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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

KANSAS CITY POWER & LIGHT COMPANY

FILE NO. ER-2010-0355

Jefferson City, Missouri
January 2011

** Denotes Highly Confidential Information **

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1 A. On December 8, 2010, KCPL filed rebuttal testimonies of nine (9) witnesses
2 encompassing 800 pages of written testimony and approximately 90 attached Schedules. The
3 list of KCPL's rebuttal testimonies along with the witness name, employer and position is
4 shown below:

	Rebuttal Witness	Employer	Position
1	Curtis Blanc	KCPL	Sr Director Regulatory Affairs
2	William Downey	KCPL	President and Chief Operating Officer KCPL
3	Chris Giles	Nextsource	Consultant - Asst to Sr Director Reg Affairs
4	Brent Davis	KCPL	Iatan Project Director since May 2006
5	Forrest Archibald	KCPL	Senior Manager of Cost Iatan 2
6	Bob Bell	KCPL	Sr Dir of Const Iatan 2 since Mar 2009
7	Ken Roberts	Schiff Hardin	Consultant
8	Daniel Meyer	Schiff Hardin	Consultant
9	Kris Nielsen	Pegasus Global	Consultant

5
6 Of these nine witnesses, in my surrebuttal testimony I address the rebuttal testimonies
7 of KCPL witnesses Curtis Blanc, William Downey, Chris Giles and Kris Nielsen. Unrelated
8 to the Iatan issue, I address the rebuttal testimony of KCPL witness Tim Rush.

9 Q. Prior to addressing specific statements and allegations made in the
10 rebuttal testimonies of the KCPL witnesses, are there any general issues that most, if not all,
11 of the KCPL rebuttal witnesses address?

12 A. Yes. From my review of KCPL's rebuttal testimony I find that KCPL has
13 misconceptions about the authority of the Staff of the Missouri Public Service Commission
14 ("Staff") to make Iatan construction project cost recommendations to the Commission, and by
15 extension, the Commission's authority to make adjustments to the level of costs
16 KCPL charged to the Iatan construction projects. In addition, while KCPL is certainly free to
17 do so, the Staff has a concern that KCPL did not present the findings of the

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1 Kansas Corporation Commission (KCC) Order in a reasonable context. In my testimony
2 I will rebut the manner in which KCPL presented portions of that order.

3 Q. Does KCPL attempt to restrict the Staff and the Commission's authority to
4 make adjustments to Iatan construction costs?

5 A. Yes. Throughout its rebuttal testimony, KCPL indicates that in order to adjust
6 any Iatan construction cost the Staff must make a finding of imprudence, under very specific
7 criteria established by KCPL, and once that decision or action is found to be imprudent, the
8 Staff must be able to match a specific dollar amount to that management decision or action.
9 For example, KCPL witness Mr. Blanc states at page 2 of his rebuttal testimony:

10 Although KCP&L strenuously disagrees with Staff's recommended
11 disallowance, Staff appears to have attempted to follow the requisite
12 two step process for a prudence review—first, to identify an imprudent
13 act or decision, and second, to quantify any impact that act or decision
14 had on the cost of the project.

15 In Staff Data Request No. 590, I asked Mr. Blanc if in this testimony he was stating
16 that this two-step process is required, and if he was, what is his basis for this statement.
17 KCPL responded to this question explaining that this two-step process is required based on a
18 practical matter, the Commission's prior handling of prudence issues, and Dr. Kris Nielsen,
19 KCPL's prudence witness in this case. KCPL's exact response to these questions is:

20 Under the Commission's prior handling of prudence issues, according
21 to Kris Nielsen, the Company's prudence expert in this case, and a
22 practical understanding, before disallowing costs related to a
23 construction project, the Commission must (i) conclude that KCP&L
24 engaged in some imprudent decision or act and (ii) that the decision or
25 act deemed to be imprudent had some adverse impact on the project.

26 Q. Did KCPL cite any legal or other authoritative basis to support its belief that
27 the Commission is restricted in such a manner?

28 A. No.

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1 Q. Does the Staff believe the Commission should be restricted in the manner
2 asserted by KCPL?

3 A. No. KCPL is seeking recovery of the Iatan construction costs in a rate case.
4 The Commission has wide range of discretion on whether to allow rate recovery of costs in a
5 rate case and is not bound by KCPL's very limited and narrow view of rate recovery, i.e.,
6 ratemaking. The Commission's discretion includes considerations of whether or not a cost is
7 appropriate to be charged to ratepayers, whether or not a cost which does not result in
8 customer benefit and is more appropriately allocated to shareholders or owners, whether or
9 not a cost may be excessive, and whether or not a cost may be unreasonable. In this rate case
10 the Commission must consider numerous relevant factors regardless of whether these costs
11 are related to Iatan construction, Iatan maintenance, Iatan fuel and purchased power or any
12 cost of constructing or maintaining Iatan plant.

13 **KCPL WITNESS BLANC**

14 Q. At page 5 of his rebuttal testimony KCPL witness Blanc discusses the Staff's
15 unexplained/unidentified adjustment and concludes that this adjustment is unsupported.
16 Do you agree?

17 A. No, the Staff believes it is unsupported by KCPL, not Staff. This lack of
18 support, or more specifically, KCPL's lack of compliance with its obligation under the
19 Experimental Alternative Regulatory Plan Stipulation And Agreement, at page 28,
20 Case No. EO-2005-0329 where KCPL agreed that it must develop and have a cost control
21 system in place that identifies and explains any cost overruns above the definitive estimate
22 during the construction period of Iatan 1 and Iatan 2.

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1 As it explains in its rebuttal testimony, it is KCPL's position that the tens of thousands
2 of documents that it produced over the last four years of construction are the documents that
3 do in fact identify and explain each cost overrun and it is up to the Staff to find the specific
4 identifications and explanations of the cost overruns in and through these documents.
5 However, these documents are nothing more than what would be expected of KCPL to
6 produce in the execution of projects costing \$2.4 billion. KCPL, however, committed to an
7 additional documentation requirement – that is for it to identify and explain each and every
8 cost overrun over its definitive estimate. However, KCPL has not complied with this
9 requirement.

10 Q. What are cost overruns?

11 A. The Staff has defined cost overruns as the amount of actual costs incurred that
12 exceed the sum of (1) the baseline budget plus (2) the contingency, plus (3) other cost areas,
13 where the actual costs incurred were less than the budget.

14 Q. At page 9 of his rebuttal testimony Mr. Blanc describes KCPL's Cost Control
15 System. Do you have any concerns with his description?

16 A. Yes. His description of KCPL's Cost Control System does not include a
17 description of any ability for KCPL to identify and explain any cost overrun above the
18 definitive cost estimate. If KCPL had this ability it should be a central feature of its
19 Cost Control System because this requirement was critical to the successful approval of
20 KCPL's Regulatory Plan and hence construction of the Iatan 1 AQCS and the Iatan 2
21 generating unit. All other features of KCPL's Cost Control System should serve this feature,
22 yet this feature is not even included in Mr. Blanc's description of KCPL's Iatan Cost
23 Control System.

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1 Q. Have you read KCPL's Cost Control System?

2 A. Yes. This document was received by the Staff in response to Staff Data
3 Request No. 399 in Case No. ER-2009-0089.

4 Q. Does KCPL's Cost Control System include any description of how it is
5 capable of identifying and explaining any cost overrun on the Iatan Project?

6 A. No. Below are the sections of KCPL's Cost Control System which describe
7 cost tracking. None of the language in the Cost Control System describes a need for or ability
8 to identify cost overruns and explain each cost overrun as KCPL is required to do per the
9 Regulatory Plan:

10 KCP&L's project cost control system involves continually monitoring
11 the accumulation of actual costs compared to the Control Budget so as
12 to determine whether the initial assumptions in the Project Definition
13 are still valid.

14 Simultaneous with the development of the Control Budget and the
15 Baseline Schedule, the Project Team will develop an overall Project
16 Controls regime capable of tracking the status of the Project's schedule
17 and cost.

18 Project Controls will be tailored to the specific Projects, and will
19 include effective analytical metrics that will provide management with
20 an accurate status report as to the Projects' progress on a regular basis.

21 At a minimum, these metrics will include Schedule and Cost
22 Performance Indices ("SPI" and "CPI") for major work categories and
23 the Project as a whole, as well as informational matrices that capture
24 and display specific and relevant aspects of schedule and cost
25 adherence.

26 Additionally, the following items will be tracked: cost variance percent
27 (CV%); schedule variance percent (SV%); cost variance in terms of
28 dollars; and projected cost at completion.

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1 Q. At page 9 of his rebuttal testimony Mr. Blanc says "To my knowledge, no
2 previous utility construction project in Missouri has had such an elaborate, sophisticated,
3 transparent cost control system in place as the one KCP&L has used for the Iatan projects. Is
4 the Staff aware of Mr. Blanc's experience with construction projects in Missouri?

5 A. Yes. From responses to Staff data requests the Staff notes that Mr. Blanc
6 began his employment with KCPL in 2005 when he was hired as an in-house attorney.
7 After four years as a KCPL in-house attorney, Mr. Blanc was promoted to
8 Senior Director - Regulatory Affairs. This would indicate that Mr. Blanc's experience with
9 utility construction projects in Missouri is extremely limited.

10 Q. Mr. Blanc states at page 9 of his rebuttal testimony that "If KCP&L's cost
11 control system is not adequate for Staff to perform its audit of Iatan 2, it is not clear to me
12 how Staff was able to audit projects built prior to Iatan 2." Please comment.

13 A. Problems that the Staff encountered in other major construction audits and how
14 the Staff approached those audits are set out in the Commission's Wolf Creek and
15 Callaway Reports and Orders. KCPL made a commitment in its Regulatory Plan which the
16 Staff sought as a means to address those prior problems. KCPL's failure to provide an
17 identification and description of cost overruns has been extremely burdensome on the Staff,
18 which the Staff had sought to address in the Regulatory Plan, and has prevented the Staff from
19 gaining an understanding of each and every cost overrun and having an adequate description
20 that explains the cost overrun. This is purely and simply the fault of KCPL.

21 Q. Mr. Blanc alleges at page 10 of his rebuttal testimony about some contact
22 between Staff and other utilities concerning KCPL's Cost Control System. Is the Staff aware
23 of any such contact?

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1 A. No. Mr. Blanc states "...it is my understanding that Staff has reached out to
2 other utilities in the state requesting that they implement cost control systems similar to the
3 one KCP&L used for the Iatan projects. That seems inconsistent with Staff's argument here
4 that KCP&L's system prevents it from doing its audit work." What is unclear is why
5 Mr. Blanc would make such a statement without providing the Commission with the facts and
6 circumstances surrounding this purported contact between Staff and other utilities discussing
7 KCPL's Cost Control System. I have asked each Staff individual who would likely have
8 knowledge of this contact and all have indicated that they do not know what Mr. Blanc is
9 referring to. I have also been advised that other Staff auditors assigned to other construction
10 projects have been contacted and have indicated that they do not know what Mr. Blanc is
11 referring to. The Staff by means of a Staff Data Request has inquired to Mr. Blanc as to the
12 details surrounding this alleged contact.

13 Q. Mr. Blanc also alleges at page 10 of his rebuttal testimony that Staff
14 "engineers' review of the Iatan projects has been largely cast aside as a 'non dollar
15 adjustment.'" Is there any truth to this allegation?

16 A. No. As he does throughout his testimony, Mr. Blanc just makes pejorative
17 statements against the Staff with very little or no explanation or support for his statements.
18 The full results of the findings and conclusions of the Staff engineers regarding the
19 Iatan Project Construction Audit were included in the Staff's August 6, 2010 and
20 November 3, 2010 Audit Reports. David Elliott, one of the Staff engineers who Mr. Blanc
21 refers to, is submitting surrebuttal testimony and addresses KCPL rebuttal testimony.

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1 Q. Mr. Blanc reaches a conclusion at page 11 of his rebuttal testimony that the
2 findings of the Staff's Operations Division are contrary to Staff's recommendation to disallow
3 every expenditure in excess of the Control Budget Estimate ("CBE"). Is he correct?

4 A. No. The Staff has made it quite clear to KCPL that the Commission's Utilities
5 Operations Division conducts "engineering reviews" and not audits. The members of the
6 Operations Division have made it very clear to other members of the Staff and KCPL that
7 they do not audit costs. Their review of change orders is a review of the engineering impacts
8 of the events and circumstances surrounding the change orders.

9 KCPL witness Brent Davis apparently understood the role of the
10 Commission's Utilities Operations Department and its engineering review. At page 9 of his
11 rebuttal testimony in this case he notes:

12 I believe that Mr. Elliott's section on page 28 of Staff's Report explains
13 it well. The Utility Operations Staff was examining the Iatan Project's
14 change orders to: (1) "understand the reason for the change at the point
15 of time when the change order was issued"; (2) determine whether the
16 change corrected an engineering-related problem, resulted in a better
17 design, or improved the operation or construction of the plant"; and
18 (3) "determine whether the change resulted in a safety concern, caused
19 unnecessary construction, or caused unnecessary duplication of
20 facilities or work." See Staff's Report 14 at p. 28, ln. 18-24.

21 Mr. Davis testified that he understood Mr. Elliot did not look at costs on the Iatan
22 construction project. While Mr. Davis states Mr. Elliot did not "intensely" review change
23 orders for costs, it is clear to me that Mr. Elliot did not review change orders to audit costs in
24 any manner whatsoever. At page 9 of his rebuttal testimony Mr. Davis states:

25 Mr. Elliott described to me on multiple occasions that he only studied
26 change orders related to "engineering issues" which he defined as
27 scope related in some manner. Mr. Elliott did not intensely review
28 change orders for indirect costs once he determined their cause.

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1 Q. Does Mr. Blanc testify quite clearly that while it continues to refuse to do so, it
2 is quite capable of complying with its Regulatory Plan?

3 A. Yes. For example at page 11 of his rebuttal testimony he states " It might not
4 be on a single piece of paper, as Staff intimates it should be, but KCP&L's cost control
5 system contains all the data one needs to identify and explain costs incurred in excess of
6 the CBE." If this is true, the Staff wonders why KCPL not provide such a document to the
7 Staff, a document that identifies and explains these cost overruns. When I refer to a
8 document, I do not mean a one page document. The Staff recognizes a document that
9 identifies and explains approximately \$200 million in cost overruns would probably be
10 multiple pages. Also Mr. Blanc states at page 13 that the creation of a document that lists and
11 describes each cost overrun may not be easy to create, but KCPL can create it:

12 Staff's request for "a list that shows the amount of each cost overrun
13 and an explanation of each cost overrun" supports my concern that
14 Staff has an overly simplistic understanding of what a cost control
15 system is or does. Iatan Report, at p. 34 (emphasis added). Staff
16 appears to want a single document, a "list" that "shows the amount of
17 each cost overrun and an explanation of each cost overrun" over the
18 December 2006 CBE. No such list exists, nor could KCP&L easily
19 create one for the Staff. (Emphasis added).

20 Mr. Blanc continues:

21 More importantly, that is not what a cost control system is or should be,
22 and it does not reflect KCP&L's obligation under the Regulatory Plan.
23 Furthermore, if such a list existed, there would be little audit work for
24 Staff to do.

25 Q. Do you have a comment on Mr. Blanc's assertion that if it provided the Staff
26 with a list of all cost overruns and an explanation of each cost overrun there would be little
27 audit work for the Staff?

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1 A. Yes. In Staff Data Request No. 583 in the instant case KCPL provided a
2 complete description of all of Mr. Blanc's education and experience as it relates to auditing:

3 Although Mr. Blanc has completed accounting classes that discussed
4 auditing generally, Mr. Blanc has not taken any specific training classes
5 on the auditing process or auditing utility costs. Mr. Blanc participated
6 in Staff's audit of the Iatan projects and KCP&L's other CEP projects.

7 Mr. Blanc's experience is principally in law and not accounting or auditing and he has
8 never completed any education in auditing and never participated in an audit as an auditor, yet
9 he expresses an opinion about what it would take to complete an audit such as the Staff has
10 undertaken.

11 If Mr. Blanc's point is that the Staff would have considerably less audit work to do if
12 it did have a list that identifies and explains every cost overrun, as it expected to have, the
13 Staff would agree to this point. As a result of KCPL's failure to comply with the Regulatory
14 Plan cost overrun documentation requirement, the Staff's construction audits and prudence
15 reviews have been made significantly more difficult in time and effort on the Staff.

16 Q. At page 12 of his rebuttal testimony Mr. Blanc states that the first time the
17 Staff told KCPL and the Commission that it believed KCPL "disregarded," or somehow failed
18 to satisfy its obligation in the Regulatory Plan to implement an adequate cost control system
19 was the Staff's November 3, 2010 Iatan Report. Is Mr. Blanc correct?

20 A. No. Mr. Blanc's complete statement is as follows:

21 Although Staff has requested and received on several occasions an
22 explanation as to how the cost control system works and how costs can
23 be tracked through the system, to my knowledge the November 3, 2010
24 Iatan Report is the first time Staff has told KCP&L, or more importantly
25 the Commission, that it believes KCP&L "disregarded," or somehow
26 failed to satisfy its obligation in the Regulatory Plan to implement an
27 adequate cost control system. Staff briefly discussed KCP&L's cost
28 control system in its August 6, 2010 report for Iatan 1, but Staff did not
29

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1 claim that KCP&L had disregarded or otherwise violated its
2 commitments under the Regulatory Plan. (Emphasis added)

3 Mr. Blanc also states at page 12:

4 I do not understand why Staff would wait until now to say that KCP&L
5 has not fulfilled its obligations under the Regulatory Plan concerning
6 the cost control system, especially since Staff appears to believe it
7 cannot complete its audit because the cost control system is inadequate.
8 Such a significant allegation should have been raised long before now,
9 for the Commission's sake as well as the Company's.

10 Mr. Blanc says to "his knowledge" but he does not appear to even have checked the
11 Staff Report of the Construction Audit/Prudence Review of Environmental Upgrades to
12 Iatan 1 and Iatan Common Plant, Case No. ER-2009-0089 filed on December 31, 2009. In
13 this Report, the Staff clearly and comprehensively explained that it "believes KCPL "failed to
14 satisfy its obligation in the Regulatory Plan to implement an adequate cost control system."

15 Staff Report of the Construction Audit/Prudence Review of Environmental
16 Upgrades to Iatan 1 and Iatan Common Plant, Case No. ER-2009-0089:

17
18 PAGE 5 - While Staff is not proposing a disallowance of the Iatan 1 AQCS
19 cost overruns not identified or explained by the change management system,
20 Staff cannot recommend inclusion of these amounts without identification and
21 corresponding examination. This problem was not anticipated because of
22 safeguards built into KCPL's Regulatory Plan. Unfortunately, these safeguards
23 failed to be fully implemented by KCPL.
24

25 PAGE 68 - The KCPL Regulatory Plan contained a provision that in Staff's
26 view were designed to facilitate an audit of cost overruns in the event any of
27 the Regulatory Plan projects exceeded their definitive estimate. The
28 KCPL Regulatory Plan contained a requirement that KCPL must develop a
29 definitive estimate and maintain a Cost Control System that identifies and
30 explains any cost overruns over this definitive estimate. After Staff's
31 experience with the construction audits of Wolf Creek and Callaway nuclear
32 stations, Staff understood the significance of a definitive estimate versus other
33 types of estimates that are available before a definitive estimate is developed.
34 Staff experienced the level of difficulty to track costs, especially in the event of
35 cost overruns, with a budget that lacked the specificity of a definitive estimate.
36 In the Wolf Creek and Callaway construction audits reconciliation packages
37 were created to identify and explain the cost overruns that occurred on those
38 projects. It was Staff's intent to avoid a repeat of that experience by making
39 current identification and explanations a feature of Regulatory Plan projects.

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1 KCPL's Comprehensive Energy Plan Construction Projects Cost Control
2 System was attached to the rebuttal testimony of Steven Jones as Schedule
3 SJ-1. Under section 3.1 Cost Control on page 8 of 30, it states the "The
4 Project team will develop a Definitive Estimate for each Project that will be
5 [sic] provide an analytical baseline for evaluating Project costs." At the end of
6 this paragraph it states that "The Definitive Estimate will be used to establish
7 each Project's Control Budget." Staff found that KCPL did not develop a
8 Definitive Estimate or a control budget estimate based on a Definitive Estimate
9 for the Iatan 1 AQCS segment. Staff found that KCPL failed to maintain a
10 Cost Control System that identifies and explains the Iatan 1 AQCS cost
11 overruns. Staff discovered that it would need an alternative approach to
12 identify the factors causing the cost overruns that would be less accurate and
13 more time consuming than the process Staff bargained for in the Regulatory
14 Plan. KCPL discovered that the Iatan 1 AQCS CBE would be exceeded within
15 eight months of its use. The Iatan 1 AQCS CBE began being used on the
16 Iatan Project on December 1, 2006. Iatan Project personnel were instructed to
17 use the change order process for any changes to the budget^{vii}. The July 2007
18 Iatan 1 AQCS Report noted that actual costs would exceed the Iatan 1 AQCS
19 CBE under the best scenario. Once the CBE was known to be exceeded, a
20 higher budget (reforecast budget) was needed for cost control for the
21 remaining portion of the Iatan 1 AQCS segment as well as serve as a real test
22 for the Iatan Project Cost Control System to be able to track cost overruns with
23 documentation to explain their justification. In addition, effort would be
24 needed to verify whether the Cost Control System would be able to identify
25 and explain cost overruns and was actually performing that function. KCPL
26 based its reforecast budget upon a listing of Risks and Opportunities (R&O)
27 items that KCPL began to itemize and estimate when Mr. David Price was in a
28 leadership position relative to the Iatan Project. These items were introduced
29 to the Iatan Project as an ongoing risk assessment of the Iatan 1 AQCS and
30 Iatan 2 segments. The R&O items were further developed and used to modify
31 the CBE by the aggregate impact of these estimates to determine a new Iatan 1
32 AQCS budget (aka current budget). Schedule 12 attached to this Report is an
33 exhibit 5 (209) from the Great Plains Energy's (GPE) acquisition of Aquila,
34 Inc. in Case Number EM- 2007-0374. This schedule shows the listing and
35 relative amounts for the R & O items used to create the current budget. The
36 actual costs charged to the Iatan 1 AQCS segment related to individual R&O
37 items were not captured, thus resulting in an inability in the Iatan Project Cost
38 Control System to identify the impact these items had, if any, on the Iatan 1
39 AQCS cost overruns. Since cost overruns occur when actual costs exceed
40 budget, a tracking system designed to identify and explain cost overruns needs
41 to capture the actual costs related to each item identified as causing the cost
42 overrun as well as identify the CBE treatment for these items. In some circles
43 of KCPL there are no cost overruns for the Iatan 1 AQCS because the actual
44 costs are expected to be less than the current or reforecast budget.
45

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1 Q. At page 15 of his rebuttal testimony Mr. Blanc takes issue with the Staff's
2 claim that KCPL failed to comply with its commitment in the Regulatory Plan and the Staff's
3 proposed adjustment to exclude all unidentified and unexplained costs above KCPL's
4 definitive estimate from Iatan 1 and Iatan 2 plant in service. Please comment on Mr. Blanc's
5 concerns.

6 A. Mr. Blanc's first issue is that the Regulatory Plan did not require KCP&L to
7 create the "list" Staff now insists it needs to complete its review of the Iatan projects. The
8 exact wording of the Regulatory Plan, Section III.B.1.q. entitled "Cost Control Process for
9 Construction Expenditures" states: "KCPL must develop and have a cost control system in
10 place that identifies and explains any cost overruns above the definitive estimate..."

11 The Staff's position is that if KCPL does have a cost control system in place that does
12 indeed identify and explain cost overruns, the main question that KCPL needs to answer is
13 why KCPL cannot produce a list, or a report, or a document that lists and explains these cost
14 overruns? And if it can produce a list (as Mr. Blanc testifies it can) why does KCPL continue
15 to refuse to produce such a list? It appears that KCPL is possibly holding out and not
16 providing this list as a matter of principle. It has been over a year since the Staff identified
17 this problem and the need for KCPL to provide this data. Mr. Blanc, while he testifies such a
18 list is not easy to produce; certainly KCPL could have produced this list in a period of
19 one year.

20 Mr. Blanc's second issue is that "prior to the November 3, 2010 Iatan Report, Staff did
21 not inform KCP&L, or more importantly the Commission, that KCP&L creating such a "list"
22 was critical to Staff's audit work." As I described earlier, this statement is not correct. The
23 Staff directly and explicitly notified KCPL and the Commission in its December 31, 2009

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1 Report of KCPL's failure to comply with the cost overrun documentation requirement of the
2 Regulatory Plan.

3 Mr. Blanc's third issue is that the Commission established monthly status hearings to
4 discuss discovery issues. The Staff did not consider this to be a discovery issue. The Staff
5 communicated its concern to KCPL in its December 31, 2009 Report. KCPL ignored that
6 Report and Mr. Blanc is not even familiar the overrun documentation concerns raised by the
7 Staff in that Report. The Staff, in effort to resolve the problem, actually put in data requests
8 asking KCPL to comply with the Regulatory Plan. KCPL did not refuse to provide an answer
9 to the Staff's data request. It did not object to the data requests, it just said in it believes it is
10 complying with the Regulatory Plan. As far as the Staff was concerned, this was not a
11 discovery dispute.

12 Q. At page 16 of his rebuttal testimony Mr. Blanc states that the
13 Commission's Utilities Operations Division did its audit work without such a list, as did
14 Kris Nielsen and Daniel Meyer, who discuss their audit work in their testimony in this case.
15 How do you respond?

16 A. As described above, the Commission's Utilities Operations Division did not
17 conduct a cost audit of either Iatan 1 or Iatan 2. The Staff has read the testimonies of KCPL
18 witnesses Nielsen and Meyer. The Staff notes that Dr. Nielsen limited himself to a prudence
19 evaluation and he did not conduct a construction audit or any type of cost audit. The Staff is
20 aware that Dr. Nielsen's review was limited and he not only did not review all cost overruns,
21 he did not even examine all costs of the Iatan construction projects, such as KCPL's decision
22 to sole source over \$20 million in Iatan project consulting services. Also, once he identified a

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1 cost as prudent, he made no attempt to identify how that cost should be treated for
2 ratemaking purposes.

3 Likewise, the Staff is not aware that Mr. Meyer did any type of construction audit or
4 even a prudence evaluation. The Staff's understanding is that Mr. Meyer was hired by
5 Schiff Hardin to assist it with construction management/project oversight and project controls
6 work. Regardless of whether or not Dr. Nielsen or Mr. Meyer could have or in fact did
7 identify and explain each cost overrun that is not the issue. It is KCPL's responsibility to
8 identify and explain each cost overrun. Merely stating that its consultants did it (which the
9 Staff takes issue with) or could have done it does not relieve KCPL of this responsibility.

10 Q. At page 18 of his rebuttal testimony Mr. Blanc states that the KCC, in its
11 recent order in KCPL's companion Kansas rate case to File No. ER-2010-0355 expressed an
12 opinion about Iatan 2 costing more than the December 2006 Control Budget Estimate. Did
13 Mr. Blanc present these KCC comments in a reasonable context?

14 A. No. Mr. Blanc correctly cites the KCC Order as follows:

15 Having now established the original cost estimate, it can be compared
16 to the final estimated costs of the plant. The Commission finds that this
17 comparison indicates that KCPL will have exceeded the "definitive
18 estimate," which means the "original cost estimate," by 18%, or \$288
19 million (whole plant). Given the magnitude of the project, the timeline
20 under which the project was constructed, and the range permitted for a
21 definitive type of cost estimate the Commission finds that this factor
22 does not indicate imprudence on the part of KCPL.

23 But what Mr. Blanc excluded from his rebuttal testimony if the section of the KCC
24 Order where the KCC directly explained that it had no choice but to make this determination
25 since it had nothing in the record as evidence to indicate whether or not this 18% indicated
26 imprudence or not.

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1 On Page 23 the KCC explained the basis for this statement was that it had nothing on
2 which to compare KCPL's 18% cost overrun estimate. Under Kansas law the KCC was
3 required to consider the percentage overrun on the project so it had to address it. The KCC
4 only ruled that this 18% did not indicate imprudence and it could not rule otherwise because it
5 did not have the in the case was any evidence to support whether or not this 18% indicated
6 imprudence.

7 The KCC ruled at page 23 of its November 22, 2010 ORDER: 1) ADDRESSING
8 PRUDENCE; 2) APPROVING APPLICATION, IN PART; & 3) RULING ON PENDING
9 REQUESTS in Docket No. 10-KCPE-415-RTS ("KCC Iatan Order"):

10 The Commission found under Factor 4 that the definitive estimate was
11 exceeded by 18%. What is lacking in the record, however, is whether the
12 other plants in the comparative analysis exceeded their original, or
13 definitive cost estimates, and by how much. Thus, the Commission has
14 nothing to compare to the 18% overrun figure. Since Staff and CURB
15 have the burden to prove imprudence, the Commission finds, due to a
16 failure of proof, that this factor does not indicate imprudence on the part of
17 KCPL.

18 Q. Mr. Blanc at page 19 of his rebuttal testimony continues his quote of the KCC
19 Iatan Order describing how the KCC said KCPL built a strong and credible case its actions
20 were not imprudent. What are your comments on this testimony?

21 A. Unlike the Missouri Commission which has no specific set of restrictions on
22 the determination of what costs it can decide to include or exclude from the Iatan construction
23 project from a ratemaking standpoint, the KCC decided to limit its review of Iatan
24 construction cost to a set of specific factors included in Kansas law. While the parties to the
25 case argued against such limitation, the KCC explained why it decided to limit its review.
26 This explanation begins at page 11 of its Order under Section A, Prudence and subsection 1.
27 The Test for Determining Prudence:

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1 Of interest, some briefs indicated that K.S.A. 66-128g did not set the legal standard
2 for determining prudence in this case; instead they offered, for example, a view that
3 the term prudence used in this statutory scheme was "borne from the definition of the
4 word 'prudence,' which ... is essentially a negligence standard based upon accepted
5 industry practice."
6

7 However, the language offered by the parties redefining prudence does not appear in
8 the statutes, the Commission's Wolf Creek Order, or the *Kansas Gas & Electric* case
9 interpreting those two authorities. In fact, the Wolf Creek Order specifically refers to
10 K.S.A. 66-128g as a "statutory mandate" that " ... also provides notice to the utilities
11 of the general *standards* to be used."
12

13 We also note that parties split hairs over the terms "factor," "guideline," and
14 "standard," which are used interchangeably in the Wolf Creek Order and the
15 *Kansas Gas & Electric* case interpreting and affirming that Order. In our view that
16 approach amounts to making a distinction without a difference when it comes to
17 applying the express and specific mandate in K.S.A. 66-128g. Under a common
18 ordinary meaning approach, factor is defined as a "cause that contributes to a
19 particular result"; guideline is defined as "a statement of policy or procedure"; and
20 standard as "an accepted measure of comparison for qualitative or quantitative
21 value." Candidly, we see K.S.A. 66-128g as a statute that has all of these
22 definitions working within a self-contained and unambiguous framework.
23

24 Therefore, after reviewing all of the briefs and the arguments of the parties, the
25 Commission concludes, as to Issue I and Issue II, that K.S.A. 66-128g, as
26 interpreted by the Kansas Supreme Court in *Kansas Gas & Electric*, and within the
27 context of K.S.A. 66-128 more generally, does apply to the non-nuclear
28 construction projects referred to as Iatan I and Iatan II in this case. That statute is
29 "devoted to a recitation of the various factors to be considered by the Commission
30 in making the determination of 'prudence' or lack thereof." Some of the factors in
31 that statute will bear on our decision more than others; however, the only factor
32 we find clearly irrelevant is (a)(7), which addresses decommissioning, waste
33 disposal, and clean up costs.
34

35 In reaching this conclusion, we see no ambiguity in the statutory scheme at issue
36 here concerning prudence, nor has any party raised such a claim. K.S.A. 66-128 g
37 is unequivocal when it states that:
38

39 [t]he factors which shall be considered by the commission in making the
40 determination of "prudence" or lack thereof in determining the
41 reasonable value of electric generating property, as contemplated by this
42 act shall include *without limitation* the following [12 enumerated items.]
43 (Emphasis added).
44

45 Likewise, the Court in *Kansas Gas & Electric* was also clear, stating twice in the
46 opinion that there was no need to look beyond the common, ordinary meaning of
47 "prudence" or lack thereof, as used in the statutes. The Court said:

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1 [K.S.A. 66-128g(a)(12)], in effect, states that 'prudence or lack thereof
2 means as that term is commonly used. Black's Law Dictionary 1104
3 (5th ed. 1979) defines "prudence" as "carefulness, precaution,
4 attentiveness and good judgment."
5

6 And it later said:
7

8 As noted heretofore in this opinion, the word 'prudence' has a common
9 and ordinary meaning. The various factors listed in K.S.A. 66-128g(a)
10 provide sufficient guidelines for determining prudence which obviates
11 the need for a definition of the term.

12 Based on the above, we reject the parties' attempts to inject an industry standard of
13 prudence or a requirement for a causal link between the alleged imprudent act and
14 an otherwise avoidable cost. We also reject the use of rewritten negligence
15 standards. These points are not included in the express statutory "guidelines for
16 determining prudence" as those are listed in K.S.A. 66-128g(a)(1-11); nor should
17 they override the very basic definition pertaining to the catchall provision in
18 (a)(12). [Footnotes omitted]

19 The KCC concluded this discussion with a very clear statements of how they will restrict
20 their evaluation of the evidence in the case:
21

22 . . . Therefore, we shall review the evidence submitted on the prudence issue by
23 applying 10 of the 11 factors in the statute, and then the catchall Factor 12, in a
24 straightforward, methodical manner. We will also rely on the "known and
25 measurable" standard, a benchmark embedded in traditional ratemaking.
26 [Footnote omitted]

27 Q. Mr. Blanc at page 19 of his rebuttal testimony states that the KCC hired an
28 outside prudence consultant, Walter Drabinski of Vantage Consulting, a witness in this case,
29 to conduct a construction audit and prudence review of the Iatan Construction Projects. He
30 also states that in its Order the KCC rejected its own expert's analysis in part because it
31 "hinges on a hindsight analysis, which is clearly prohibited." Please comment.

32 A. The Staff understands that Mr. Drabinski was hired by the Staff of the KCC
33 and not by the Commissioners of the KCC.

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1 Q. While Mr. Blanc is incorrect in stating that the KCC rejected the analysis of its
2 own expert, is it true that KCPL did in fact reject the analysis of its own expert,
3 Dr. Kris Nielsen of Pegasus Global?

4 A. Yes. In its Order, the KCC noted that KCPL's own expert testified that KCPL
5 should accept a \$20.4 million imprudence disallowance due to the engagement of Welding
6 Services, Inc. ("WSI") and the removal/readdition of an auxiliary boiler as described in
7 Dr. Nielsen's testimony. The Staff notes that in its September 16, 2010 POST HEARING
8 BRIEF OF KANSAS CITY POWER & LIGHT COMPANY in Docket No. 10-KCPE-415-
9 RTS, KCPL at page 111, paragraph 274, KCPL supported a finding of the Commission
10 adopting Dr. Nielsen's recommendation for a disallowance associated with the costs of the
11 auxiliary boiler, but KCPL rejected the testimony of its own prudence expert with respect to
12 the disallowance due to the engagement of the services of WSI.

13 Q. Mr. Blanc states at page 20 of his rebuttal testimony that his
14 "general observation is that Staff's criticisms are based on the incorrect notion that KCP&L
15 should procure legal services in the same manner it procures offices supplies or some other
16 fungible commodity." What are your comments on this statement?

17 A. The Staff has never had such a "notion" and has certainly never reflected such
18 a notion to KCPL in its reports or testimony on the Iatan construction projects.

19 Q. Did the Staff have a concern that KCPL may misunderstand and misinterpret
20 some of its statements and adjustments in its December 31, 2009 Staff Report?

21 A. Yes. In July 2010, I submitted Staff Data Request No. 187 in this case to
22 KCPL asking for a meeting to give KCPL an opportunity to meet and discuss the Staff's
23 December 31, 2009 Staff Report concerning the Iatan construction project, including its

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1 adjustments. KCPL responded on July 30, 2010, seven months after the Staff filed its
2 December 31, 2009 Report, that it was still evaluation the report and rejected the Staff's
3 request for a meeting:

4 Response to Hyneman Chuck Interrogatories – Set MPSC_20100719
5 Date of Response: 07/30/2010

6 Question No. :0187 Please arrange for a meeting time and place
7 between the Staff and KCPL to discuss the status of KCPL's position
8 regarding all of the items addressed in the Staff's December 31, 2009
9 Staff Report concerning the Iatan construction project, including Staff's
10 proposed adjustments to the Iatan 1 workorder. The Staff requests that
11 the meeting be held as soon as possible.

12 RESPONSE: KCPL is still evaluating this report, and expects to file its
13 position in the Rebuttal Testimony in the pending KCPL rate case and
14 therefore a meeting would not be helpful at this time.

15 However, if Staff would like to meet and ask questions of the Company
16 about the report, we would be happy to facilitate such a meeting. In
17 order to do so, we would want to know the nature of the questions so
18 we would have the right personnel available.

19 Q. At page 27 of his rebuttal testimony Mr. Blanc states that "Simply put, there
20 are not many firms in the United States that have significant experience with projects as large
21 and complex as the Iatan projects". Did Mr. Blanc do any analysis on which to base this
22 statement?

23 A. No. To support testimony that there are not many firms in the United States
24 that have experience with large projects, Mr. Blanc relied upon his general knowledge. When
25 asked what analysis did Mr. Blanc conduct to arrive at this conclusion, KCPL responded to
26 Staff Data Request No. 611 that "Mr. Blanc did not conduct a specific analysis to arrive at his
27 conclusion. Instead, Mr. Blanc relied upon his general knowledge that there have not been

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1 many utility projects as large and complex as the Iatan projects since the last generation of
2 nuclear plants were completed about 30 years ago.”

3 Q. At page 28 of his rebuttal testimony Mr. Blanc states that “Schiff Hardin’s
4 team for the Iatan projects possesses the requisite skill, knowledge and experience to handle a
5 project as large and complex as the Iatan projects. Few firms in the United States have
6 significant experience with these types of projects.” Did Mr. Blanc do any analysis on which
7 to base this statement?

8 A. No. Again to support this testimony that there are only a few firms in the
9 United States with experience similar to Schiff Hardin, Mr. Blanc did not do any analysis. He
10 simply relied upon his general knowledge. (KCPL response to Staff Data Request No. 611).

11 Q. Mr. Blanc takes issue with the Staff’s estimation of the classification of
12 Schiff Hardin work as legal and non-legal. Does Mr. Blanc appear to understand the Staff’s
13 Schiff Hardin audit adjustment?

14 A. No. There appears to be a lack of understanding that the Staff hoped to
15 address when it requested a meeting with KCPL in July 2010 to answer any question KCPL
16 may have on the Staff adjustments. Instead KCPL decided to write testimony about Staff
17 adjustments it apparently does not understand. At page 30 of his rebuttal testimony Mr. Blanc
18 states “[i]n Staff’s disallowance workpapers, they assign the project control work (estimated
19 at 80%) to four specific Schiff Hardin employees . . .” This statement is completely wrong.
20 Nowhere in the Staff’s Report or in the Staff’s workpapers does the Staff assign any
21 percentage to project controls. The Staff’s allocation is to legal work (20 percent) and
22 non-legal or Project Management (80 percent).

23 Q. Was the Staff very clear on this point in its November 3, 2010 Report?

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1 A. Yes. The Staff's workpapers made no mention of or reference to
2 "project controls." The Staff, at page 80 of its Report made the basis of this classification very
3 clear:

4 From the description of the Schiff roles and responsibilities provided
5 by Mr. Downey, and the description of the work performed by Schiff in
6 its monthly invoices, the Staff made a determination that 80 percent of
7 the work performed by Schiff employees were related to construction
8 project management, including project controls. The remaining 20
9 percent related to legal and paralegal services.(Emphasis added).

10 Q. At page 31 of his rebuttal testimony, Mr. Blanc states his belief of how total
11 Schiff Hardin billed hours have been distributed if only the hours incurred by Schiff Hardin
12 personnel (excluding subcontractors) had been considered as Iatan Oversight (32%),
13 Iatan Project Control (10%), Contracts (10%), Contract Administration (46%) and other (2%).
14 Do you believe this allocation is accurate?

15 A. No. It does not appear to be accurate and it is based solely on cost categories
16 established by Schiff Hardin and not by KCPL. First, this breakdown does not include a
17 category for legal work such as providing legal advice to KCPL. It appears this legal work is
18 buried in the other categories that would be classified as non-legal project management-type
19 work. Also, from a review of Schiff Hardin invoices, the Staff notes that one Schiff Hardin
20 employee who has been working on the Iatan construction projects for the last four years has
21 a job title as Project Controls Analyst. However, much of hours billed by this employee are
22 categorized as Project Oversight instead of Project Controls and Mr. Blanc appears to classify
23 Project Oversight services as legal services. It is not clear how a non-attorney project controls
24 analyst could be performing services categorized as legal services. Clearly this is not

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1 appropriate and, among other problems, significantly overstates the portion of Schiff work
2 that could legitimately be considered legal services.

3 On October 30, 2009, KCPL charged KCPL \$660 for one attorney with very limited
4 experience for 2 hours to review, analyze and revise KCPL's 2009 3rd Quarterly Report to
5 the Commission. It is not clear why such a review by a Schiff Hardin attorney would be
6 required in the first place and it certainly is not a cost that would be required to build Iatan 2.
7 Nonetheless this is a cost KCPL paid to Schiff Hardin for project oversight. Assuming this
8 Quarterly Report review is considered legal work by KCPL, it is an inappropriate
9 classification. Any such review of Construction-related reports should be handled by KCPL
10 with an interface with project controls personnel to verify KCPL schedule and cost
11 information. Also, if a legal review was necessary, it could easily be handled by KCPL's
12 in-house legal staff at a much lower cost.

13 Q. Did the Staff clearly explain how it arrived at its classification of Schiff Hardin
14 project management and legal work?

15 A. Yes. In its November 3, 2010 Report the Staff explained that in his direct
16 testimony in this case, KCPL's President and Chief Operating Officer Mr. William Downey
17 explained at pages 8 and 9 why he hired Schiff Hardin. Mr. Downey described how in
18 August of 2005, KCPL retained Schiff Hardin to perform a number of services on KCPL's
19 behalf. Mr. Downey described the following services provided by Schiff Hardin:

- 20 1. Review and validate the essential milestone dates and critical path activity
- 21 2. Provide procurement advice regarding potential contracting methods
- 22 3. Development of and procurement of the goods and services
- 23 4. Provide project oversight and reporting to the Senior Management
- 24 5. Developing appropriate and industry standard project controls standards and
25 metrics

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1 6. Development of policies and procedures for the cost and schedule management
2 of the CEP Projects.

3 Q. Does KCPL have a contract with Schiff Hardin?

4 A. Yes. KCPL and Schiff Hardin entered into a contract dated January 7, 2007
5 outlining Schiff Hardin's roles and responsibilities and primary functions (Response to Staff
6 Data Request No. 887). ** _____
7 _____

8 1. _____
9 _____

10 2. _____

11 3. _____
12 _____

13 4. _____
14 _____

15 5. _____

16 6. _____
17 _____

18 7. _____

19 8. _____

20 9. _____

21 10. _____
22 _____

23 11. _____
24 _____

25 12. _____
26 _____

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28 _____

29 13. _____
30 _____

31 14. _____
32 _____ **

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1 A more detailed description of the services that Schiff Hardin provides is described by
2 Schiff Hardin itself in its contract with KCPL, which is attached as Schedule 1 to this
3 surrebuttal testimony. This contract which described Schiff Hardin's duties and
4 responsibilities in great detail, along with summary descriptions of Schiff Hardin's
5 responsibilities on the Iatan construction contracts by Mr. Downey, the KCPL executive who
6 personally hired Schiff Hardin, provides full and complete documentation on which to
7 understand Schiff Hardin's assignments on the Iatan 1 and Iatan 2 construction contracts.
8 There is very strong support for the Staff's 80 percent allocation of Schiff costs to project
9 management duties and 20 percent to legal services. If this allocation is to be criticized, it
10 should be criticized in the fact that it understates the amount of work that should be classified
11 as construction project management in nature as opposed to legal services in nature.

12 Q. In his rebuttal testimony starting at page 31, Mr. Blanc spends considerable
13 effort criticizing Staff's work in attempting to determine a fair and reasonable rate for the
14 work charged by Schiff Hardin to KCPL on the Iatan construction projects. Why was it even
15 necessary for the Staff to spend a considerable amount of time and effort to arrive at a fair and
16 reasonable rate?

17 A. KCPL failed to make any effort to justify the reasonableness of the hourly rates
18 charged to KCPL by Schiff Hardin employees and the independent construction project
19 management subcontractors hired by Schiff Hardin to work on the project. The Staff, in an
20 attempt to reduce the possibility that unjust, inappropriate, and unreasonable charges would
21 get charged to KCPL's customers, decided to make the considerable effort in time to arrive at
22 a dollar adjustment to the Schiff Hardin charges that, if made, will result in a higher
23 likelihood that excess costs for Schiff Hardin services will be not charged to KCPL's

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1 customers. The Staff is clearly convinced that Schiff Hardin's rates are excessive and
2 unreasonable and Staff has an equal concern that there was even the possibility that Schiff
3 Hardin provided services for KCPL for work that does not appear to be reasonable or
4 necessary for work on the Iatan construction projects and/or that, if necessary, KCPL
5 personnel could have done at a much more cost-effective manner.

6 Q. Can you further respond to Mr. Blanc's rebuttal testimony regarding the Staff's
7 Schiff Hardin adjustment and provide an example to support the Staff's position?

8 A. Yes. Since March 2006 when he signed a contract with KCPL, KCPL
9 witness Steve Jones was an independent contractor working on Iatan Procurement issues.
10 During the Iatan Construction Project Mr. Jones switched employers from KCPL to
11 Schiff Hardin and changed hourly rates from ** ____ ** per hour to ** ____ ** per hour.
12 Mr. Jones continues to work as an independent contractor and continued to work on the Iatan
13 project, the only difference is that he charged the Iatan project ** ____ ** more per hour
14 (an increase that is more than his hourly rate at KCPL). Schiff Hardin signed an independent
15 contractor contract with Steve Jones on June 12, 2009 (see Schedule 2, "Schiff & Jones
16 contract").

17 Q. Did you review the Schiff & Jones contract?

18 A. Yes.

19 Q. Do you have any concerns with the work performed by Mr. Jones as a
20 Schiff Hardin contractor?

21 A. Yes. In the contract the only duties and responsibilities assigned to Mr. Jones
22 by Schiff Hardin is to "Report directly to Kansas City Power & Light's VP of Administrative
23 Services and Vice President Regulatory Affairs to provide procurement and regulatory

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1 services for Kansas City Power & Light's Comprehensive Energy Plan Projects". In a review
2 of the work performed by Mr. Jones for Schiff Hardin in August 2009 shows that Mr. Jones
3 spent 45 hours per week for four weeks at ** ____ ** per hour working on "data requests,"
4 "white papers" and "change management notice and notification." This was the extent of the
5 description of Mr. Jones' work on which KCPL paid over \$50,000 in the month of August
6 2009. It is not clear to the Staff how this work provided any value to the Iatan Construction
7 Project.

8 Q. Does the Staff have a concern with the similar level of costs for other
9 Schiff Hardin independent contractors that provided services to KCPL?

10 A. Yes. Given the thousands of hours that Schiff Hardin billed KCPL for work
11 performed by independent construction project management subcontractors, and this
12 excessive Schiff Hardin "overhead and profit" charge, KCPL's customers would clearly be
13 charged for costs which are not fair and reasonable without the Staff's proposed adjustment.

14 Q. Do you know of any reason why KCPL could not hire its own project controls
15 personnel for the project instead of going through Schiff Hardin and pay an excessive
16 Schiff Hardin overhead and profit rate?

17 A. No. I can see of no reason why KCPL had to go through Schiff Hardin to hire
18 project controls and project management consultants. The Staff believes this action on the
19 part of KCPL was not reasonable.

20 Q. Are you aware whether Dr. Nielsen addressed this issue in his
21 prudence review?

22 A. I do not believe he addressed this issue.

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1 Q. Mr. Hyneman, in addition to the Staff, did the KCC Commission have serious
2 concern about the expenses charged by Schiff Hardin to KCPL?

3 A. Yes. At page 94 of its Order, the KCC noted that it found the expenses KCPL
4 was requesting for KCPL to be particularly troubling and expressed serious concern about
5 hourly rates charged by Schiff Hardin.

6 The Commission finds expenses requested for Schiff Hardin
7 particularly troubling. This firm served KCPL in several roles. One
8 attorney from Schiff Hardin, Kenneth M. Roberts, testified at the
9 hearing about advice this firm gave KCPL's management related to
10 construction projects, suggesting the firm acted as a consultant. But a
11 significant number of exhibits in the record reflect deleted material
12 based upon KCPL's attorney/client privilege with Schiff Hardin. No
13 attorney from Schiff Hardin entered an appearance in this proceeding,
14 but Roberts and at least one other attorney were present during the first
15 week of the hearing.³⁵⁰ Schiff Hardin invoices confirm the
16 hourly rates for its attorneys exceed those for experienced attorneys in
17 the Kansas City metropolitan area. Roberts testified his hourly rate was
18 \$550.³⁵¹ Recently, the local hourly rate for an experienced attorney in the
19 Kansas City metropolitan area with specialized expertise was
20 determined to be \$295.³⁵² The highest hourly rate for the most
21 experienced attorney representing KCPL from the Kansas City
22 metropolitan area in this proceeding is \$390. Unfortunately, the record
23 is not adequate to allow the Commission to consider whether adopting
24 a "fee customarily charged in the locality for similar legal services" is
25 appropriate for this case, as allowed in KRPC 1.5(a)(3), and, if
26 appropriate, to determine that rate.³⁵³

27 Despite its concerns about Schiff Hardin hourly billing legal rates, the KCC
28 Commission stated it was restricted by the lack of evidence in the case to make any
29 significant adjustment.

1 **KCPL WITNESS DOWNEY**

2 Q. At page 14 of his rebuttal testimony KCPL witness Downey describes KCPL's
3 position as it relates to the costs KCPL incurred and charged to the Iatan 1 construction
4 project as a result of the May 23, 2008 crane accident. Please summarize Mr. Downey's
5 position on this issue.

6 A. Mr. Downey's position is simple. Although he states in his rebuttal testimony
7 that "KCPL does agree that it was ALSTOM who was responsible for the crane accident,"
8 he wants KCPL's customers to pay for this accident.

9 Q. Does Mr. Downey indicate a reason why he wants KCPL's ratepayers to
10 bear the burden paying for the Crane Accident caused by Alstom?

11 A. Yes. At page 14, line 16 he states that KCPL has tried to get Alstom to pay for
12 the cost of the accident Alstom caused, but so far KCPL has been unsuccessful.

13 Q. If the Commission accepts the Staff's proposed adjustment to not include the
14 costs related to the Crane Accident in Iatan 1 construction costs would the Commission create
15 an incentive for KCPL to pursue recovery of these costs?

16 A. Yes. If these costs are initially absorbed by KCPL's shareholders, one would
17 think that KCPL would aggressively pursue recovery of these costs.

18 Q. If the Commission rejects the Staff's proposed adjustment and allows KCPL to
19 include the costs related to the Crane Accident in Iatan 1 construction costs would there be a
20 similar incentive for KCPL to pursue recovery of these costs?

21 A. No. If the Commission permits KCPL to recover the costs from KCPL's
22 ratepayers, there will be no incentive at all for KCPL to pursue recovery of these costs from
23 Alstom. These costs will be already charged to plant in service and KCPL will be earning a
24 profit on these costs.

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1 Q. At page 23, line 22 to page 24, line 2 of his rebuttal testimony Mr. Downey
2 describes Alstom's position that ** _____

3 _____

4 ** Please comment.

5 A. ** _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____ **

14 Q. At page 24 line 22 of his rebuttal testimony Mr. Downey states that KCPL and
15 Alstom ** _____ ** Is the Staff seriously concerned about this
16 action by KCPL?

17 A. Yes. The Staff's concern is based on the fact that whenever ** _____

18 _____

19 _____

20 _____

21 _____

22 _____

23 _____ **

Surrebuttal Testimony of
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1 Q. At page 24, line 6 of his rebuttal testimony, Mr. Downey states that KCPL
2 agrees that "to the extent it does recoup some of the costs it incurred related to the
3 Crane Incident from Alstom; KCPL will credit that money back to the cost of the plant."
4 Is this a reasonable proposal?

5 A. This is not a reasonable or appropriate offer. KCPL is offering not to double
6 recover the costs of the Crane Accident.

7 **KCPL WITNESS DOWNEY**

8 Q. At page 48 of his rebuttal testimony KCPL witness Downey describes his
9 concern with the Staff's Schiff Hardin Adjustments. Mr. Downey seems particularly
10 concerned with what he believes was an inordinate amount of time examining Schiff Hardin.
11 He also seems to indicate that the approximate \$20 million that KCPL spent on Schiff Hardin
12 was immaterial to the cost of Iatan Project's Budget. He states that the Staff's concern about
13 Schiff Hardin's costs seems "strange and hollow" and he calls on the Staff to further explain
14 why it "targeted" Schiff Hardin and other corporate expenses and not the Iatan Construction
15 Project itself. Please comment.

16 A. The Staff did spend a significant amount of time on the Schiff Hardin costs,
17 but the sole reason for this time investment was the manner in which KCPL procured the
18 services provided by Schiff Hardin. There is nothing unusual about this area of the Staff's
19 audit or any of the areas of the Staff's construction audit. Other than the Hawthorn 5 rebuild,
20 there have not been baseload generating units constructed or owned in part by Missouri
21 regulated electric utilities that have been constructed since the Callaway and Wolf Creek
22 nuclear units. The facts are that KCPL hired Schiff Hardin based on a phone call
23 recommendation of Mr. Downey's former boss at Commonwealth Edison, Mr. Tom Maiman.

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1 Also, KCPL paid \$20 million dollars to Schiff Hardin without ever doing any analysis
2 whatsoever of the rates charged by Schiff Hardin or ever soliciting any bids or proposals for
3 any other firm capable of providing the same or similar services as Schiff Hardin.

4 KCPL did not determine a fair and reasonable rate for the services that ultimately were
5 provided by Schiff Hardin. The Staff was forced to do so and it did take a considerable
6 amount of time and effort on the Staff's part. In fact, the exact processes and procedures the
7 Staff went through to determine a fair and reasonable rate in making this adjustment are very
8 similar to what KCPL should have done in procuring the construction project management
9 and legal services of the type provided by Schiff Hardin.

10 Q. At page 48 of his rebuttal testimony Mr. Downey accuses the Staff of
11 targeting Schiff Hardin and other corporate expenses. Does he explain what he means by
12 targeting?

13 A. No.

14 Q. Did the Staff treat other KCPL Iatan Project consultants in the same manner
15 it treated Schiff Hardin?

16 A. Yes. The Staff treated the costs for the project management consulting firm
17 Cushman & Associates in the exact same manner as it did Schiff Hardin. KCPL hired
18 Cushman & Associates without any competitive bids and paid excessively high rates for these
19 services. Because Cushman & Associate's time on the Iatan construction projects was limited
20 and did not involve legal fees, the amount of time the Staff had to devote to the discovery,
21 research and other audit procedures to determine whether or not to make a cost adjustment
22 was not as significant as the time required for the Schiff Hardin adjustment. Another factor
23 that made the time required for the Cushman & Associates adjustment less than for the

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1 Schiff Hardin adjustment was that unlike Schiff Hardin, KCPL did not redact a significant
2 amount of documentation provided in data request responses. However, the audit process and
3 the adjustment for both Cushman & Associates and Schiff Hardin were exactly the same.

4 Q. At page 48, line 6 of his rebuttal testimony KCPL witness Downey states that
5 the Staff had complaints about Schiff Hardin. Do you recall the Staff making any
6 "complaints" about Schiff Hardin?

7 A. No. Mr. Downey did not identify the specific complaints and I am not sure
8 what he is referring to in his testimony.

9 Q. Also at page 48, lines 6-8 of his rebuttal testimony KCPL witness Downey
10 states that the Staff never once ventured into whether or not Schiff Hardin performed services
11 of value to the Iatan Project and Staff's entire focus was on how much Schiff Hardin was paid
12 for its work. Please comment on these statements.

13 A. I do not know the basis of Mr. Downey's statement that the Staff never
14 ventured into whether or not Schiff Hardin performed valuable services. I do agree that the
15 Staff's primary focus on Schiff Hardin was its cost. The Staff was required to have a
16 high-level focus on Schiff Hardin's cost because it was apparent to the Staff that KCPL did
17 not have any concern at all about the cost it was paying to Schiff Hardin and charging to the
18 Iatan construction projects. The Staff welcomes any evidence whatsoever that KCPL can
19 produce that shows that KCPL had any concern about the cost Schiff Hardin charged KCPL
20 for the period 2005 through 2010. The Staff searched for such documentation and engaged in
21 significant discovery with KCPL in an attempt to obtain this information without success.

22 Q. Did the Staff have any concerns about Schiff Hardin's performance on the
23 Iatan projects?

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1 A. Yes. In early 2007 the Executive Oversight Committee (EOC) asked Strategic
2 Talent Solutions ("STS", a consultant often used by KCPL for personnel matters) to conduct
3 an assessment of the construction project effectiveness due to ongoing concerns project team
4 relationship issues and factions developing at the construction site. These problems led to
5 concerns about the Project Team's effectiveness. In May 2007 STS issued a report entitled
6 Construction Project Effectiveness Kansas City Power & Light May 2007 ("STS Report").
7 One of the key findings by STS was a lack of alignment among executives in charge of the
8 project:

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Surrebuttal Testimony of
Charles R. Hyneman

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12 Q. Did the Staff have any concerns about Schiff Hardin's behavior that was
13 consistent with the findings in the STS Report?

14 A. In response to Staff Data Request No. 728.1, the Staff reviewed
15 communications documentation between KCPL and Carl Marano. Mr. Marano was hired by
16 KCPL to assist its Internal Audit department with certain audit work, primarily the Alstom
17 Contract audit. In this documentation provided by KCPL the Staff noted that ** _____

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1 **KCPL WITNESS DOWNEY**

2 Q. Have you read the comments of KCPL witness Downey as it relates to the
3 July 18, 2008 ALSTOM Unit 1 Settlement Agreement (Unit 1 Settlement Agreement) at
4 pages 3 through 5 and 24 through 39 of his rebuttal testimony?

5 A. Yes, I have.

6 Q. What is your overall impression of his rebuttal testimony?

7 A. In his rebuttal testimony Mr. Downey explains KCPL's decisions on the
8 Iatan Unit 1 Settlement Agreement as it relates to the overall strategic impact on the Iatan 1
9 and Iatan 2 construction projects. Mr. Downey describes in his view how KCPL making a
10 payment of \$22 million to settle Alstom's claims against KCPL and other contractors and
11 forgoing a potential \$22 million in liquidated damages (damages KCPL believed it incurred
12 and presumably is included in the cost of the project) is in the best interests of KCPL.
13 The Staff does not characterize KCPL's decision to enter into a settlement agreement with
14 Alstom as imprudent. However, KCPL's decision to charge all of the paid claims and, in
15 essence, the forgone liquidated damages to the project in a manner that the costs are to be
16 recovered from Missouri retail ratepayers is not reasonable, just, or appropriate.

17 The key question when it comes to this settlement is, is it reasonable, just, or
18 appropriate for Missouri retail ratepayers to pay the settlement or for some other entity, such
19 as the contractors who were at fault and caused the increased costs, or KCPL whose
20 inappropriate, unreasonable or imprudent actions may have resulted in the increased costs that
21 formed the basis of the Alstom Unit 1 Settlement? According to KCPL it is its customers
22 who should bear the cost of this settlement. The burden is not shared by Alstom because they
23 got a check for \$22 million and they got out of a potential \$22 million payment in liquidated
24 damages. The burden is not shared by KCPL because it is seeking to charge all of the cost of

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1 the \$22 million payment to Alstom and the \$22 million in Alstom-caused damages to the
2 Iatan 1 construction projects. The burden is not shared by Burns & McDonnell, who the Staff
3 found bears substantial responsibility for much of Alstom's claims. No, none of these parties
4 are harmed. The only party that is harmed is the party that has to pay these costs – KCPL's
5 regulated ratepayers if KCPL prevails. As the Staff pointed out in its November 3, 2010
6 Report, KCPL made no attempt to determine who was responsible for these claims. KCPL
7 just decided to pay the claims off, wipe the slate clean and move on. The Staff does not
8 believe KCPL's ratepayers should bear the burden of these costs.

9 Q. Are you stating that this issue is more of a cost allocation issue than an
10 imprudence issue?

11 A. Yes. It is quite possible that some of the costs of the settlement are reasonable,
12 prudent, and appropriate to include in the cost of Iatan 1. The Staff made this clear in its
13 November 3, 2010 Report. However, KCPL made no attempt to make a proper allocation of
14 costs and the Staff does not have the documentation required to make a more detailed
15 allocation than it had made. It is KCPL's responsibility to take actions to prevent
16 inappropriate costs from being charged to its customers and provide the Staff with appropriate
17 documentation supporting this effort.

18 Q. As it relates to the Staff's reference to KCPL internal audits to provide
19 background evidence in support of its adjustments, Mr. Downey states at 35, lines 16
20 through 17 of his rebuttal testimony that the Staff in its Report "misuses, mistakes and takes
21 great liberties with the content and conclusions of KCP&L's internal audit reports."
22 Does Mr. Downey provide testimony to support these allegations?

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1 A. No. He did claim that the Staff failed to identify 1) how KCPL addressed
2 these findings, 2) if any audit findings resulted in any specific impact to the Project and 3) any
3 linkage between these findings and the recommended disallowance. The Staff did review
4 KCPL's internal audits and it found many negative findings and some positive findings that it
5 did not include in the report. The Staff attempted to only include the specific audit finding
6 that support its proposed adjustments.

7 The Staff did not use the audit findings as the sole support for its adjustments but
8 merely as background support. The Staff did not take any liberty with the content and
9 conclusions, it did not misuse any audit findings and the Staff did not, to its knowledge make
10 any mistakes in the use of these audit findings as background support. Mr. Downey makes
11 the accusation but he does not provide any support. In addition, contrary to Mr. Downey's
12 allegation, the Staff did describe KCPL's response to the audit findings on several occasions.

13 Q. Provide an example of how the Staff used an internal audit finding as support
14 for its Iatan 1 Alstom Settlement Adjustment in the Staff's November 3, 2010 Report.

15 A. In its November 3, 2010 Report the Staff described the audit of the Alstom
16 contract by KCPL auditor/consultant Carl Marano of Marano Consulting, LLC (Marano).
17 The Marano Audit Report, "Alstom Power Contract Audit," was released in January 2009, six
18 months after the signing of the Alstom Unit 1 Settlement Agreement. In the Staff's
19 November 3, 2010 Report the Staff quoted the Marano Audit Report noting positive
20 comments Mr. Marano had about the Project Team:

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Surrebuttal Testimony of
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1 One major finding by Marano was that key members of the Project Team do not appear

2 ** _____ **

3 Mr. Marano also found that Alstom is ** _____

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5 _____ ** This is the specific type of documentation that

6 not only is related to but provides support to the Staff's finding on the Alstom Unit 1 Settlement

7 adjustment.

8 Q. Earlier you discussed how Mr. Downey accused the Staff of failing to state how
9 KCPL addressed the audit findings. Is Mr. Downey correct?

10 A. No. The Staff quoted KCPL's response to the audit findings very liberally in its
11 November 3, 2010 Report. Specifically as it relates to this issue, the Staff included the following
12 KCPL management responses:

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25 **KCPL WITNESS GILES**

26 Q. At page 14 of his rebuttal testimony KCPL witness Giles states that "KCP&L
27 has clearly identified and explained the reasons for every cost overrun on the Iatan Project.
28 KCP&L provided to Staff the information it has needed to track the Iatan Project, including
29 all cost data and other information from its Cost Control System. KCP&L has provided
30 nineteen Quarterly Reports to Staff and responses to approximately 2150 data requests."
31 Is Mr. Giles correct?

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1 B. No. The Staff's position is that KCPL has not identified or explained each cost
2 overrun on the Iatan Project as it is required to do under the terms of the Regulatory Plan.
3 Mr. Giles may state that KCPL has clearly identified and explained the cost overruns, by
4 stating that the identification and explanation can be found somewhere in the Cost Control
5 System that KCPL developed for the Iatan Construction Project, in addition KCPL developed
6 for the Staff nineteen Quarterly Reports, and in the KCPL responses to the 2150 Staff data
7 requests does not meet the terms of the Stipulation and Agreement of the Regulatory Plan.

8 Q. Mr. Giles states at pages 9 through 11 that the Staff has chosen to focus its
9 auditing activities on marginal costs like executive expenses, mileage charges, fees for its
10 oversight team and travel expenses while essentially throwing its hands in the air and
11 claiming that KCP&L has not explained approximately \$200 million in actual costs to date.
12 Please comment.

13 A. This statement demonstrates a clear lack of knowledge about how the Staff
14 focused its auditing activities. Mr. Giles characterizes an expenditure of \$20 million (fees for
15 its oversight team) as marginal. The Staff disagrees that \$20 million is marginal. With
16 respect to the Staff's auditing activities related to KCPL's internal expenditures of excessive
17 expenses and excessive mileage charges, the Staff has a responsibility to identify
18 inappropriate officer expenses charged to the project. Early on in its audit the Staff focused
19 on KCPL's internal control over costs in an effort to determine if KCPL was following its
20 own internal procedures. To accomplish this audit objective and for other auditing-related
21 reasons the Staff reviewed the expense reports of selected Iatan Project personnel. The Staff
22 found numerous examples of charges inappropriately charged, excessive costs and a general

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1 | disregard for the level of expenses charged by KCPL officers to the Iatan Project. This Staff
2 | finding forced the Staff to expand its review in this area.

3 | The Staff did spend significant amount of time in this area, but the amount of time was
4 | strictly a function of the Staff's findings based on its review and KCPL's lack of concern
5 | about the amount and appropriateness of charges to the project. The amount of time the Staff
6 | was required to focus on this area was also increased by KCPL's lack of transparency in the
7 | provision of data on officer expenses. For example, Staff Data Request No. 556 in
8 | Case No. ER-2009-0089 shown below is one example where KCPL refused to provide
9 | requested data to the Staff. This is just one example where the Staff found inappropriate and
10 | excessive costs being charged to KCPL's ratepayers and KCPL's response when these
11 | charges are discovered it to not provide the data and claim that the charges were inadvertently
12 | included in cost of service:

13 | Data Request No. 0556
14 | Company Name Kansas City Power & Light Company
15 | Case/Tracking No. ER-2009-0089
16 | Date Requested 2/26/2009
17 | Brief Description WHD Expense Report 9/28/07

18 | Description: Reference WHD expense report approved on 9/28/07.
19 | 1. Please provide the business purpose of WMD traveling from
20 | Chicago to Denver instead of KC to Denver (What was his business
21 | purpose of being in Chicago) 2. Please provide a copy of the receipts
22 | for the \$1,606.38 Dinner charged on 6/18/07 at Kevin Taylor
23 | Restaurant in Denver and provide the business purpose of charging this
24 | expense to KCPL's regulated customers. 3. Please provide a copy of the
25 | receipts for business meal with L. Cheatum re: personnel on 6/21/07.

26 | Objection: KCPL objects to this data request as it calls for information
27 | which is irrelevant, immaterial, inadmissible and not reasonably
28 | calculated to lead to the discovery of admissible evidence. The costs
29 | mentioned in this data request were inadvertently included in KCPL's
30 | cost of service. KCPL is no longer seeking recovery in rates of any of
31 | the costs mentioned in the data request.

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1 The Staff would also note that based on KCPL's response to Staff Data Request
2 Nos. 580 and 583, Mr. Giles has never attended any auditing classes, never attended any
3 training classes on the auditing process in general. Never attended any training classes on
4 auditing utility costs, and never participated in any actual audit. In addition, Mr. Giles holds
5 no auditing or any other professional certification.

6 Q. At page 2 of his rebuttal testimony Mr. Giles states that KCPL's actions on the
7 Iatan Project has set new standards for transparency by a utility in a rate proceeding. Do you
8 agree with this assessment?

9 A. No, quite the contrary. In my seventeen years experience auditing Missouri
10 utilities companies (including KCPL's three recent rate cases), I have never seen a lack of
11 transparency in the provision of data to the Staff as I have experienced in audit of the Iatan
12 Project. In my opinion, KCPL has not made a serious attempt at providing reasonable
13 responses to many Staff data requests; it has failed to answer specific questions and has been
14 evasive in its response in many instances. I must note that I have been deeply involved in
15 KCPL's three previous rate cases and did not experience the lack of cooperation in the
16 provision of data as I have in this construction audit.

17 Q. To what does the Staff attribute this recent lack of cooperation in the provision
18 of data to the Staff?

19 A. I believe KCPL's new approach to answering Staff data requests is
20 significantly influenced by its association with Schiff Hardin. Since KCPL hired Schiff, it has
21 significantly increased the frequency in which it has asserted privileges and has asserted many
22 privileges with a frequency never before seen by the Staff in recent memory. For example,
23 KCPL initially redacted all information on Schiff Hardin invoices, including information that

Surrebuttal Testimony of
Charles R. Hyneman

1 describes clearly project management duties and administrative tasks. KCPL has since ceased
2 this practice of wholesale redactions, but only after being prompted to do so by the Staff.
3 To this date the Staff has been unable to review thousands of documents that it believes is
4 relevant to its audit. The Staff would not classify KCPL's behavior on this audit as
5 transparent under any circumstances.

6 Q. Do you have an example of how KCPL could have been more cooperative in
7 the provision of data to the Staff?

8 A. Yes. KCPL maintains a central depository Iatan Project documents in
9 SharePoint. When the Staff asked for access to this central depository in Staff data request
10 No 650 in Case No. EO-2010-0259, KCPL objected on the basis that this repository may
11 contain documents that it considers to be protected by the attorney-client privilege and/or
12 attorney work product doctrine. KCPL also characterized the Staff's request for access to this
13 data base as overly broad and vague. KCPL also objected on the basis that SharePoint may
14 contain documents that it does not believe is relevant to the Staff's audit. KCPL's proposal
15 was to provide a list of documents in SharePoint and Staff can ask for the documents on that
16 list. Access to this data base would have been a tremendous resource for the Staff's audit.
17 While the Staff understands the need for the assertion of legitimate privileges in the provision
18 of data, the Staff does not understand why KCPL could not have segregated documents it
19 considered privilege in a locked section of the data base to prevent Staff access and provide
20 access to the remainder of the data base.

21 Q. At page 11 of his rebuttal testimony Mr. Giles states that "In auditing the Iatan
22 Unit 2 Project's costs over four years on the project, the charge repeatedly cited by Staff as
23 the proof of this accusation is a single \$400 meal charge that it found over two years ago

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1 | which KCP&L removed from the costs of the Project once Staff brought the charge to
2 | KCP&L's attention." Is Mr. Giles correct in stating that the Staff audited Iatan 2 for over
3 | four years?

4 | A. No. KCPL did not allow the Staff to audit Iatan 2 until some date after
5 | February 2009. As noted in its response to Staff Data Request No. 491 in Case No.
6 | ER-2009-0089, KCPL refused to provide any documents related to Iatan 2 until some date
7 | after the date of this data request. When Staff asked for data related to the Iatan 2 contingency
8 | in February 2009, KCPL characterized this request as, among other things, irrelevant and
9 | immaterial. Yet, Mr. Giles continues to describe KCPL's behavior as "transparent."

10 | Case: ER-2009-0089
11 | Date of Response: 02/03/2009
12 | Information Provided By: Gerry Reynolds
13 | Requested by: Schallenberg Bob

14 | Question No: 0491 Please provide copies of all the documentation
15 | supporting the development, review, analysis and approval of the
16 | contingency and executive contingency included in the control budget
17 | estimate for Iatan 2.

18 | Response: KCPL Objects to this data request to the extent it calls for
19 | information pertaining to Iatan 2 and therefore seeks discovery of
20 | information which is irrelevant, immaterial and inadmissible and whose
21 | discovery is not reasonably calculated to lead to the production of
22 | relevant and admissible evidence.

23 | Response provided by Iatan Construction Project, Project Controls
24 | Department.

25 | Q. Did KCPL make it very difficult for the Staff to conduct a review of basic
26 | audit material for the Iatan Construction Project?

27 | A. Yes. In Staff Data Request No. 490 in Case No. ER-2009-0089 the Staff asked
28 | for basic documentation supporting KCPL's budget for Iatan 1. KCPL responded that it will

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Charles R. Hyneman

1 not provide this documentation to the Staff but requires the Staff to travel to its Kansas City,
2 Missouri Headquarters building to review this basic budget information.

3 Case: ER-2009-0089
4 Date of Response: 02/03/2009
5 Information Provided By: Gerry Reynolds
6 Requested by: Schallenberg Bob

7 Question No. : 0490 Please provide copies of all the documentation
8 supporting the development, review, analysis and approval of the
9 contingency and executive contingency included in the control budget
10 estimate for environmental upgrades at Iatan 1.

11 Response: The current Control Budget Estimate for Iatan 1 is \$484
12 million. Due to their confidential nature, all of the documentation
13 supporting the development, review, analysis and approval of the
14 contingency and executive contingency included in the current control
15 budget estimate for environmental upgrades at Iatan 1 are available by
16 contacting Tim Rush 816-556 2344 or Lois Liechti 816-556-2612 to
17 make arrangements to view these documents. Response provided by
18 Iatan Construction Project, Project Controls. This information was
19 provided for onsite viewing to the Commission Staff in early 2008 as
20 part of its investigation in Case No. EM-2007-0374.

21 Seeking further clarification about what data would be provided in response to this
22 Staff Data Request, KCPL indicated only three documents were available. However, KCPL
23 claimed privilege on two of the documents in total and completely redacted all meaningful
24 data from a third document (Memo from Ken Roberts and Eric Gould to Steve Easley
25 October 18, 2006). It is completely unreasonable for KCPL to prevent the Staff from
26 reviewing basic information in the development of the Control Budget Estimate. This is
27 another example of a complete lack of transparency on the part of KCPL.

28 Q. At the top of page 11 of his rebuttal testimony Mr. Giles implies that the Staff
29 auditors spent too much time reviewing expense reports and not enough time reviewing
30 change orders. Please comment.

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1 A. It is clear that this statement is speculation as there is no way Mr. Giles could
2 know how much time the Staff devoted to its review of expense reports and how much time it
3 devoted to review of change orders. More importantly, Mr. Giles never discussed the matter
4 with Staff to attempt to determine these facts.

5 It is also unlikely Mr. Giles knows which Staff auditors did the review of the expense
6 reports, and exactly how many were reviewed, what dates they were reviewed, and how much
7 time it took to review each expense report. Despite being advised by the Staff the purpose of
8 its expense report review, Mr. Giles continues to demonstrate a lack understanding in how to
9 conduct an audit, including audit risk, development of audit scope and procedures. He is not
10 an auditor, but professes to be an expert on auditing by his testimony.

11 The Staff has noted in previous rate cases and this construction audit that KCPL has
12 had problems excessive and inappropriate costs of KCPL executives charged to ratepayers
13 and a lack of internal controls over KCPL's executive expenses. The Staff has noted these
14 problems but if KCPL believes the Staff has not done enough to support its finding of
15 inappropriate costs charged to the Iatan Construction Projects, the Staff is willing to
16 strengthen its efforts in this area for future audit reports.

17 Mr. Giles' comments criticizing Staff auditors in his rebuttal testimony are just
18 another attempt by KCPL to obscure its failure to identify Iatan cost overruns above the
19 definitive estimate. The Regulatory Plan is clear that KCPL is required to identify and
20 explain any cost overrun over the definitive estimate.

21 As will be discussed in the surrebuttal testimony of Staff witness Keith Majors, once
22 KCPL fails to provide documentation supporting the development of its Control Budget
23 Estimate contingency amounts, it is impossible to determine from the budget variances, the

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Charles R. Hyneman

1 specific costs that should be charged to the contingency and the specific costs that are true
2 budget overruns. Mr. Giles should be able to explain why KCPL will not provide to the Staff
3 all the documentation it has related to the development of the budget, the very same budget
4 it insists the Staff has the ability to track cost overruns against. Mr. Giles should
5 understand that for the Staff to be able to know what types of costs should be charged to
6 the contingency; it has to be able to read and understand all the documentation that
7 describes and supports the development and evolution of the budget contingency. Mr. Giles
8 should also understand that the determination of what cost is a cost overrun has to come from
9 the Project Management Team.

10 It is interesting to note that in its rebuttal testimony, KCPL made a last minute attempt
11 to comply with its Regulatory Plan requirements and it provided more information related to
12 cost overruns in this rebuttal filing than it did in the years that the Staff has been auditing the
13 Iatan Project. However, KCPL continues to ignore one of the most obvious cost overruns and
14 that is the cost overrun for Schiff Hardin. The Staff was unable to find any KCPL witness
15 who described and explained whether or not the Schiff Hardin cost was a cost overrun for
16 Iatan 1 and Iatan 2. The Staff knows that this task would be very difficult to do due to the
17 poor documentation and internal controls over the Schiff Hardin costs.

18 The Staff's unidentified/unexplained cost overrun adjustment was actually very
19 conservative in its dollar amount. The Staff took all of its adjustments and classified them as
20 cost overruns instead of contingency items, thereby reducing the size of the
21 unidentified/unexplained cost overruns adjustment. In this manner, no cost charged to the
22 budget contingency for Iatan 2, \$220 million, was adjusted. In effect, the Staff made no
23 adjustment to any budget costs of for procurement, construction and indirect costs, and no

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1 adjustment to the amount of costs in excess of these baseline budget components up to
2 \$220 million. It is only when KCPL's baseline budget amounts were exceeded by
3 \$220 million did the Staff's adjustment come into play. The Staff could have assumed that all
4 of its specific audit adjustments came from the contingency which would have made its
5 unexplained/unidentified cost overrun adjustment significantly higher.

6 Mr. Giles, in his rebuttal testimony at pages 10 to 11, incorrectly portrays that the
7 Commission's Utilities Services Staff did not devote time to a review of change orders. His
8 belief that a more focused review would somehow allow the Staff to identify and explain cost
9 overruns is wrong. The Staff has explained to Mr. Giles and KCPL in the past that the total
10 value of the change orders approximately equal the related contingency. Thus, if every
11 change order is charged against the contingency, which they are not, acceptance of all of the
12 change orders would not identify the cost overruns in the event they occurred.

13 As noted earlier, Mr. Giles has been associated with the Iatan Construction Project at
14 least since 2005. He seems to put a lot of reliance on the quality and accuracy of KCPL's
15 Iatan construction change orders, but his reliance is misplaced.

16 The Iatan Project Management team was repeatedly criticized by KCPL internal
17 auditors for writing change orders that ** _____

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22 At page 6 of the Iatan Construction Project, Project Controls Audit, Audit Report
23 October 2009 (see Schedule 3), Audit Finding numbers 2 and 3 state:

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28 At page 11, line 21 through page 12, line 6 of his rebuttal testimony Mr. Giles states:

29 Had Staff read the actual records of KCP&L's cost overruns on Unit 1,
30 it may have concluded that \$10 million of the allegedly \$18 million it
31 allegedly couldn't find was in two purchase orders for the procurement
32 of the material and the construction for increasing the surface area of
33 the existing Unit 1 economizer. (Schedule CBG2010-1). Staff would
34 have also discovered that the reason this was an "overrun" to KCP&L's
35 Control Budget Estimate because KCP&L could not have anticipated
36 needing to do this work until after the ALSTOM contract was executed
37 and KCP&L had time to evaluate this work as compared to other

Surrebuttal Testimony of
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1 alternatives to determine the least-cost option for meeting key
2 performance requirements.

3 Q. Is Mr. Giles correct that KCPL's cost overruns for Iatan 1 include \$10 million
4 dollars for the Unit 1 economizer?

5 A. No. But what Mr. Giles testimony here does do is clarify for the Commission
6 the problem the Staff has been having in its attempt to identify cost overruns. Mr. Giles, who
7 has been associated with the Iatan Project for the last five years for KCPL cannot even
8 identify the cost overruns on Iatan 1. KCPL's Contingency Log for Iatan 1 at June 2010
9 contains approximately 2,000 line items. Buried in these line items are components of the
10 costs in the purchase orders attached to Mr. Giles testimony as Schedule CBG2010-1 and
11 other miscellaneous costs related to the economize in the amount of approximately
12 \$3.4 million. The Staff's unexplained/unidentified cost overrun adjustment does not include
13 any amounts for costs charged to the contingency component of the Control Budget Estimate.
14 Therefore, Mr. Giles cannot even identify cost overruns for only one event on only Iatan 1.

15 At page 20 of his rebuttal testimony Mr. Giles states that KCPL's responsibility is to
16 develop a cost control system that will identify and explain cost variances from the definitive
17 estimate (which KCPL refers to as the Control Budget Estimate) and he believes that KCPL
18 has fully met this obligation. Yet, he cannot even identify and explain one specific example
19 of a cost overrun that he selected to include as an example in his rebuttal testimony.

20 **KCPL WITNESS NIELSEN**

21 Q. At page 97 of his rebuttal testimony KCPL witness Dr. Kris Nielsen, quoting
22 Mr. Walter Drabinski, admits that Iatan site activities had begun "almost one year" prior to
23 the publication of the Project Execution Plan ("PEP"). Is this significant?

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1 A. Yes. In its July 2007 Iatan Construction Project Audit Report (the audit was
2 performed primarily in March 2007), Great Plain Energy Inc.'s internal auditors and
3 Ernst & Young ("GPE Audit Team") noted that the PEP is one of the most essential
4 documents of any major capital project and should be in place at the start of the project.
5 The GPE Audit Team was very concerned that the PEP had not yet been developed and one
6 was not adopted until June 2007.

7 Q. Did Dr. Nielsen believe it was important to have a PEP in place prior to
8 June 2007?

9 A. No. Dr. Nielsen disagrees with the conclusions of the GPE Audit Team.
10 Dr. Nielsen at page 97, lines 2 through 23 of his rebuttal testimony dismissed the importance
11 of having a PEP in place at the start of the project by stating "the only site work under way at
12 that time involved site preparation, pile placement and foundation work, all of which was
13 easily managed under the organization, staff and processes in place throughout that work."

14 Q. Did the Iatan Project costs for the foundation and substructure work,
15 Burns & McDonnell (B&Mcd) Spec. No. 8211 significantly exceed the Control Budget Estimate?

16 A. Yes. For Iatan 2, the CBE for this work was \$43.3 million and the actual cost
17 at October 2010 was \$88.1 million. For Iatan 1, the CBE for this work was \$9.1 million and
18 the actual cost at October 2010 was \$14.9 million. While Dr. Nielsen says this work was
19 easily managed under the organization, staff and processes in place, clearly it was not.

20 Q. Did the Staff review the June 2007 PEP?

21 A. Yes.

22 Q. Was the June 2007 PEP revised?

23 A. According to KCPL, no. KCPL provided the June 2007 PEP in response to
24 Staff Data Request No. 380. In Staff Data Request No. 380.1 in Case No. EO-2010-0259, the

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1 Staff asked for any changes to the PEP. KCPL responded that "there are no updates to the
2 Project Execution Plan provided in Data Request 0380 in Case ER-2009-0089."

3 Question No. :0380.1 Date of Response: 06/10/2010

4 KCPL's 6/1/07 Project Execution Plan (PEP) states that it is a
5 developing document which will be changed, as and when appropriate,
6 to accommodate the evolving stages of the project. Please provide a list
7 of and a description of all changes to the PEP and provide the most
8 recent updated PEP. If the most recent and current PEP has been
9 provided to the Staff, please so note.

10 RESPONSE: There are no updates to the Project Execution Plan
11 provided in Data Request 0380 in Case ER-2009-0089.

12 Response provided by Iatan Construction Management Attachment:
13 Q0380.1 Verification Form.pdf

14 Q. Did KCPL provide a document to the Staff that said the June 2007 PEP was
15 being revised in early 2008?

16 A. Yes. In a review of a KCPL internal audit report, the Staff learned that the
17 PEP was supposed to be revised sometime in early 2008. The quotes below are from KCPL's
18 January 2008 Iatan Construction Project Organization Audit:

19 The Project Organization is in a state of transition. The Project Execution Plan
20 (PEP) and organization chart are currently being revised, and a number of
21 policies and procedures are still in development, with the expectation that
22 they be compiled into a manual by year-end. Despite some uncertainty created
23 by and during this transition, near unanimity was expressed during interviews
24 that the Project Organization had improved over the last six months, and
25 while additional improvements could be made, the project was "on the right
26 track." (Emphasis Added)

27 The revised PEP will also reflect the decision to modify the acquisition
28 strategy from multi-prime to EPC for the Balance of Plant activities.

29 Once the revised PEP, organization chart and policies and procedures manual
30 are finalized, the impacts of any revisions should be formally made clear to
31 the Project Team and contractors such that everyone is aware of their levels of
32 authority and responsibility.

33 Q. Did Dr. Nielsen state that the June 2007 PEP was revised?

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1 A. Yes. At page 135, lines 8 through 10 of this rebuttal testimony Dr. Nielsen
2 stated that "KCP&L decided to revise its project execution plan for the BOP scope of work
3 using an EPC type delivery methodology and a Unit Price contract approach...."

4 Q. Did Dr. Nielsen state that PEPs for projects like Iatan 2 require adjustments?

5 A. Yes. At page 151, lines 9 through 11 of this rebuttal testimony Dr. Nielsen
6 stated that "Mega-projects such as the Iatan Unit 2 project are confronted with an even greater
7 range of issues which require adjustments to the project execution plans."

8 Q. Did KCPL provide the Staff with any document that indicated the June 2007
9 PEP was revised?

10 A. No, not that I am aware. As far as the Staff knows, the 2007 PEP was
11 never revised.

12 Q. Dr. Nielsen states at page 97 of his rebuttal testimony that "various elements of
13 the PEP had been developed and issued as early as the fall of 2006." Does he cite any support
14 that this, in fact, occurred?

15 A. No. The Staff's review of the June 2007 PEP indicated that the earliest any
16 section of the document was scheduled to be completed was in April 2007. It does not appear
17 that any sections were complete, much less issued, in the fall of 2006. No section of the
18 June 2007 PEP was signed as complete prior to June 2007, including the Safety section which
19 was signed as complete on June 11, 2007.

20 Q. Does Dr. Nielsen appear to contradict his statement that elements of the PEP
21 were issued as early as the fall of 2006 elsewhere in his rebuttal testimony?

22 A. Yes. At page 169, lines 6 through 8 of his rebuttal testimony he states that
23 "In this regard, KCP&L's PMT began development of the Project Execution Plan (PEP) in

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1 January 2007, involving all the Iatan Project team participants, including contractors.”
2 If KCPL began the development of the PEP in January 2007, it is not clear how parts of it
3 could have been developed and issued in 2006.

4 Q. At page 99 of his rebuttal testimony Dr. Nielsen discusses the Report by
5 Strategic Talent Solutions (“STS Report”). Are you familiar with the STS Report?

6 A. Yes.

7 Q. Also at page 99 Dr. Nielsen states that “the project record appears to support
8 the opposite conclusion that KCP&L actively considered and implemented a number of STS’s
9 recommendations, and that ultimately the KCP&L PMT functioned well as an integrated team
10 throughout the execution of the Iatan Project.” Do you know who Dr. Nielsen could reach
11 such a conclusion?

12 A. No. The STS Report was highly critical of the Project Management Team in
13 terms of getting along and working as a team on the project. The Staff was not aware of any
14 follow-up meeting by STS which would indicate the Project Management Team functioned
15 well as an integrated team. The Staff does not agree that the project record appears to support
16 the opposite conclusion.

17 Q. At page 46, lines 15 through 16 of his rebuttal testimony, Dr. Nielsen states
18 that “A construction audit is generally understood to be an examination of the costs to execute
19 a construction project; in short a financial audit.” Do you agree with this statement?

20 A. I agree that a construction audit can be described as an examination of the
21 costs to execute construction projects, but it is not a financial audit in any sense. Dr. Nielsen
22 is confusing a construction audit with an audit of the company’s published financial
23 statements, such as a balance sheet, income statement, and statement of cash flows. There is

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1 no similarity or relationship between a construction audit (especially the type of construction
2 audit performed by the Staff in this case) and a financial audit. They are two completely
3 separate and unrelated endeavors.

4 Q. Mr. Hyneman, are you a certified public accountant ("CPA")?

5 A. Yes, I am.

6 Q. Have you reviewed the description of a financial audit at page 48 of
7 Dr. Nielsen's rebuttal testimony?

8 A. Yes, I have. At page 48, lines 6 through 12, he provides the following
9 description of a financial audit:

10 Typically, financial audits are intended to be "tests" of financial
11 statements produced by the entity being audited. The goal is to
12 establish with reasonable certainty that the auditing party can rely on
13 what is reported within those financial statements. Once the test is
14 completed, and assuming it is determined that those financial
15 statements issued present a reliable source of information relative to the
16 financial actions of the party audited, the financial test is "passed" and
17 the financial statements are then used for such other purposes for which
18 they are intended.

19 Q. Do you concur with Dr. Nielsen's description of a financial audit?

20 A. No. I have not previously seen financial audits described in this manner and
21 this description does not come from any authoritative accounting or auditing literature of
22 which I am aware. I am familiar with the purpose of an audit on financial statements
23 presented in accordance with generally accepted accounting principles (GAAP) and this is not
24 a description of this type of financial audit. A GAAP audit is not a test and the goal is not for
25 the auditors to be able to rely on the financial statements. I am not aware of the term
26 "reasonable certainty" being used as the description of an audit of financial statements in any
27 authoritative accounting or auditing literature.

28 Q. Did Dr. Nielsen do a construction audit on the Iatan Project?

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1 A. No. As he testified, he only did what he refers to as a prudence review, which
2 he described as an examination of management decisions and a determination if those
3 decisions by themselves were responsible for negative cost impacts to the project. For
4 example, he described KCPL's effort to make settlements with Alstom as prudent for the
5 project. He did not appear to make an attempt to determine who or what caused the need for
6 the settlements, causing KCPL to spend millions of dollars in settlements.

7 I also did not note where he concluded that any of the dollars associated with Alstom's
8 claims were not based on poor specifications or late specifications from Burns & McDonnell.
9 If he did, and found that a portion of Alstom's claims were legitimate due to poor contractor
10 performance, he should have deemed it prudent for KCPL to pay the Alstom claim and then
11 backcharge Burns & McDonnell for amount of the settlement payment poor performance.
12 Also, if he found that KCPL was responsible for a portion of the Alstom claims through poor
13 performance, or negligence or imprudence, his testimony should include a recommendation
14 for KCPL to absorb these costs and not charge them to its ratepayers.

15 Q. Is it your understanding that the Commission is charged with more than just
16 whether or not KCPL's management made prudent decisions?

17 A. Yes. It is concerned with whether or not KCPL has charged inappropriate,
18 unreasonable, or excessive costs to the Construction Iatan Project and seeks recovery from
19 ratepayers. This is why the Staff not only conducted a prudence review but also a
20 construction audit (not a financial audit) to not only determine prudence, but also the cost
21 impact of decisions that may viewed as prudent, reasonable, appropriate, and of benefit to
22 KCPL's ratepayers. This is a perspective that I believed Dr. Nielsen did not address in his
23 prudence review.

1 **KCPL WITNESS RUSH**

2 Q. At pages five through nine of his rebuttal testimony, KCPL witness Rush
3 proposes new ratemaking treatments for KCPL's Demand Side Management ("DSM")
4 program deferrals. Is KCPL's ratemaking treatment of its DSM deferrals governed by a
5 contract in which KCPL is a signatory?

6 A. Yes. In the Stipulation and Agreement that KCPL, Staff and OPC
7 (among other parties) signed in the Experimental Regulatory Plan Stipulation and Agreement
8 in Case No. EO-2005-032 (2005 Stipulation and Agreement), KCPL made certain
9 commitments in regard to a Demand Response, Efficiency and Affordability Program.
10 Among other things, these commitments related to the creation of a regulatory asset, the
11 amortization of that asset, and the financial return the Company can earn on that asset. The
12 specific commitments made by KCPL are reflected in the language of the Stipulation and
13 Agreement shown below at pages 43 and 49 respectively:

14 (v) Demand Response, Efficiency and Affordability Programs. The
15 2009 Rate Case will also include the amortization related to the Demand
16 Response, Efficiency and Affordability Programs, as more fully described in
17 Paragraph III.B.5 below. The Signatory Parties agree not to contest the
18 continuation of this amortization in the 2009 Rate Case on any basis other than
19 KCPL's failure to prudently implement the Demand Response, Efficiency and
20 Affordability Programs described in Paragraph III.B.5 below.

21 KCPL will accumulate the Demand Response, Efficiency and Affordability
22 Program costs in regulatory asset accounts as the costs are incurred. Beginning
23 with the 2006 Rate Filing, KCPL will begin amortizing the accumulated costs
24 over a ten (10) year period. KCPL will continue to place the Demand
25 Response, Efficiency and Affordability Program costs in the regulatory asset
26 account, and costs for each vintage subsequent to the 2006 Rate Filing will be
27 amortized over a ten (10) year period. Signatory Parties reserve the right to
28 establish a fixed amortization amount in any KCPL rate case prior to
29 June 1, 2011. The amounts accumulated in these regulatory asset accounts
30 shall be allowed to earn a return not greater than KCPL's AFUDC rate. The
31 class allocation of the costs will be determined when the amortizations
32 are approved.

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1 Q. Did the 2005 Stipulation and Agreement contain language establishing the
2 effect of the negotiated settlement?

3 A. Yes. Paragraph 10 (f) at page 53 states “[w]hen approved and adopted by the
4 Commission, this Agreement shall constitute a binding agreement among the Signatory
5 Parties hereto. The Signatory Parties shall cooperate in defending the validity and
6 enforceability of this Agreement and the operation of this Agreement according to its terms.”

7 Q. What specific new ratemaking proposals are being offered by Mr. Rush?

8 A. From my reading of Mr. Rush’s rebuttal testimony, it appears that Mr. Rush is
9 proposing the following changes to the accepted ratemaking treatment of KCPL’s DSM
10 deferrals:

- 11 1. Change KCPL’s current amortization period for the DSM regulatory
12 asset from 10 years to 6 years for DSM costs deferred after to
13 September 30, 2008.
- 14 2. Include the unamortized balance of DSM deferrals in rate base for
15 actual expenditures booked to the DSM regulatory asset up through
16 December 31, 2010.
- 17 3. Starting on December 31, 2010, calculate the AFUDC rate of return
18 applicable to the DSM regulatory asset on a monthly basis by using the
19 monthly value of the annual AFUDC rate.

20 Q. Did Mr. Rush make these recommendations in his direct testimony filing on
21 behalf of the Company?

22 A. No he did not. Mr. Rush’s direct testimony states at page 21, line 14, that
23 “[t]he Company has not taken any action in this filing beyond what is currently in place and
24 was established in the Regulatory Plan.” Mr. Rush also states at page 26, line 14 of his direct
25 testimony, “...the Company is not seeking to change the cost recovery mechanism in its
26 initial filing.”

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1 Q. Did any other signatory to the 2005 Stipulation and Agreement propose a
2 change to the current amortization period for the DSM regulatory asset from ten years to
3 six years?

4 A. Yes. MDNR was a signatory to the 2005 Stipulation and Agreement and
5 agreed to the contract's binding terms therein.

6 Q. Would Mr. Rush's first two proposed changes to KCPL's DSM deferrals
7 violate the contract KCPL entered into in Case No. EO-2005-0329?

8 A. Clearly proposals 1 and 2 do violate the terms of the Regulatory Plan
9 Stipulation and Agreement. The Staff is not clear why KCPL would pick and choose selected
10 components of the Regulatory Plan that is feels no longer apply and provide no support as to
11 why it believes the Regulatory Plan no longer applies. The Staff is not aware of any party to
12 the case taking the position that the terms and conditions of the Regulatory Plan Stipulation
13 and Agreement have expired. As such, the Staff believes they are still in effect. The Staff
14 rejects Mr. Rush's proposal to be excused from the terms and conditions of a contract that is
15 clearly in effect and to which the parties obligated themselves to carry out.

16 Q. In your opinion would Mr. Rush's third proposal to calculate a monthly
17 AFUDC return necessarily be in contradiction to the terms and conditions of the
18 Regulatory Plan?

19 A. At first blush, no. However, this is a new proposal that the signatory parties of
20 the Regulatory Plan in Case No. EO-2005-0329 did not approve. Since each party negotiated
21 the terms of the Regulatory Plan representing its respective interests, Staff can not know if
22 there would be interest in pursuing this type of proposal. There may too little time to explore
23 this new ratemaking proposal, but Staff is willing to make itself available to discuss the matter

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1 with KCPL, the signatories to the 2005 Stipulation and Agreement and any other interested
2 parties to see if this proposal could be addressed to their mutual satisfaction. The Staff would
3 also be willing to discuss and entertain settlement negotiations on the DSM amortization
4 issues if KCPL so desires, but would need to include the same signatories and any interested
5 parties.

6 Q. At page 9 of his rebuttal testimony Mr. Rush takes issue with how the Staff
7 accounts for its DSM deferrals. Is it clear why this is a concern to Mr. Rush?

8 A. No. Mr. Rush correctly states that the Staff has netted other regulatory
9 accounting deferrals, which Mr. Rush admits have the same amortization period as the DSM
10 deferrals. The Staff has netted the various components to calculate KCPL's "net" investment
11 in DSM deferrals and amortized this net investment. The Staff could set up and keep track of
12 these separate cost items, but this would be cumbersome and inefficient. The Staff is not
13 proposed that KCPL make any changes to its books and records, but has merely reflected this
14 netting on its own workpapers. The Staff has no understanding of why this is of concern to
15 KCPL, and Mr. Rush has proposed no reason as to why the Staff's accounting results in an
16 inappropriate ratemaking calculation or adjustment in this rate case.

17 Q. Does this conclude your surrebuttal testimony?

18 A. Yes.

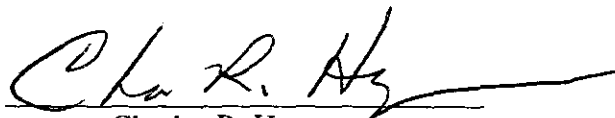
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

AFFIDAVIT OF CHARLES R. HYNEMAN

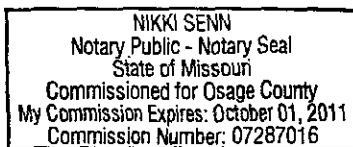
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Charles R. Hyneman, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 63 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


Charles R. Hyneman

Subscribed and sworn to before me this 5th day of January, 2011.


Notary Public



SCHEDULES 1 - 3

HAVE BEEN DEEMED

HIGHLY CONFIDENTIAL

IN THEIR ENTIRETY

NP