5,7,1
1,15 2246:18
2247:18
2248:8
2249:20
2250:18
2251:12
2253:18
2273:7,20,23
,24
2274:2,22,25
2275:1
2276:8
2279:8,9
2280:18

2293:10,19
2301:4
2327:1
2357:3
2358:16
2363:3
2384:15,17
2402:10
2404:10
2405:21
2406:14
2410:16
2423:7,10
2424:16
2427:12
2430:12
2432:7,12
2433:10
2435:3,18
2437:18
2440:6,7
2442:4,6,22,
24
2443:3,10,11

Texas 2126:15

text 2058:25
2059:25
2060:1
2442:16

thank 2053:8
2069:8
2070:7
2072:3,17
2076:8,15
2078:18
2082:18
2084:12
2088:25
2089:2
2091:4,6,8
2101:21,22
2102:17,21
2113:7,9,11
2126:3
2129:3,5,6,1
9 2133:6,8
2152:2
2154:14,15
2160:18
2162:24
2168:18
2169:14
2178:5
2183:18
2189:7
2194:8,20
2205:8,10
2206:4,12

2223:1,19,20	2129:3,9	2292:2	2423:1
2231:13	2136:7	2293:7	2424:2,4,10,
2232:12,13	2152:7	2294:1	15,20,25
2234:4,9	2154:13	2295:18	2425:5,13
2236:3	2155:21	2296:17	2426:20
2237:9	2159:20	2298:19	2429:6
2250:13	2164:22	2300:3,6	2431:3
2262:17,22	2165:8,11	2302:7,23	2433:20
2272:10,11	2166:22	2305:10,12	2434:4,7,11
2278:13,15,1	2168:9	2306:23	2436:7,11
6	2174:3,24	2308:23	**theirs**
2279:5,15,21	2175:11	2310:8,18,21	2097:20
,22 2281:4	2176:24	2313:22	**themself**
2296:24	2181:14,20	2317:17	2216:9
2343:21,24	2183:18	2321:17	**themselves**
2345:15	2185:15	2323:7	2172:3
2360:7,8,11,	2186:5	2324:4	**thereafter**
13,16	2188:14,18	2328:25	2440:8
2361:4,6,7,8	2190:13,17	2329:7	**therefore**
,15 2362:4	2194:16,24	2330:11,22	2097:19
2365:1,10	2200:4	2333:15	2374:23
2368:8,9,13	2201:18,21	2336:21	2378:5
2397:1	2205:16	2337:22	2420:2
2411:13	2208:19,21	2338:8	**therein**
2432:2	2209:20	2343:7,22	2059:16
2438:21,25	2212:1	2348:25	**there's**
2439:8	2214:10	2349:2,13	2050:4
thanks	2218:24	2352:8	2058:15
2091:11	2220:16	2353:6	2060:10
2104:7	2230:17	2357:2	2062:6
2368:17	2232:10,24	2358:20	2076:2,3
that's	2233:1,3,8,1	2361:3,4,17	2085:10
2050:12	2,17 2236:22	2363:25	2086:20
2055:1	2237:11	2364:11	2094:14
2060:3	2238:3	2367:6	2097:3
2065:10	2240:24	2368:3,7,22	2099:4,16
2071:3	2241:13	2369:9,14,21	2133:21
2078:1	2243:2,16	2373:25	2136:14
2080:5	2245:6,15	2374:4,17	2174:3
2086:4	2249:15,20	2375:6	2175:14
2088:25	2250:21	2377:11,16,2	2193:10
2090:19	2251:10,24	1 2378:18	2223:22
2092:7	2252:2,14	2379:20	2228:6
2094:14,17,2	2253:23	2381:5	2238:25
0,25 2096:2	2254:14	2382:13,22	2255:22
2099:15,25	2255:12	2384:21	2289:12
2100:14,21	2256:9,12,24	2385:9	2293:6
2101:1,12	2258:10	2398:7	2312:22
2102:14,19	2259:4,6,21	2401:20	2313:6,8,12,
2104:7,19	2262:14	2406:23	23 2314:19
2107:18	2264:17	2407:11,21	2329:18
2109:1	2278:19	2408:13,24	2333:8,16,22
2111:2,17	2279:25	2416:24	2342:6
2116:18	2280:20	2417:17	2347:18
2117:8	2281:3,21	2418:5,14	2349:1
2120:8	2282:1,6,8	2419:15,20	2363:8
2122:24	2284:18	2420:6,22	2366:20
2123:9,14,18	2285:8,17	2421:1,7,21	
2127:5	2287:14	2422:4,8	

2429:25

thereto
2440:14

they'd
2226:17

they'll
2205:13

they're
2054:19
2057:19
2058:8
2090:24
2113:18
2132:16
2183:2,22
2215:24
2229:21
2248:18
2251:15
2260:8
2276:6,22
2291:13
2292:19
2320:9
2385:11
2424:22

they've
2087:9
2107:21
2113:20,22
2292:19

third
2216:13,21
2217:24
2228:7
2306:10
2312:23
2313:14

third-party
2128:16

thirteen
2159:8

Thomas
2044:19
2083:16
2264:9

THOMPSON
2048:2

thorough
2332:14

Thorpe
2440:4,18

thousands
2185:21,25

2186:2
2231:24,25

throughout
2062:17
2155:15
2200:18
2232:8

throwing
2231:4

throws
2206:20

tied 2122:12
2356:18

ties 2152:18
2215:16

TIGER 2043:24

till 2345:10

timeliness
2319:12

timely 2164:7
2303:22

title 2198:6
2199:1,22

titled 2152:8

titles 2051:4

today
2091:12,15
2101:25
2117:25
2155:25
2156:6,15
2170:11
2171:10,14,2
2 2172:7,17
2173:3,15,23
2174:22
2184:14,16,1
8,22
2229:21,25
2287:8
2302:8
2307:16
2308:16,24
2329:7
2341:5
2399:24
2424:3
2437:22

TODD 2044:14

tomorrow
2232:20,21,2
4 2233:1

tonight

2279:22
2439:1

tonnage
2245:14

tool 2183:2

tools 2184:3

top 2090:14
2105:8
2131:16
2167:15
2216:6
2239:2,3,7,1
2,17 2241:9
2286:3
2343:8

Topeka
2046:15

total 2100:15
2104:25
2106:18
2111:18
2178:25
2191:14
2409:24

totaled
2428:19

totally
2107:2
2110:6

touched
2214:11
2217:12

tough 2255:1

tour 2410:4

toured
2413:18

toward 2214:1
2340:25
2342:9

towards
2166:12

trace
2186:21,25

track 2110:25
2114:2,15,22
,25
2162:11,20
2164:16
2166:1
2176:24
2181:22
2182:19,21,2
5

2183:13,15,2
0,24
2184:2,4,6
2188:13
2209:17,19,2
1,22,25
2210:3,11,14
,15,20,24
2213:7,12
2214:2,5
2215:2
2252:4,7
2274:10
2329:22
2330:20

tracked
2107:16
2162:10
2199:8,14,23
,25 2428:2

tracking
2110:19
2152:16
2175:5
2181:18
2426:15

tracks
2175:12
2184:1

Tracy 2043:24
2440:4,18

trade 2257:7

trailers
2309:23,25

trained
2428:21
2429:5

training
2154:24
2155:1,2,5,1
2,15,17,18,2
0
2156:5,9,13,
16,20,22
2157:2,8,10,
21,24
2158:2,5,8,1
1 2173:22
2285:5
2320:3
2337:25
2338:6,13,19
2339:20

transcript
2043:5
2052:17

2066:6
2137:19
2152:5
2173:22
2195:11
2220:20
2266:18
2385:18

transcripts
2295:6

transfer
2186:20

transit
2237:1

transition
2163:11
2335:14

treated
2101:14

treatment
2304:10,16,2
5 2306:6

trenches
2175:5
2207:17

trended
2224:21

Trendy
2125:15

tried
2174:1,24
2175:13
2227:9,12

TRIPP 2045:5

trouble
2115:22
2252:12

true 2068:22
2165:5
2167:18
2232:3
2285:6,16,17
2289:21
2290:7
2305:21
2306:3
2324:17
2328:17
2363:17,19
2378:11
2397:14
2398:3
2417:18
2426:2,3

2434:8
2436:16

trued 2382:24

true-up
2353:21,22
2354:4
2405:21
2423:7
2427:12
2430:11
2435:3,10
2442:22
2443:3

truly 2342:11

truncated
2274:15

trust
2341:9,10

trusts 2341:9

try 2058:23
2106:11
2134:3
2174:5,7,11
2177:24
2179:11
2180:14
2205:14
2228:22
2237:10
2247:23
2292:12
2332:8
2365:13

trying
2061:10
2062:25
2098:6
2104:2
2134:24
2156:17
2162:19
2164:22
2170:3
2172:13
2176:19
2193:23
2217:18
2218:12,14,2
4 2224:18
2274:18
2280:25
2347:12
2400:14

turbine
2240:24
2243:22

2244:5,6
2245:4,11
2246:12,14
2248:22
2250:7
2310:1
2371:12,23
2373:2
2431:5,6
2435:20

turbines
2327:15
2433:23
2435:7

turn 2074:2
2082:7
2119:25
2136:10
2246:20
2250:17
2253:16
2312:20
2333:7
2374:18
2406:13

turned 2259:1

Tuxedo
2047:13

twice
2351:16,20
2432:25

two-thirds
2265:16

type 2092:3
2109:22
2172:10
2239:22,24
2240:2
2241:23
2272:24
2337:4
2377:22
2378:13,14,2
0,25
2379:3,16,17
,21,24
2380:3,8,14,
17,18
2381:6,11,18
2382:2,3,10,
15,16,18
2383:3,20
2384:1,12
2385:4
2404:8
2425:11
2426:22,25

2431:14
2433:17
2436:2

types 2061:10
2062:10
2088:20
2116:18,19
2163:5
2173:6
2248:10
2249:11
2299:14
2319:13
2329:13
2384:19

typewriting
2440:9

typhoons
2109:15

typical
2354:4

typically
2249:16
2254:22
2260:19
2293:1
2348:13
2376:7

U

U.S 2045:16

Uh-huh
2049:17
2098:12
2099:14
2109:8
2160:13
2167:16
2170:17
2191:6
2213:24
2280:10
2296:7,25

Uhlig 2046:18

ultimate
2065:24
2283:8
2286:9,25

ultimately
2245:3
2286:14,20
2287:5
2352:10

unallocated

2099:22

unbiased
2291:20
2340:24

uncommon
2109:1

underlines
2306:18

underlying
2242:12,21

underran
2135:2

underrun
2162:9
2165:14
2166:16
2175:7,18,20
2176:9
2182:15
2207:6
2209:22
2243:12

underruns
2161:10
2164:24
2188:12
2189:2
2193:19
2209:19
2210:22

understand
2055:20
2065:15
2072:3
2076:15
2085:6
2091:6
2097:1
2115:19
2116:9,10,16
,21 2118:18
2120:9
2128:22
2134:3,4,24
2155:25
2157:18
2163:21
2167:8
2172:18
2173:10
2176:25
2179:11,20
2180:2
2181:6
2182:4
2191:2

2192:22
2207:23
2211:6
2212:17
2215:24
2216:10
2232:22
2242:22,24
2243:16
2254:15
2279:25
2284:11
2287:10
2298:21
2307:24
2317:4
2325:15,18
2332:8
2365:14
2366:21
2368:24
2373:4
2375:9,15
2377:12
2383:9,12
2384:15
2397:8
2399:5
2400:15,23
2404:10
2405:3
2418:23
2428:7
2429:4,8,24
2430:22

understanding
2055:2
2101:4,11
2157:10
2162:2
2167:6
2192:21
2211:13,15,1
8,22,23
2215:6
2233:14
2246:5
2252:11
2260:9
2273:1
2300:22
2301:2
2304:21
2310:11
2314:24
2316:12
2325:11,24
2326:6
2328:21

2329:3
2330:23
2331:24
2332:6
2343:2,4
2365:21
2376:23
2397:10
2401:21,25
2402:1
2428:21
2430:7
2434:5

understood
2059:6
2091:4
2096:1
2157:1
2169:18
2232:20
2233:12
2316:5
2399:11

undertaken
2059:7

undertaking
2337:24

underway
2060:14

unexpected
2109:2
2110:6

unexpectedly
2109:10

unexplained
2326:5

unforeseen
2381:14
2423:24
2424:13

union 2044:17
2109:6
2238:19,22

unit 2079:20
2114:8
2117:19
2120:6,9,10
2184:20,25
2187:3
2236:16
2247:17
2327:9
2371:16
2433:25

United 2047:1

units 2126:23
2327:11
2371:18,21
2433:19,21,2
5

University
2281:20
2369:15

unless
2068:11
2294:7

unnecessary
2098:5
2419:24
2420:2

unquestioned
2361:2

unreasonable
2383:6
2384:8

**unsubstantiat
ed** 2356:22

unusual
2060:5
2252:18
2423:18

up/top
2238:23

update
2127:25
2155:20
2160:7,10

updated
2152:8
2194:13
2266:7

updates
2114:21
2413:21

updating
2415:15

upgrade
2203:15
2204:1

upgrades
2298:3
2317:24
2353:20

up-line
2307:7

upon 2106:22
2119:14
2172:14

2240:9,17
2242:17
2335:3
2384:25
2385:8
2427:3
2436:5

upside
2365:20
2366:2

USB
2103:13,14
2104:5
2168:25

useful
2081:17

usually
2155:18
2256:6,10

utilities
2126:20
2155:5
2199:9
2349:1

utility
2085:4,18
2087:9
2127:17
2155:20
2156:21
2292:8,12
2307:12
2347:8
2348:23

utilize
2308:4

utilized
2123:17
2305:20
2306:2
2307:25
2377:19

———————
V
———————

valid 2118:17
2399:4

validation
2131:7

valuation
2125:15

value 2065:23
2187:6
2271:16
2272:23

2374:24

Vantage
2053:24

variability
2238:25
2272:4

variance
2114:19
2160:15
2166:11,17
2175:10,15,1
7,18,25
2177:15
2209:22
2214:2,6

variances
2116:3
2159:24
2160:4
2161:20
2162:8
2175:8
2176:3
2177:17
2188:5,8,11,
19,25 2189:1
2204:18,22
2205:5
2207:6
2210:11,20
2213:3
2398:13,17

various
2055:22
2056:11
2057:11
2061:10
2082:2,19
2083:3
2085:10,11,1
5 2088:6,20
2093:21
2097:2
2099:5
2114:21
2116:1
2125:9
2128:12
2249:19
2290:21
2299:23
2313:14
2357:2
2370:20
2416:15
2420:17
2421:9

variously
2252:3

vendor
2057:13
2063:22,24
2064:1,3,25
2065:6,13
2068:4
2069:4
2070:10
2180:22
2375:18
2376:14

vendors
2203:13
2204:17

ver 2363:23

verbal
2060:12

verbally
2088:1

verbatim
2159:22

verification
2084:10

verify 2169:5
2232:19,25
2263:2
2399:4

version
2295:10
2305:14
2363:6,7

versus
2078:10
2098:24
2119:15,16
2238:19

vetted
2226:16
2229:11
2242:13,15,1
8 2275:8

vetting
2164:4
2227:1
2244:16,23

via 2063:24
2081:10
2099:5

**video-
conferences**
2056:8

view 2108:11
2121:3
2164:22
2192:8
2340:24

viewed
2337:25
2341:3

views 2432:21

visibility
2125:19

visit 2082:4
2369:7
2385:10
2409:11
2412:23
2413:12

visited
2082:5,9,11,
13

visiting
2276:24

visits
2409:3,7,18
2413:11,18

vogue 2272:6

voltage
2435:20

Volume 2043:9
2066:6
2137:19
2195:11
2220:20
2266:18
2385:18

———————
W
———————

Wagner
2047:16,17

waist 2126:1

waives
2059:10

walk 2220:8

walked 2189:4
2216:8

wall
2256:14,17,2
5
2257:1,3,8,1
7
2258:3,7,21,
22

washington	2089:16	2431:4	2110:20
2045:15	2090:7	2433:22,25	2119:7
	2091:14	**Weston**	2122:16
wasn't	2092:3	2239:18	2124:3
2061:24			2125:5
2064:14	**we'll** 2051:15	**we've** 2055:12	2126:4
2070:16	2052:12,15	2075:24	2128:21
2073:12	2072:14,15	2112:19	2154:8
2077:3	2075:12	2128:10	2162:8
2091:5	2102:2	2181:20	2166:13,16
2094:16	2129:12	2198:5	2167:5
2095:5,6,25	2168:18	2201:23,24	2180:16,20
2098:17	2206:2	2212:16	2190:9
2102:7	2233:18,19,2	2231:4	2191:5
2114:4	0 2266:13	2233:19	2192:7,12
2175:1	2316:16	2235:7	2201:19
2201:13	2345:14	2258:10	2208:5,6,13
2208:13	2430:2	2261:18	2214:10
2211:23	2439:4	2280:7	2216:1
2224:22		2308:15	2218:13,15
2242:21	**Wells**	2328:19	2229:18
2257:8,18	2323:17,18	2368:20	2238:16
2258:7		2403:6	2254:8
2261:8	**we're** 2056:10	2437:5,21	2273:15
2276:4	2072:20		2274:19
2321:18	2076:6	**whatever**	2277:2,3
2323:24	2130:11	2101:1	2288:4,9
2327:12,16,1	2152:1	2105:20	2339:2,8
9 2356:2	2153:13	2106:21	2342:8
2409:21	2168:5	2108:21,22	2351:13
2417:1	2179:18	2109:16	2355:14,23
2422:5	2180:13,15	2180:21	2356:5,11
	2181:11	2209:10	2367:8,24
water	2188:15	2214:25	2406:20
2050:9,11	2198:1	2230:18	2420:9
2282:2	2200:13,21	2231:18	
	2205:18	2239:5	**whichever**
ways 2175:25	2212:18	2240:15	2174:18
2213:16	2218:6	2241:19	
2239:20	2219:3,5		**whole** 2070:5
2260:20	2223:2	**whenever**	2081:13
	2230:18	2076:6	2083:23
wearing	2237:16		2084:9,18,22
2358:6	2253:18	**where's**	2095:22
	2262:18,25	2192:19	2112:18
website	2271:1	2193:21	2114:16
2283:17	2287:8	2207:9,10	2259:15
2285:2	2316:20,22		2261:7
2289:17	2322:18	**WHEREUPON**	2265:17
	2323:20	2439:9	2331:20
we'd 2071:18	2364:4		
2235:17	2397:2	**wherever**	**wholly** 2202:9
2405:10	2439:8	2177:1	**whom** 2085:6
			2111:9
weekend	**Wess** 2279:16	**whether**	
2260:2	2295:3	2054:15	**who's** 2051:6
	2298:11	2061:15	2239:13
weeks 2056:15	2374:5	2068:16	2257:11
2174:8	2441:15	2087:19,20	2258:16
		2096:24	2323:18
welded	**West** 2327:14	2097:14	2385:14
2365:20	2371:21	2098:7	
2366:2		2099:19	
welding			

whose 2177:4

widget
2105:16,19,20 2106:2
2109:19

William
2046:22

Williams
2048:1
2341:2

willing
2209:13

wind 2328:3
2372:9
2431:8
2435:15,20

wisdom 2237:5

withdraw
2078:8
2118:4
2430:2

withdrawn
2226:24

withheld
2096:18

witness
2053:8
2055:16
2058:14
2070:22
2076:11
2093:15
2117:23
2125:9
2129:7,18
2130:12
2133:4
2135:24
2160:3
2167:10
2169:6,18
2171:11,16,18 2172:22
2174:12
2179:22
2180:1,4
2182:5,8
2183:5,11
2190:16,19
2191:24
2194:20
2195:3
2211:22
2232:11
2233:7

2234:3
2236:1
2237:12
2247:9
2254:15
2278:22
2279:4,9,11
2280:23
2295:9
2319:4
2326:4
2330:13
2335:24
2341:14
2346:1
2357:18
2358:2,4,7,24 2361:8,10
2362:3
2365:8
2429:16
2432:15
2439:2

witnesses
2094:22
2155:16
2172:4
2173:5
2249:19
2440:7

witness's
2174:9

Wolf
2123:10,17
2218:18,19
2357:11
2433:12

women 2077:24
2078:3

WOODSMALL
2044:6

work 2056:18
2059:9
2060:6,17
2061:1,2,7
2068:16,23
2069:17,19,24,25
2070:3,4,5
2079:23
2120:3
2127:9
2155:19
2180:17,18,19,22 2204:23
2211:9
2226:14

2228:16
2236:19
2239:22,24
2246:16
2249:6
2252:20
2255:10,20,21,24
2256:8,11,23
2258:5,17
2259:6,15
2260:2
2264:9
2265:18,22
2275:2
2285:5
2289:24
2320:9
2321:13
2337:18
2338:1
2339:17
2350:16,20,25 2359:7,10
2369:8,12
2371:13
2376:1,2,4
2378:6,9
2380:9
2381:21
2382:23
2385:11
2397:21
2399:22
2400:6,8
2402:4
2412:4
2426:6
2428:6
2435:24
2438:13,14

worked
2084:15
2126:5,8,11,25 2127:6
2128:14
2236:7
2238:13,14
2259:2
2264:6
2265:8
2326:8
2380:4
2412:17

worker
2198:15,17

working
2168:1

2206:19
2254:5
2256:4
2257:9
2264:12
2265:14
2275:15
2290:18,21
2336:11
2412:25

works 2265:21

world 2056:6
2265:17

worth 2069:16
2215:7

Wow 2413:3

wrap 2437:12

wrapped
2345:8

wreck 2277:18

writing
2060:13

written
2113:22
2128:18
2153:19,22
2250:1
2262:10
2264:24
2295:18
2382:19

wrong 2051:22
2227:15
2344:16
2410:17
2411:3,5

WSI 2117:3,5
2118:8
2119:7
2121:7
2128:4

—————————
Y
—————————

Yankee
2050:16

yard 2240:23

yards 2240:22

Ye 2297:7

Yep 2188:6
2212:23
2214:22
2215:9

yes-or-no
 2170:22
 2183:4,9

yesterday
 2076:11

yet 2055:14
 2198:5
 2202:15
 2275:12
 2335:5

York 2086:11

you-guys
 2173:6

you'll
 2052:20
 2072:6
 2088:23
 2129:16
 2279:2

Young 2079:7
 2137:13
 2189:10

younger
 2059:5

yours 2219:22
 2249:21

yourself
 2082:16
 2124:11
 2158:14
 2263:15,18
 2408:15
 2420:21
 2421:15

you've 2059:5
 2062:24
 2073:15
 2075:4
 2083:21
 2084:12,15
 2100:7
 2111:21
 2192:24
 2209:6
 2217:21
 2235:10
 2237:15
 2248:13
 2255:4
 2257:9
 2260:5
 2264:6
 2266:3,4
 2276:10
 2280:11

 2287:10
 2335:19
 2370:6,11
 2373:4,13
 2384:15
 2385:4
 2402:13
 2404:7
 2407:1,13
 2437:15

—————
Z
—————

zero 2210:10

ZOBRIST
 2046:5