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Issue: Iatan Prudence  
Witness: Daniel F. Meyer  
Type of Exhibit: Supplemental Rebuttal Testimony  
Sponsoring Party: Kansas City Power & Light Company  
KCP&L Greater Missouri Operations Company  
Case No.: ER-2010-0355/ER-2010-0356  
Date Testimony Prepared: December 15, 2010

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO.: ER-2010-0355/ER-2010-0356**

**SUPPLEMENTAL REBUTTAL TESTIMONY**

**OF**

**DANIEL F. MEYER**

**ON BEHALF OF**

**KANSAS CITY POWER & LIGHT COMPANY  
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**Kansas City, Missouri  
December 2010**

\*\*\* [REDACTED] \*\*\* Designates "Highly Confidential" Information  
Has Been Removed.

Also Certain Schedules Attached To This Testimony Designated "(HC)"  
Have Been Removed  
Pursuant To 4 CSR 240-2.135.

KCP&L Exhibit No. 45-NP  
Date 1-2-11 Reporter TL  
File No. ER-2010-0355

**SUPPLEMENTAL REBUTTAL TESTIMONY**

**OF**

**DANIEL F. MEYER**

**Case No. ER-2010-0355/ER-2010-0356**

1 **Q: Please state your name and address.**

2 A: My name is Daniel F. Meyer. My address is 30 Sequoia, Lake Forest, Illinois.

3 **Q: Are you the same Daniel F. Meyer who submitted Direct Testimony and Rebuttal**  
4 **Testimony in this proceeding?**

5 A: Yes, I am.

6 **Q: What is the purpose of your Supplemental Rebuttal Testimony?**

7 A: The purpose of my testimony is to rebut the direct testimony submitted by Walter P.  
8 Drabinski of Vantage Construction Consulting Inc., a consultant for the Missouri  
9 Retailers' Association in which I: (1) discuss the flawed methodology that Mr. Drabinski  
10 uses to develop his analysis; (2) identify the purpose, utility and application of early and  
11 preliminary project cost estimates and rebut Mr. Drabinski's misuse of such estimates;  
12 and (3) rebut Mr. Drabinski's recommendation to the Commission.

13 **Q: Please provide a summary of your Supplemental Rebuttal Testimony.**

14 A: I specifically rebut the Direct Testimony of Mr. Walter Drabinski whose various analyses  
15 of the Iatan Project's costs are fatally flawed. Mr. Drabinski's approach to a prudence  
16 audit in this case is nearly identical in every substantive manner to the methodology he  
17 utilized in the 10-KCPE-415-RTS case regarding the prudence of Iatan Unit 2 (the "KCC  
18 415 Docket") which was recently decided before the Kansas Corporation Commission  
19 ("KCC"). In fact, although Mr. Drabinski's testimony in this case contains a few  
20 revisions from his pre-filed testimony in the KCC 415 Docket, he has made no real,  
21 changes to the methodology or substance of his recommended disallowance to the KCC,

1 who flatly rejected his analysis and Mr. Drabinski's associated prudence  
2 recommendation. I have attached the prudence section of the KCC Order issued on  
3 November 22, 2010 ("KCC Order") for the Commissions convenience at DFM2010-28.  
4 In its Order, the KCC declined "to place much weight on Drabinski's analysis". See  
5 DFM2010-28, KCC Order at p. 25. Specifically, the KCC rejected Mr. Drabinski's  
6 "holistic" approach, as well as determining that his methodology for finding imprudence  
7 was based entirely on hindsight, such that his conclusion of "impudence [was] a  
8 consequence of the results attained rather than evaluating decisions and the decision  
9 making process, connecting the allegations, and then quantifying the impact." See KCC  
10 Order, p. 27

11 Consistent with my testimony to the KCC, I agree with the KCC's Order that Mr.  
12 Drabinski's analysis contains these and other fatal flaws which I will discuss in greater  
13 detail today. As an initial point, I find that Mr. Drabinski's Direct Testimony for this  
14 case includes four separate analyses of the Iatan Project, three of which are nothing more  
15 than red herrings. As Company witness Mr. Roberts also testifies, Mr. Drabinski's  
16 attempt to compare the Iatan Project with other plants built around this time is deeply and  
17 inherently flawed - and it is also completely irrelevant to this proceeding because it does  
18 not factor into his recommended disallowance whatsoever. The same is true of his  
19 attempt to compare the Iatan Project with the Trimble County 2 project in Kentucky.  
20 This information was presented to the KCC because one of the statutory factors in its  
21 regulatory scheme to evaluate prudence is "a comparison of the final cost of the facility  
22 under consideration to the final cost of other facilities constructed within a reasonable  
23 time before or after construction of the facility under consideration." (K.S.A. 66-128g  
24 (3)). Nevertheless, the KCC completely rejected Mr. Drabinski's analysis of the costs of

1 other plants as compared to the costs of Iatan. The following is from KCC's Order at  
2 p.19:

3 The Commission has considered all of the evidence by all the  
4 witnesses on this factor and in the weighing process we are not  
5 persuaded by Staff's approach and gave it little weight. KCPL's  
6 rebuttal witness presented more convincing and compelling  
7 reasons to view Iatan 2 costs as comparable to other similar coal  
8 plants constructed during the time frame, and we so find.

9 The next red herring that Mr. Drabinski places in front of this Commission is his  
10 "Analysis of Budgets and Cost Reforecasts" in which he attempts to bolster the  
11 significance of a series of early cost estimates for the Iatan Project, ultimately to no  
12 effect. In his original Direct Testimony in the KCC 415 Docket, Mr. Drabinski attempted  
13 to compare the Iatan Unit 2 Project's first cost estimate that is embedded in the Iatan Unit  
14 2 Project Definition Report ("PDR"), to the Project's actual costs. See Schedule  
15 BCD2010-7 (the PDR). Prior to the hearing in the KCC 415 Docket, Mr. Drabinski  
16 argued that KCP&L should be held to a large extent to the estimate it developed as a part  
17 of the 2004 PDR. However, his testimony at the hearing changed, and he claimed that  
18 his recommendation was that the "real starting cost" of the Iatan Unit 2 Project was an  
19 interim preliminary estimate that the Company developed in January of 2006. Mr.  
20 Drabinski continues to make this recommendation in this case, despite the fact that the  
21 Company never characterized the January 2006 number to be anything more than an  
22 interim estimate and that it was still working on its Definitive Estimate. See Drabinski  
23 Direct Testimony at p. 16. Additionally, by attempting to hold KCP&L to this interim  
24 preliminary estimate, Mr. Drabinski can claim that there were "mistakes" in this estimate.  
25 For example, Mr. Drabinski claims that a mistake in translating the Iatan Unit 2 Project's  
26 scope into the estimate related to the design of the turbine generator building resulted in  
27 the "unintended consequence" of adding "at least \*\* [REDACTED] \*\* and perhaps over

1       \*\*[REDACTED]\*\*" to the Iatan Unit 2 Project's costs. See Drabinski Direct Testimony at  
2 p. 33 Here, Mr. Drabinski shows his fundamental misunderstanding of the construction  
3 industry's generally accepted estimating process with regard to large power projects. It is  
4 commonly seen and is reasonable for cost estimators to create various iterations of an  
5 estimate's component costs that are prepared along side of the design until there is  
6 enough information for management to formally establish a control budget against which  
7 the actual cost will be measured. Based on my years of being responsible for the  
8 preparation of thousands of cost estimates for all types of construction work, Mr.  
9 Drabinski mistakes this normal evolution and maturation of a preliminary estimate that  
10 occurs on virtually every project with an "unintended consequence" – I am quite sure that  
11 KCP&L intended to increase the size of the turbine generator building to adequately  
12 support the turbine purchased by KCP&L. Furthermore, Company witness Mr. Davis  
13 testifies that is was necessary, as could virtually every other interested party who was  
14 aware of the situation at the time. I will address other aspects of the turbine building  
15 estimate later in my testimony.

16               In my Direct Testimony on pages 7-16, I discuss the progression of the Iatan Unit  
17 2 Project's estimates from the PDR to the final, accepted definitive estimate for the Iatan  
18 Unit 2 which is known also as the Control Budget Estimate or "CBE". Mr. Drabinski  
19 ignores both the industry perspective on various interim cost estimates, the specific Iatan  
20 factual considerations and associated testimony from KCP&L's witnesses regarding the  
21 relative insignificance of the preliminary estimates prior to the Control Budget Estimate.  
22 Quite simply, the cost information that may have existed prior to the advent of the  
23 Control Budget Estimate cannot reasonably be used as a basis for comparison of the  
24 actual project costs, nor was that ever the intent of KCP&L or the MPSC Staff, who  
25 agreed in the 2005 Stipulation and Agreement to use the Definitive Estimate also known

1 as the Control Budget Estimate as the comparative estimate. What makes this issue a  
2 wasteful distraction and a red herring is that just like his alternate analysis of plant  
3 comparisons, Mr. Drabinski's comparison of the PDR and/or the January 2006 cost  
4 estimate does not factor into his recommendation to the Commission for disallowance.

5 The bulk of my testimony rebuts Mr. Drabinski's actual recommended  
6 disallowance of \$231 million from Iatan Unit 2's costs. I discuss the significant and fatal  
7 flaws of Mr. Drabinski's approach including how he: (1) ignores or disregards key  
8 Project facts that he should have reasonably been considered in his analysis of Project's  
9 costs, particularly in claiming that KCP&L should have chosen a different project  
10 delivery method than it did even though that method was not, in fact, available; (2) fails  
11 to follow widely accepted and well-established methodologies, procedures and practice  
12 within the construction industry for the purposes of determining and apportioning costs as  
13 related to actual events and calculating damages; (3) makes generalizations that are not  
14 supported by the bulk of the facts; (4) makes erroneous statements or provides erroneous  
15 calculations in support of his recommended disallowance; (5) improperly uses the term  
16 "industry standard" which he occasionally shortens to "standards"; (6) fails to establish a  
17 nexus between the alleged events/occurrences emanating from what Mr. Drabinski claims  
18 was KCP&L mismanagement and any costs that he recommends the Commission to  
19 disallow; and (7) provides the Commission with alternate analyses that lack substance  
20 and fail to provide any relevant guidance. In short, Mr. Drabinski's analysis has  
21 attributes that are frequently the hallmark of junk science.

22 I also rebut Mr. Drabinski's position that KCP&L lacked the tools necessary to  
23 manage the Project. On this last point, I have already testified extensively regarding the  
24 establishment of the Iatan Project's budgets and how the reforecast of those budgets  
25 provided management with essential insights and tools that it needed to mitigate cost

1 variances on the Iatan Project. On this point the KCC agreed. In its Order, the KCC  
2 stated:

3 The control budget estimate and the reforecasting process  
4 demonstrate KCPL was effectively managing costs. The fact that  
5 the project was over budget by only 18% indicates that these tools,  
6 among others such as the internal audits, are the best evidence of  
7 this effectiveness during the relevant periods. See KCC Order p.  
8 28

9 The components of Mr. Drabinski's proposed \$231 million disallowance should  
10 not be adopted by the Commission because of multiple defects in his analysis and his  
11 failure to establish a causal connection between KCP&L's actions and the alleged  
12 imprudent costs.

13 From an industry perspective, the Iatan Project was a great success and these  
14 successes are discussed at length in the Company witnesses' Testimony in both this  
15 docket and the ER-2009-0089 docket. It is worth noting that in early to mid-2005,  
16 KCP&L contemplated mid-2010 for Iatan Unit 2's in-service date. KCP&L achieved  
17 that date within three months of the target or within 4% of the total time elapsed since the  
18 Project was first contemplated in mid-2004. The above would be seen as an outstanding  
19 result in the power industry, and not indicative as imprudent management by KCP&L.

20 The KCC agreed with this point and stated the following in its Order:

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

30 See DFM2010-28, KCC Order at p. 22.

1 METHODOLOGY USED BY VANTAGE/DRABINSKI

2 **Q: Are you familiar with the Direct Testimony of Mr. Walter P. Drabinski of Vantage**  
3 **Energy Consulting, LLC. (“Vantage”) that was filed in this case?**

4 **A:** Yes, I am.

5 **Q: Are you also familiar with Mr. Drabinski’s Direct Testimony from the KCC 415**  
6 **Docket?**

7 **A:** Yes, I am. I provided KCP&L with both Direct and Rebuttal Testimony in the KCC 415  
8 Docket, and my Rebuttal Testimony was in response to Mr. Drabinski’s testimony in that  
9 case.

10 **Q: Has Mr. Drabinski changed his testimony from the KCC 415 Docket?**

11 **A:** Yes, but most of his changes appear to be tailoring his Direct Testimony to Missouri  
12 prudence standards, which I understand are somewhat different than those in Kansas.

13 **Q: Have any of the changes Mr. Drabinski made to his pre-filed Direct Testimony in**  
14 **this case resulted in you changing your opinions regarding Mr. Drabinski’s**  
15 **analysis?**

16 **A:** No. Both Mr. Drabinski’s Direct Testimony and my rebuttal to that testimony in this  
17 case are largely the same. Mr. Drabinski’s Direct Testimony in the KCC 415 Docket and  
18 this case suffer from the same flaws; factual errors, hindsight review, Monday-morning-  
19 quarterbacking and the like.

20 **Q: Mr. Drabinski has developed four separate cost-related analyses for the**  
21 **Commission that identify his recommended disallowances for the Iatan Unit 2**  
22 **Project. Have you reviewed those analyses?**

23 **A:** Yes.

24 **Q: Is there merit to any of these analyses?**



1 A: No, I don't believe so. Three of the four analyses propounded by Mr. Drabinski are  
2 actually red herrings that are wholly unrelated to his recommended disallowance of \$231  
3 million. Mr. Drabinski apparently included these three red herrings to show how  
4 "conservative" his real recommendation is. See Drabinski Direct Testimony at p. 53.  
5 Company witness Mr. Kenneth Roberts testifies in greater detail to Mr. Drabinski's  
6 "Comparison of 15 Similar Plants" and the "Comparison to Trimble County 2" in his  
7 Rebuttal Testimony to show that such comparisons are highly speculative and cannot be  
8 used as Mr. Drabinski has attempted to use them in his testimony. I agree with Mr.  
9 Roberts. Company witness Roberts also identifies a number of errors in Mr. Drabinski's  
10 methodology and analysis which despite certain corrections and updates of information  
11 regarding other facilities' costs nevertheless does not address the serious flaws apparent  
12 in his pre-filed Direct Testimony and cross examination in the KCC 415 Docket. In its  
13 Order, KCC stated:

14 The Commission has considered all of the evidence by all the  
15 witnesses on this [plant comparison] factor and in the weighing  
16 process **we are not persuaded by Staff's approach and gave**  
17 **it little weight.** KCPL's rebuttal witness presented more  
18 convincing and compelling reasons to view Iatan 2 costs as  
19 comparable to other similar coal plants constructed during the  
20 time frame, and we so find. Furthermore, KCPL has cited to  
21 Drabinski's own adverse admission where he noted: "**there are**  
22 **many differences between plants that ultimately justify**  
23 **differences in costs**" and "**it is difficult to get timely and**  
24 **accurate information and therefore all numbers must be**  
25 **looked at with some reservation.**" This reservation in our  
26 view undercuts the impact of Drabinski's analysis on this point,  
27 particularly in terms of its accuracy. An equivocal reservation  
28 makes a "bounding calculation" meaningless; it places a ball  
29 park figure within a ball park. Further, such reservation together  
30 with its impact on the witness' persuasiveness supports our  
31 ultimate finding on this point, which is that this factor does not  
32 indicate imprudence on the part of KCPL.

33 (emphasis added). See DFM2010-28, KCC Order at p. 19.

1           Based on my many years as a hands-on construction contractor and the one  
2 responsible for thousands of comparative cost estimates, I agree with the KCC that Mr.  
3 Drabinski's analysis of plant comparisons does not establish imprudence on the part of  
4 KCP&L. As the KCC Order notes, Drabinski also discredits his own analysis as quickly  
5 as he introduces it. *See* DFM2010-28, KCC Order at p. 19, Drabinski Direct Testimony  
6 at p. 161.

7           In any event, the main substance of my Rebuttal Testimony is related to: (1) Mr.  
8 Drabinski's main analyses of the Iatan Unit 2 Project's costs; (2) the so-called "Analysis  
9 of PDR's and Cost Reforecasts;" and (3) the "Analysis of Specific Contracts, Purchase  
10 Orders, Change Orders and Other Cost Drivers." *See* Drabinski Direct Testimony at pp.  
11 51-53. It is only in this last section of his testimony that Mr. Drabinski reveals his actual  
12 recommended disallowance.

13 **Q: In what manner does Mr. Drabinski attempt to support his allegations regarding**  
14 **KCP&L's mismanagement of the Iatan Project?**

15 **A:** Mr. Drabinski attempts through repeated citation of anecdotal and untethered topics to  
16 establish that certain of KCP&L's management decisions were imprudent, which in turn  
17 caused the Iatan Project to cost significantly more money than planned. In this diffused  
18 effort, Mr. Drabinski has engaged in clear and obvious hindsight and second-guessing of  
19 KCP&L's management's decision-making. The most prominent decision that Mr.  
20 Drabinski claims KCP&L should have made differently was that to perform the Project  
21 on EPC basis, an option that Company witness Mr. Downey states very clearly did not  
22 exist and was not available to KCP&L. Mr. Drabinski also attempts to confuse the  
23 Commission by trying to change the basis for cost comparison from the Iatan Project's  
24 approved Control Budget Estimate to some earlier iteration of cost information that  
25 existed in January 2006 to which KCP&L never attributed such importance. However,

1 Mr. Drabinski never establishes a nexus between these general and disaggregated after-  
2 the-fact alleged events/occurrences emanating from mismanagement and his  
3 recommended disallowances.

4 **Q: Do you agree with Mr. Drabinski's analysis?**

5 A: No, I do not. The serious defects that I enumerated earlier are evident in Mr. Drabinski's  
6 ultimate analysis of recommended disallowances, in which he proposes that \$231 million  
7 should be deducted from KCP&L's costs on the Project. Company witnesses Chris  
8 Giles, William Downey and Brent Davis each testify as to factual errors in Mr.  
9 Drabinski's Direct Testimony that once corrected immediately deflate his disallowance  
10 analyses. His proposed disallowances ultimately fail, however due to his flawed  
11 methodology. For example, Mr. Drabinski spends dozens of pages citing Schiff Hardin  
12 and Internal Audit Reports. While it is true that those reports identify certain "risks" on  
13 the Iatan Project that if not addressed *could* have led to additional costs, Mr. Drabinski  
14 fails to ever ascertain if and how KCP&L addressed those risks and whether they  
15 materialized. Additionally, simply because a risk is identified it does not mean that  
16 KCP&L actually incurred any additional costs. KCP&L hired consultants and auditors  
17 and requested those reports to help it identify issues as a part of its overall prudent  
18 management of the Iatan Projects. All projects such as Iatan are inherently risk-laden and  
19 in this light, Mr. Drabinski is merely attempting to distort matters. In any event, the fact  
20 that both Mr. Drabinski and MPSC Staff are attempting to utilize these reports against  
21 KCP&L is bad public policy. It discourages utilities from hiring such experts or  
22 identifying issues for fear that it will lead to later disallowances.

23 **Q: How did the KCC view Mr. Drabinski's support of his recommended disallowance**  
24 **in the KCC 415 Docket?**

1 A: The KCC roundly rejected Mr. Drabinski's argument that it should adopt his subjective  
2 recommended disallowances that was largely based upon his "gut feel." This so-called  
3 "holistic" approach to establishing imprudence by KCP&L and viewed the same as not  
4 worthy of characterization as expert testimony:

5 First, Drabinski's "holistic" analysis is severely undermined  
6 when his starting point for the cost overruns is corrected from a  
7 claim of being 49% over budget to about 18%, which is well  
8 within reasonableness for definitive cost estimates. Moreover,  
9 much of Mr. Drabinski's analysis builds on his perception that  
10 there was an imprudent decision to contract using a multi-prime  
11 rather than an EPC approach. As established elsewhere, we  
12 found that KCPL did not have that option. Therefore, the  
13 Commission concludes that the "holistic" approach used by  
14 Staff's expert, which resulted in many attempts to "assess  
15 reasonable percentage disallowances," is prone to being  
16 speculative and arbitrary. Not only is the method far afield from  
17 a reasoned, auditable methodology, we agree with KCPL that it  
18 runs afoul of standards articulated by our Courts for expert  
19 testimony.

20 *See DFM2010-28, KCC Order at p. 32.*

21 **Q: What do you mean when you say that Mr. Drabinski fails to establish a nexus**  
22 **between the alleged events/occurrences emanating from mismanagement?**

23 A: Every experienced and reasonable party in the industry knows that in order to establish  
24 construction expenditures as misspent or wasteful, the asserting party has the reasonable  
25 burden of identifying the factual basis for the assertions by linking them to supporting  
26 events; then show that the misspent or wasted expenditures were incurred as a result of  
27 such an event or series of events; and then accurately aggregate the costs, all based on the  
28 project's actual records. Company witness Mr. Roberts discusses the pertinent legal  
29 standards regarding the "two-step process" for establishing imprudence in this  
30 jurisdiction. I believe that Mr. Drabinski has failed with respect to each step of the  
31 process concerning his recommended disallowance on the Iatan Unit 2 Project.

1 **Q: Do the Project's purchase orders, contracts, change orders or other documents**  
2 **provide sufficient information to identify allegedly imprudent costs?**

3 A: Yes. In my earlier rebuttal to Missouri Public Commission Staff ("Staff") and Staff's  
4 Report, I testify at length regarding the methods that KCP&L identifies and uses to  
5 explain the cost variances on the Iatan Project in keeping with its Cost Control System. I  
6 noted in my Rebuttal Testimony how KCP&L has met its obligations in accordance with  
7 the Stipulation and Agreement ("S&A", Case No. EO-2005-0239) that required KCP&L  
8 to have a system for tracking costs. I testify regarding how I was able to discern each of  
9 the Iatan Project's cost variances from the system that KCP&L maintains and how one  
10 could use a factual review of those variances to form an opinion regarding KCP&L's  
11 management of costs on the Iatan Project. In my Rebuttal Testimony, I also demonstrate  
12 just how hollow are Staff's complaints regarding KCP&L's Cost Control System.

13 The same criticism is warranted with respect to Mr. Drabinski's analysis. While  
14 Mr. Drabinski purportedly shows that, contrary to Staff's position, cost overruns on the  
15 Iatan Project are discernable, Mr. Drabinski nonetheless fails to perform any reasonable  
16 review of the contract, change orders and purchase orders along with supporting  
17 information so as to clearly provide detail on the nature of all costs and associated  
18 overruns. For example, as a part of his recommended disallowance, Mr. Drabinski  
19 simply uses a percentage of the overall costs of certain categories with no analysis as to  
20 how those additional costs were caused by KCP&L's imprudent management of the Iatan  
21 Project. Furthermore, although in other categories Mr. Drabinski does attempt to identify  
22 some specific purchase orders and change orders that he believes to be imprudent, he  
23 does not reasonably explain why or how these change orders or purchase orders were  
24 caused by KCP&L's allegedly imprudent management. He just simply lists them and  
25 recommends that they be disallowed. Further, Mr. Drabinski makes numerous types of

1 errors that are self-evident in his analysis. Additionally, Company witness Davis  
2 discusses in his Rebuttal Testimony the misstatements and inaccuracies evident in Mr.  
3 Drabinski's review of the Project's documents.

4 **Q: Did Mr. Drabinski have ample opportunity to review all of the relevant project**  
5 **documentation?**

6 A: Yes. Company witness Mr. Davis testified that Mr. Drabinski and his associates visited  
7 the project site seventeen times and met with KCP&L on numerous occasions while Mr.  
8 Drabinski was employed by the KCC Staff. When Mr. Drabinski asked for information,  
9 he was provided with full and unfettered access to the documents. Mr. Drabinski had  
10 many opportunities to ask additional questions and seek even more information but he  
11 quite simply failed to do so. All of the costs that were spent on the Project are contained  
12 in and reported upon via the Project's cost portfolio. There have been four full  
13 reforecasts performed on the Iatan Unit 2 Project and Mr. Drabinski has had full and  
14 unrestrained access to the documents regarding each of KCP&L's estimate at completion  
15 ("EAC") effort. In those documents, which I and others from the Schiff team reviewed  
16 as part of our oversight capacity, experienced parties could have found the basis for every  
17 cost variance that has occurred on the Project. KCP&L's team scrupulously tracked the  
18 justification for each variance and Mr. Drabinski and his team were specifically directed  
19 to relevant documents so that they could make their own independent judgment in regard  
20 to these costs. However, Mr. Drabinski simply failed in each of his four analyses to  
21 provide the Commission with any reasonable basis for a finding of disallowance.

22 **Q: You just mentioned the importance of establishing a nexus between actions and**  
23 **costs. Do you believe that Mr. Drabinski has sufficiently analyzed the facts of the**  
24 **Iatan Project to establish a basis for disallowances?**

1 A: No, I do not. Mr. Drabinski has taken an approach in analyzing the facts that is overly  
2 broad and highly suspect. An example of this approach is found on pages 198 to 204 of  
3 Mr. Drabinski's Direct Testimony, where Mr. Drabinski attempts to summarize his  
4 findings for purposes of establishing the "causal factor (s) that result in negative project  
5 impacts and imprudent costs. This list is not all inclusive, but provides a view of how  
6 costs were driven higher due to mismanagement." See Drabinski Direct Testimony at pp.  
7 197, l. 22 to p. 98 l. 2.

8 **Q: Do you agree with the conclusions that Mr. Drabinski reaches in this chart**  
9 **regarding the "Causal Factors" of cost variances on the Iatan Project?**

10 A: No. As an initial point, Mr. Drabinski cites to this chart in support of one of his alternate  
11 analyses that he abandons in developing his actual disallowance, and for that reason alone  
12 Mr. Drabinski's analysis should be disregarded. Even if Mr. Drabinski were to somehow  
13 cure that deficiency, Company witnesses Chris Giles, Brent Davis, William Downey and  
14 Kenneth Roberts each testify as to the factual errors in the body of Mr. Drabinski's  
15 testimony that are summarized in this referenced chart. I will not repeat that testimony in  
16 its entirety; rather, I will identify certain of those items that are indicative of the  
17 methodology that Mr. Drabinski has employed.

18 Additionally, Mr. Drabinski draws multiple conclusions that are wholly without  
19 basis. For example, Mr. Drabinski states in his chart, "The initial schedule was  
20 immediately recognized as tight." See Drabinski Direct Testimony at p. 198. He doesn't  
21 define the terms "initial schedule" or "tight", or provide any context for those terms, and  
22 most of all, he fails to provide any meaning for reference "(\*\* [REDACTED] \*\*)" but does  
23 provide a footnote to a document reference, which is to an internal KCP&L Leadership  
24 Team meeting of January 4, 2007. See Drabinski Direct Testimony p. 198, footnote 51. I  
25 have attached the actual copy of the January 4, 2007 team meeting minutes as Schedule

1 DFM2010-29. In the KCC 415 Docket, Company witness Mr. Davis filed extensive  
2 testimony regarding the factual errors Mr. Drabinski made in his testimony, including  
3 conclusions he reached regarding the January 4 meeting:

4 \*\* [REDACTED]  
5 [REDACTED] \*\*\*  
6 [REDACTED]  
7 (Drabinski Direct Testimony, Exhibit WPD-10.) **This**  
8 **comment is completely taken out of context, and the**  
9 **conclusion that he draws is objectively wrong.** As I just  
10 stated, ALSTOM did not baseline its schedule until April 9,  
11 2007, four months after this meeting was held. What I recall is  
12 that at that time, we were in the process of discussing  
13 ALSTOM's schedule and found some issues that were corrected  
14 before the schedule was baselined. This is a standard part of the  
15 *schedule vetting process.* \*\* [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 \*\*

20 See Davis Rebuttal Testimony, KCC 415 Docket, p. 34, emphasis added.

21 During his cross-examination in the KCC hearing, Mr. Drabinski admitted that the  
22 reference to "\*\*\* [REDACTED] \*\*\*" was "clearly an error," and "I would take out the \*\* [REDACTED]  
23 [REDACTED] \*\* and the footnote 50<sup>1</sup>." See KCC Hearing Transcript, Day 7, p. 1563, lns. 5-25.  
24 Despite admitting to this error in the KCC Hearing and removing the document he  
25 created for his prior testimony in the KCC 415 Docket, Mr. Drabinski boldly and  
26 knowingly repeats the identical erroneous statement in his Direct Testimony before this  
27 Commission regarding the schedule being "tight." See Drabinski Direct Testimony at p.  
28 198.

29 Nonetheless, Mr. Drabinski contends that this erroneously unsupported "Causal  
30 Factor" in this chart drove "decisions on EPC v. Multi-prime." Putting aside the first  
31 mistake of claiming a "Causal Factor" without support, Mr. Drabinski's claim without

<sup>1</sup> In Mr. Drabinski's Direct Testimony in the KCC 415 Docket, the reference that is now footnote 51 was numbered footnote 50.



1 evidence regarding KCP&L's contracting decisions means that Mr. Drabinski continues  
2 to ignore the large body of evidence that KCP&L did not actually have a viable EPC  
3 option at the time the decision was made. The KCC found:

4 KCPL did not have the option in 2005 of entering into an EPC  
5 contract for the balance of Plant work on Iatan at a 12%  
6 premium. Mr. Giles and Mr. Downey testified at length  
7 concerning the contracting strategy choices KCPL had  
8 available, and each highlighted how Mr. Drabinski ignored the  
9 actual circumstances KCPL encountered.

10 See DFM2010-28, KCC Order at p.26.

11 Mr. Drabinski also states that this allegedly "tight" schedule caused the "signing of key  
12 contracts without defined details" (which Mr. Roberts disputes in his Supplemental  
13 Rebuttal Testimony), and "significant rework and engineering miscues" (which is such a  
14 vague and unbounded reference that it difficult to discern what Mr. Drabinski really  
15 means). Finally, even if one were to assume at any point that Mr. Drabinski's position  
16 had some factual underpinnings (which it does not), he provides absolutely no rationale  
17 as to how much the alleged schedule issues cost the Project. Quite simply, Mr. Drabinski  
18 fails to establish the facts necessary to support his opinions and cannot thus establish a  
19 nexus between those shaky positions and the alleged cost overruns. His bottom line  
20 analysis is as untethered as a leaf in the sky.

21 **Q: Do you have another example from Mr. Drabinski's chart in regard to his major**  
22 **mistakes?**

23 **A:** As general matter, Mr. Drabinski contends that there were \*\* [REDACTED]

24 [REDACTED] \*\* He maintains that, \*\* [REDACTED]

25 [REDACTED]  
26 [REDACTED] \*\* See Drabinski Direct Testimony at p. 200.

27 **Q: What mistakes does Mr. Drabinski make related to this line item in his chart?**

1 A: The allegation that he makes is vague – he doesn't state which contractors were impacted  
2 or what delays occurred. Further, in the construction industry, demobilization has a  
3 specific meaning – it means that a contractor leaves the site. There is no other place in  
4 his testimony where he alleges that such demobilization even occurred, and there are no  
5 facts in evidence that he cites to support these statements. Here, as throughout much of  
6 his Direct Testimony, Mr. Drabinski simply stretches too far.

7 I could similarly dispute each and every allegation in Mr. Drabinski's chart on pp.  
8 198-201. The examples that I have cited are exemplar in nature and intended to  
9 demonstrate the poor quality and incompleteness of Mr. Drabinski's methodology and  
10 how he fails to establish any reasonable nexus between alleged cost events and  
11 disallowances.

12 **Q: Mr. Drabinski also claims that the Project was delayed and those delays led to**  
13 **additional costs. Do you agree?**

14 A: It is true that the Project did not meet its in-service criteria when it was initially  
15 contemplated. However, Mr. Drabinski refers to the project as having a "schedule crisis"  
16 *See Drabinski Direct Testimony at p. 37.* Given the fact that Iatan Unit 2's in-service  
17 criteria was met only two-and half-months after a target date that was originally set five  
18 years' prior, this is a seriously overblown statement. It is worth noting that in early to  
19 mid-2005, KCP&L contemplated a "summer of 2010" in-service date for Iatan Unit 2.  
20 KCP&L achieved a date in the summer of 2010 and that date is within 4% of the target  
21 date the Project first contemplated in mid-2004. Thus, actual performance fails to  
22 support Mr. Drabinski's dire proclamation. The Iatan performance as related to both  
23 schedule and cost would be seen as a good and reasonable result in the power business  
24 and undercuts Mr. Drabinski's position that \$231 million of the total Project's costs  
25 should be disallowed based in large part on the Project's schedule performance. Mr.

1 Roberts identifies the schedule performance of other coal plants that were constructed in  
2 the same general time frame as Iatan Unit 2 and found that these projects have been  
3 delayed between 1 month and 14 months. In my view, the Iatan performance period falls  
4 well within the reasonableness envelope. See Roberts Rebuttal Testimony. The KCC  
5 agreed, stating that the Iatan Project was “essentially on time.” See DFM2010-28, KCC  
6 Order at p. 32.

7 Importantly, Mr. Drabinski also fails to reasonably and adequately assess the  
8 schedule impacts on the Project’s costs. Mr. Drabinski prepared a five page table listing  
9 project milestones that he alleges were or were not met on time (Drabinski Direct  
10 Testimony at p. 77-81) even though he made no attempt to analyze the milestones within  
11 the context of the Project’s critical work path using methodologies soundly imbedded and  
12 widely accepted in the construction industry. Company witness Mr. Roberts discusses in  
13 his Supplemental Rebuttal Testimony the flaws in Mr. Drabinski’s testimony.

14 Mr. Drabinski further fails, despite multiple pages of seemingly undirected  
15 discussion within his Direct Testimony, to provide any reasonable and understandable  
16 basis for demonstrating how the Project’s costs increased because of the major  
17 contractor’s labor productivity. Mr. Drabinski states that, “All costs associated with  
18 unreasonable project inefficiencies should be excluded as imprudently incurred because  
19 such costs are due to actions that fell below the standards set by B&McD in its initial  
20 budget estimates and KCP&L’s CM desire.” See Drabinski Direct Testimony at p. 116.  
21 However, he never identifies what costs are attributable to “unreasonable project  
22 inefficiencies” nor does he provide any understandable evidence that KCP&L actually  
23 paid such costs to the contractors. This is relevant because KCP&L’s records are  
24 transparent and include time-card type information, man-hour and scheduling  
25 information, correspondence files, cost reports, Change Order logs, RFIs and many other

1 job related reports. It is widely known and accepted in the power industry that such  
2 records as I have described provide the backbone of schedule delay and disruption  
3 analyses. Mr. Drabinski had all of the information available to him for months and years  
4 so as to perform a supporting analysis and prove whether poor management caused  
5 schedule problems. He simply chose not to do that.

6 **Q: Did Mr. Drabinski make any other mistakes in his analysis of the Project's costs?**

7 A: Yes. I will detail how Mr. Drabinski completely mistakes the purpose and proper use of  
8 the preliminary Project Definition Report ("PDR") that was developed by Burns &  
9 McDonnell in mid-2004, and how misreading that document has resulted in multiple  
10 deeply flawed analyses that ultimately are red herring in nature because they do not factor  
11 into his recommended disallowance. In addition, I will discuss how Mr. Drabinski  
12 overstated, misstated or otherwise failed to provide an auditable basis for a number of  
13 key cost components in his analysis. At the bottom line, even if one were to conclude  
14 that Mr. Drabinski was correct in his supporting allegations, his quantum analysis suffers  
15 from the same problems as his factual analysis.

16 **Q: How does Mr. Drabinski misuse the term "Industry Standard?"**

17 A: I agree with Company witness Mr. Roberts that Mr. Drabinski both misuses and overuses  
18 the terms "standard" and "Industry Standard." As an example, Mr. Drabinski states,

19 \*\* [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]\*\* This is only one of a number times where  
2 Mr. Drabinski invokes the term "Industry Standard" or simply cites to "standards" where  
3 I do not believe such exists, including: bid estimates, labor productivity and the like. If  
4 there were, all project bidders on a project would submit bids in the same amount because  
5 they would simply use the same "industry standard" productivity factors.

6 **Q: You stated earlier that you agreed with Company witness Roberts' rebuttal of Mr.**  
7 **Drabinski's plant comparisons. Are you familiar with the location of the Trimble**  
8 **County 2 project that Mr. Drabinski uses for one of his comparisons?**

9 A: Yes. I believe that Trimble County 2 is located in Kentucky.

10 **Q: Are you familiar with the cost of labor in Kentucky in comparison to Missouri?**

11 A: Yes. I am currently working on two projects in Kentucky and have had other  
12 involvement in Kentucky over the years. First, Kentucky is an "open shop" state and  
13 second, wages in that region tend to be fairly low. As a result, projects like Trimble  
14 County evidence a completely different labor cost profile. Not only are the wages  
15 generally lower, there are much less, if not any, burdensome union manning provisions  
16 (e.g., oiler on a crane) which generally mean less craft, supervision and support  
17 personnel expenses.

18 **Q: Mr. Drabinski estimates that the labor cost difference between Trimble County 2**  
19 **and Iatan Unit 2 is only \$75 million. Do you agree with this assessment?**

20 A: No, I believe that based upon the regional differences and the costs open shop vs. full  
21 union, Mr. Drabinski's estimate is far too low. Responses to data requests in the Trimble  
22 County 2 rate case indicate that the difference in cost between union and non-union labor  
23 is approximately 17-30%, depending on the craft. See WPD-6. One of the Witnesses for  
24 the utility, Dr. Coomes indicated that labor savings to the project based on use of non-  
25 union labor amounted to a project savings of \$93-\$187 million in 2004 dollars. I believe

1 that once time corrected for inflation, the effect of wages and manning provision issues  
2 may actually be in excess of \$200 million.

3 **Q: Are you familiar with Mr. Drabinski's testimony on pages 100-106 in which he**  
4 **attempts to show the impact of commodity pricing on the Project?**

5 A: Yes, I have read it but I don't agree with it.

6 **Q: What is the source of your disagreement?**

7 A: First, the point that Mr. Drabinski is trying to make is unclear. Mr. Drabinski's testimony  
8 and his Exhibit WPD-22 assert that commodity price increases that were operative in the  
9 construction market during the relevant time period had essentially abated by the time  
10 Kiewit prepared its estimate. See Drabinski Direct Testimony at p. 100. On the  
11 following page, in connection with a curve that purports to track the commodity pricing  
12 of Wire and Cable, Mr. Drabinski states, "A review of this data, which encompasses  
13 power wire and cable, indicates that prices peaked in mid-2006, followed by a dip and  
14 another peak in mid-2007. This is significant as this was the timeframe in which Kiewit  
15 was preparing its bid for the balance of plant work on Iatan Unit 2. One would expect that  
16 Kiewit, using current prices, would not see significant increases in commodity costs for  
17 this category." See Drabinski Direct Testimony at p. 101. This testimony reveals a series  
18 of fundamental mistakes. First, Mr. Drabinski asserts that Kiewit, like a Wall Street  
19 brokerage house, should have known and thus been able to better predict market results.  
20 However, what Mr. Drabinski ignores is the fact that Kiewit was not responsible under its  
21 contract for buying engineered materials and for those items that it did purchase, KCP&L  
22 agreed to take the pricing risk. Therefore, commodity pricing had no influence  
23 whatsoever on Kiewit's estimate.

24 Second, as with most other aspects of his analysis, Mr. Drabinski makes  
25 allegations but provides the Commission with no nexus between the allegation and any

1 component of his recommended disallowances. On that basis alone, Mr. Drabinski's  
2 position should be disregarded.

3 Third, the curves that Mr. Drabinski provides are not fully identified and  
4 explained in context. For example, are they a producer cost index (pushing cost up) or  
5 buyer price index (pulling cost up), which are frequently out of sync with specific market  
6 segments such as the power industry and Iatan. This all has to be reasonably vetted and  
7 accounted for before mindless application and reasonable parties know that. In the end,  
8 Mr. Drabinski's use of broad market indices no matter what their pedigree, is simply  
9 another case of an untethered work product.

10 Fourth, the indices appear to reference extremely broad product categories and are  
11 not demonstrated to be relevant. For example, he cites ductile iron pressure pipe when  
12 that product is but a miniscule component of the Project's piping systems. See Drabinski  
13 Direct Testimony at p. 102, Exhibit WPD-22B. Mr. Drabinski also cites construction  
14 machinery and equipment which belongs to the likes of Kiewit and ALSTOM. To the  
15 extent that such parties paid more for their equipment (a fact not established), Mr.  
16 Drabinski offers no evidence that the amount of any such purchase price increases has  
17 been passed along to KCP&L. Mr. Drabinski appears to be arguing that KCP&L paid for  
18 price escalation but should not have, but Mr. Drabinski's position is not entirely clear.  
19 He never articulates an amount that he believes was improperly paid to Kiewit or any  
20 other contractor for price escalation. Contractors frequently charge equipment amounts  
21 other than that based on actual costs when bidding and that is well understood in the  
22 industry. In short, Mr. Drabinski's inclusion of the various indices provide no useful  
23 information regarding the Iatan Project's costs. As an example, Mr. Drabinski cites  
24 concrete when that material was provided to KCP&L on the Iatan Project at a unit cost  
25 and thus not relevant.

1 Fifth, experienced industry parties know that power plant materials and  
2 equipment carry special high pressure and high temperature designs along with unique  
3 safety considerations. They are of a special nature and their pricing bears little or no  
4 relationship to broad average market indices.

5 Sixth, a cursory inspection of the indices yields an opposite impression than the  
6 one Mr. Drabinski attempts to cast – that the price of all these commodities was on a  
7 steep ascent from 2004 through at least 2008. However, without more indication of the  
8 meaning of his data, even that conclusion is tentative.

#### 9 APPLICATION OF PRELIMINARY COST ESTIMATES

10 **Q: Within the industry, what is a PDR and how is it generally used?**

11 A: A PDR is a preliminary engineering report that defines the major characteristics of a  
12 construction project in a very broad sense. PDRs comprise a general road map or  
13 template of what the project is supposed to do and how it generally functions which in  
14 turn serves to document the project as originally conceived. PDRs serve as a starting  
15 point or launch platform from which to continue the design, costing and construction of  
16 the project. For example, the initial 2004 PDR for Iatan Unit 2 sets forth plant capacity  
17 of 800 MW, steam heat of 1050<sup>0</sup>, turbine size and other operating parameters. There  
18 were various other broad aspects of the plant discussed in the 2004 PDR.

19 **Q: What was the level of design maturity imbedded in the 2004 PDR?**

20 A: For all practical purposes, there was no design whatsoever imbedded in the 2004 PDR.  
21 The simplest way of discerning the level of design of a construction project is to pulse the  
22 status and stage of the project's specifications, drawings and other documentation so as to  
23 determine the percent complete. The 2004 PDR contained almost no drawings of  
24 consequence and no specifications – it was little more than 2" thick and weighs less than  
25 a pound.



1 For sake of comparison, I would like to point out two things. First, the ALSTOM  
2 contract specifications for the Iatan Unit 2 Project comprise 1,876 pages, and ALSTOM  
3 created thousands of drawings for specific use on the Iatan Unit 2 Project. Second, if all  
4 of the paperwork associated with the design and construction of Iatan 2 were put in one  
5 place, it would take a semi-truck to hold it. Nevertheless, the 2004 PDR was a good and  
6 useful document given its inherent limitations and the June 2007 Iatan PDR successfully  
7 built on the 2004 PDR as the project moved through the design continuum. Mr.  
8 Drabinski totally mischaracterizes KCP&L's view of a PDR and, here, KCP&L's  
9 position is consistent with industry views.

10 Q: \*\* [REDACTED]  
11 [REDACTED]

12 [REDACTED] \*\* Do you agree?

13 A: No. As I have said, this analysis is ultimately a red herring because Mr. Drabinski does  
14 not in any meaningful way use it as a basis for his recommended disallowance. In  
15 developing his analysis, Mr. Drabinski either ignores or misinterprets the stated – and  
16 limited – purpose of the 2004 PDR and the 2007 PDR Supplement which was to provide  
17 KCP&L with sufficient information to determine the feasibility of the project. First, allow  
18 me to clarify a key point: a review of the 2007 PDR supplement clearly indicates that it  
19 provides the details and history of the changes to the Iatan Project's estimate up to the  
20 approval of the December 2006 Control Budget Estimate. In his lack of clarity, Mr.  
21 Drabinski muddies the water with respect to when the PDR update was performed (he  
22 says 2006); gives it a number of different names (including the Control Budget Estimate);  
23 and confuses its purpose. The 2007 PDR Update explains the changes giving rise to the  
24 cost estimate modifications in detail over a 2-plus year period.

1           However, the most salient point to be made in regard to the 2007 PDR is that the  
2 year 2006 and earlier cost changes referenced therein are simply not cost overruns  
3 because the Control Budget Estimate had not been established and approved until  
4 December 2006. All prior cost amounts were based on information too preliminary and  
5 unvetted to warrant characterization as the "Definitive Estimate" or Control Budget  
6 Estimate. The earlier cost information was evolving as more information about the  
7 Project's scope and performance conditions became known. I reviewed in detail the  
8 stages of development and the relative accuracy of those stages in my Direct Testimony.

9 Q:   \*\* [REDACTED]  
10 [REDACTED] \*\* See Drabinski Direct  
11 Testimony at p. 179. Do you agree that this was an abrupt change in a short period  
12 of time?

13 A:   No. Here again, Mr. Drabinski has his facts wrong and fixates on issues that are entirely  
14 irrelevant. The Iatan Unit 2 Project's design, while still in its embryonic form, had  
15 evolved considerably from a scope perspective during the time period. Moreover, to the  
16 extent that cost increases were driven by the general market place such were consistent  
17 with my own experience on many other projects and also that reported by Mr. Roberts in  
18 his Direct Testimony. Mr. Roberts has reported that power industry prices increased 27%  
19 in 2007 alone and 19% in the last six months of that year. See Roberts Direct Testimony  
20 at page 16 and Schedule KMR2010-8. Mr. Roberts also pointed to studies indicating that  
21 certain power plant costs doubled in the period May 2006-June 2008. See Roberts Direct  
22 Testimony at page 16 and Schedule KMR2010-9. So, viewed in perspective, the Iatan 2  
23 Project falls within the envelope of reasonableness and would be seen as such in the  
24 industry.

1 Q: What were the major areas of cost growth between the 2004 PDR and the 2007 PDR  
2 Update/Control Budget Estimate?

3 A: The 2007 PDR Update contains five summary level tables in Appendix S1-M that  
4 summarized more expansively the various changes in different ways. \*\* [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]\*\* The second five-

9 page table provides a somewhat different sort of cost line items so the amounts do not  
10 always track directly to the first table. Although more detail is provided, the total cost is

11 the same at \*\* [REDACTED]\*\*. The third six-page table tracks some \*\* [REDACTED]

12 [REDACTED]\*\* of specific changes related to selected items.

13 Q: Were these changes in the Iatan Unit 2 Project's estimate visible when KCP&L's  
14 senior management approved of the Control Budget Estimate in December 2006?

15 A: Absolutely, yes. There were periodic meetings all through 2006 in which various  
16 iterations of the Iatan Unit 2 Project's estimate were presented to KCP&L's senior  
17 management.

18 Q: Was the Staff aware that the estimate had changed from the PDR to the Control  
19 Budget Estimate?

20 A: My understanding is that Staff certainly knew of the progression of the cost estimates.  
21 Company witness Mr. Giles testifies that Staff encouraged KCP&L to take its time in  
22 preparing the Control Budget Estimate, and that there were multiple presentations over  
23 time. The Cost Control System document (Schedule SJ2010-1) even includes reference  
24 to the cost estimate's status and certain goals that KCP&L had set for completing the cost  
25 estimate, leading to the Control Budget Estimate.

1 Q: Earlier in your testimony today, you stated your disagreement with Mr. Drabinski's  
2 position regarding the January 2006 cost estimate as the "starting point" for the  
3 Project. Can you identify the basis for your disagreement with Mr. Drabinski?

4 A: It is a matter of fact that this January 2006 estimate was never the Iatan Project's budget  
5 nor was it ever purported to be. Mr. Drabinski asserts that, "\*\*\* [REDACTED]  
6 [REDACTED]  
7 [REDACTED]\*\*" See Drabinski Direct Testimony at p.179 However, Mr.  
8 Drabinski provides no support whatsoever for this conclusion, and I am not even sure  
9 what "stipulation" he is talking about. As Mr. Giles and Mr. Downey testify, the project  
10 described in the 2004 PDR and the January 2006 estimate was widely different than the  
11 one that was ultimately constructed. Mr. Drabinski takes what in essence was as an  
12 "overnight number" and blows it out of proportion, again for no purpose whatsoever  
13 other than attempting to create ambiguity where there is none. The Staff has agreed that  
14 the Project's costs should be measured against the Control Budget Estimate, and Mr.  
15 Drabinski's actual recommended disallowance is calculated from the Control Budget  
16 Estimate as the starting point as well.

17 It appears that Mr. Drabinski wants to keep either the PDR or the January 2006  
18 interim cost information in focus so as to provide him a shock-value platform associated  
19 with pointing to earlier smaller number. Mr. Drabinski simply strives to transform the  
20 January 2006 interim cost information into something that it is not.

21 Q: Mr. Drabinski asserts that the expansion of the Iatan Unit 2 Project's scope to  
22 include a deaerator and the increase in the size of the turbine building added "at  
23 least \*\* [REDACTED]\*\* and perhaps over \*\* [REDACTED]\*\*" to the Iatan Unit 2  
24 Project's costs. Do you agree?

1 A: I will agree that the Iatan Unit 2 may increased in cost by \*\* [REDACTED] \*\* as a result of  
2 the change to the size of the turbine generator building, as that is the amount that was  
3 estimated at the time. I have no idea why Mr. Drabinski asserts that the number would be  
4 higher, and Mr. Drabinski never identifies how he has come by this newfound  
5 knowledge. He also insinuates that the above additions to the Iatan Unit 2 Project's cost  
6 estimate were somehow sinister. The following is an excerpt from my Rebuttal  
7 Testimony in ER-2009-0089:

8 **Q: What happened between October 2006 and December**  
9 **2006 with respect to the Estimate?**

10 A: The project team, Schiff and Burns & McDonnell  
11 continued to vet the estimate. Additionally, in October, it was  
12 determined that the cost estimate for Unit 2 was missing a  
13 significant amount of steel quantities for the turbine generator  
14 building. Burns & McDonnell started with Iatan Unit 1's as-built  
15 quantities for commodities and then scaled-up those quantities on a  
16 numerical basis for use on Unit 2. Generally speaking, when  
17 Burns & McDonnell utilized a scale-up of the existing Unit 1 for  
18 Unit 2 on a commodity basis, the measure of that scale-up was  
19 20% to 25% to accommodate the new unit's larger size. As a  
20 result, KCP&L told Burns & McDonnell to reevaluate the entire  
21 estimate. Burns & McDonnell subsequently re-estimated all  
22 portions of the project: (1) that had not been purchased; (2) where  
23 the scope of any particular work package was influenced by  
24 commodities and/or quantities that could be at variance with the  
25 design concept; and (3) where there may have been scope  
26 variances between the estimate and the design. See Meyer  
27 Rebuttal, ER-2009-0089, p. 11, ln. 10 to p.12, ln. 1.

28 The Project's estimate was updated to include addition of the dearator, the larger turbine  
29 generator and all related structural, mechanical and electrical work that was known at the  
30 time. These costs are in the Control Budget Estimate. Ultimately, Mr. Drabinski's  
31 opinion lacks substance.

32 **Q: Why do you believe Mr. Drabinski's opinion lacks substance?**

33 A: Mr. Drabinski's fixation with this particular issue shows his fundamental  
34 misunderstanding of the estimating process for a large power project. As I have testified,

1 it is common to create iterations of cost information that are prepared along side the  
2 design until, in aggregate, there is enough vetted information for management to move  
3 forward with a control budget that is used for actual cost comparison henceforth. Mr.  
4 Drabinski does not provide any technical analysis to support his insinuation that the  
5 turbine building's ultimate cost included costs that somehow could have been avoided  
6 through a different design or equipment choice. It is reasonably clear that Mr. Drabinski  
7 does not fully comprehend heavy construction cost estimating and associated norms and  
8 procedures and, further, he also mistakes normal maturation of preliminary cost  
9 information that occurs on every project with an "unintended consequence". It is also  
10 important to note that none of the costs related to this issue are part of Mr. Drabinski's  
11 \$231 million proposed disallowance. As a result, this is simply another "red herring."

12 **REBUTTAL OF MR. DRABINSKI'S ADJUSTED PDR COST ANALYSIS**

13 **Q: On pages 202 to 204 of his Direct Testimony, Mr. Drabinski includes a table that**  
14 **purports to identify a series of cost variances on the Project and an "Imprudent**  
15 **Amount" for each of those variances. Are you familiar with that testimony?**

16 **A:** Yes. I have read it but I cannot identify how it is relevant to the Commission's current  
17 undertaking.

18 **Q: Can you identify Mr. Drabinski's purpose in providing this chart?**

19 **A:** No, I cannot, because neither the chart nor the adjoining testimony support or link to Mr.  
20 Drabinski's recommended disallowances in any way whatsoever. He arrives at a total of  
21 **\*\* [REDACTED] \*\*** that he alleges was imprudent and then tacks on the **\*\* [REDACTED] \*\***  
22 that he calculates was imprudent based on a comparison of the 2004 PDR estimate and  
23 the Control Budget Estimate (an amount foreign even to Staff since Staff recognizes the  
24 December 2006 CBE as the benchmark) and concludes that the total disallowance, if one  
25 were to follow this line of reasoning, would be **\*\* [REDACTED] \*\***. However, after

1 developing this analysis, he appears to abandon it for the recommendation he makes in  
2 the last 9 pages of his 213-page testimony. This entire analysis is just another of Mr.  
3 Drabinski's red herrings.

4 **Q: How would you characterize the information that Mr. Drabinski provides in this**  
5 **chart?**

6 A: I believe this analysis suffers from the same problems that I have articulated throughout  
7 my testimony today. Mr. Drabinski fails to provide an understandable audit trail for his  
8 calculations, fails to factually support his conclusions and makes great leaps of judgment,  
9 including the use of random and large percentages as part of his disallowance  
10 calculations. I don't see how this chart provides any assistance whatsoever to the  
11 Commission in trying to validate the basis of Mr. Drabinski's opinions.

12 **Q: Can you give some examples of why you do not believe that Mr. Drabinski analysis**  
13 **on pp. 202-204 is useful to the Commission?**

14 A: Yes. I can just take the example of the first category called "Total Construction." These  
15 cost were tracked in detail through KCP&L's cost report/portfolio. However, instead of  
16 analyzing the actual costs, Mr. Drabinski simply purports to identify the cost overrun and  
17 then proposes an arbitrary disallowance amount without any analysis. For this category,  
18 Mr. Drabinski proposes a disallowance of \*\* [REDACTED]  
19 [REDACTED]\*\* Mr. Drabinski  
20 provides no explanation as to how he arrives at this 40% percentage.

21 **Q: Mr. Drabinski states that the "Imprudent Amount" for this item is due to**  
22 **mismanagement. Do you agree?**

23 A: Without fully knowing how Mr. Drabinski calculated this amount, such would be pure  
24 speculation on my part.

1     REBUTTAL OF MR. DRABINSKI'S PURCHASE ORDER AND CHANGE ORDER

2                     ANALYSIS

3     **Q: You have discussed three of the four analyses provided by Mr. Drabinski that**  
4       **purport to support his recommended disallowance. What is your understanding of**  
5       **Mr. Drabinski's fourth and last analysis?**

6     **A:** The fourth analysis is based upon Mr. Drabinski's review of the purchase orders and  
7       change orders. It is this analysis that makes up Mr. Drabinski's "real" proposed  
8       disallowance amount of \$230,955,466. The other three analyses are patently self-serving  
9       and their magnitude appears to be engineered to simply provide cover in regard to why  
10      the \$231 million is both reasonable and on the low side as far as deductions are  
11      concerned. However, as I and Mr. Roberts explain in detail, the other three analyses are  
12      fatally flawed and should not be considered. In short, Mr. Drabinski's purchase order  
13      and change order analysis ("CO Analysis") is as equally flawed as his other analyses.

14    **Q: Have you reviewed Mr. Drabinski's CO analysis that leads to his proposed**  
15      **disallowance of \$230,955,466?**

16    **A:** Yes. Mr. Drabinski assigns specific amounts of his recommended disallowance to  
17      particular contractors based upon his so-called CO Analysis. *See* Drabinski Direct  
18      Testimony at p. 208. These amounts are as follows:



Contractor	Unit 2	Imprudent Amount
Total For Alstom	\$502,243,063	\$37,221,000
Total for Kiewit	\$387,155,301	\$112,000,000
Total for Kissick	\$100,427,520	\$2,790,294
Total for B&McD	\$63,350,503	\$5,819,845
Total Aerotek & Nextsource	\$33,045,508	\$16,522,754
Total for Toshiba	\$60,298,594	\$0
AQUILA, INC.	\$9,223,912	\$0
AFCO STEEL	\$13,055,822	\$0
LIST & CLARK CONSTRUCTION CO	\$10,148,778	\$0
POWELL ELECTRICAL SYSTEMS INC	\$10,148,778	\$0
PULLMAN POWER, LLC	\$23,136,889	\$0
R.F. FISHER ELECTRIC CO., INC	\$10,375,610	\$0
Professional Support	\$23,265,486	\$11,632,743
Other Miscellaneous POs from Data	\$57,723,475	\$0
Other POs, Indirects, Uncommitted	\$684,400,762	\$44,968,830
Project total	\$1,988,000,000	\$230,955,466

1

2 Q: What is your opinion of this analysis?

3 A: As an initial matter, I am unclear as to the methodology used by Mr. Drabinski in  
4 compiling and analyzing his amounts. Typically, in performing this type of analysis, the  
5 amounts to be used are reconciled using some recognized method of accounting, a "cut-  
6 off" date is chosen to ensure that the numbers will not change while the analysis is being  
7 performed, and an explanation of the methodology used is provided, all as commonly  
8 seen throughout the heavy construction industry. However, it does not appear that Mr.  
9 Drabinski did any of these things. As a result, I have had some trouble reconciling the  
10 numbers developed by Mr. Drabinski. In fact, Mr. Drabinski himself refers to very  
11 different amounts for the same cost item. As an example, with respect to the Kiewit  
12 Contract, on pg. 49, Mr. Drabinski states that the "initial contract, when adjusted for  
13 work moved to other contractors, was approximately" \*\* [REDACTED]

14 [REDACTED] \*\* On page 156, Mr. Drabinski states that "\*\*\* [REDACTED]  
15 [REDACTED]

16 [REDACTED] \*\*\*" On page 158, Mr. Drabinski states that  
17 the "\*\*\* [REDACTED]

1 [REDACTED]\*\* Finally, the number for the Kiewit contract used on  
2 page 208 in Mr. Drabinski's table of recommended disallowances is \*\*[REDACTED]\*\*.  
3 We cannot reconcile, nor does Mr. Drabinski explain, the differences in all of these  
4 numbers that are purportedly for the same contract. Additionally, on page 155, Mr.  
5 Drabinski argues that the total Project cost exceeded the originally proposed estimate by  
6 \*\*[REDACTED]\*\*, and then just three pages later on page 158 Mr. Drabinski states that \*\*[REDACTED]  
7 [REDACTED]  
8 [REDACTED]\*\*" There is similar confusion regarding Mr. Drabinski's testimony around the  
9 ALSTOM contract. On page 147 of his testimony, Mr. Drabinski states that \*\*[REDACTED]  
10 [REDACTED]  
11 [REDACTED]\*\* However, the recommended disallowance table on  
12 page 208 shows the ALSTOM contract total as \*\*[REDACTED]\*\*. No explanation has  
13 been provided by Mr. Drabinski as to the differences in these numbers, or why the  
14 recommended disallowance amounts that were calculated off of the higher numbers,  
15 would be subtracted from a lower number. For example and in illustration of how deeply  
16 flawed are the Drabinski calculations, subtracting the recommended disallowance of  
17 \*\*[REDACTED]\*\* from the Kiewit contract number of \*\*[REDACTED]\*\* means that  
18 Mr. Drabinski is recommending that the Kiewit Contract amount should have been  
19 \*\*[REDACTED]\*\*, which is \*\*[REDACTED]\*\* less than the actual original contract  
20 value. This is just another example of Mr. Drabinski engaging in flawed analyses.

21 **Q: Mr. Drabinski has provided data attached to his testimony that he says supports his**  
22 **recommended disallowance amounts. Do you agree?**

23 **A:** No. First, in five of the categories, ALSTOM (\$37.2 million), Kiewit (\$112 million),  
24 Burns & McDonnell (\$5.8 million), Aerotek/Nextsource (\$16.5 million); and  
25 Professional Support (\$11.6 million), Mr. Drabinski is recommending arbitrary

1 disallowance amounts. For ALSTOM and Burns & McDonnell the recommended  
2 disallowance is essentially any amount above the original contract amount. Mr.  
3 Drabinski's recommended Aerotek/Nextsource and Professional Services disallowance is  
4 50% of the total costs in those categories, and his recommendation for disallowance for  
5 the Kiewit contract simply appears to be a random number. Although Mr. Drabinski  
6 seems to tie the Kiewit number to the Unit 2 Contract Amendment, the proposed  
7 disallowance is in excess of thirty million dollars higher than the actual costs associated  
8 with the Contract Amendment. When KCP&L provided this information to Mr.  
9 Drabinski in the KCC 415 Docket, his response was that his proposed disallowance was  
10 "reasonable" in light of the overall cost increase to the Kiewit Contract. See Schedule  
11 DFM2010-30, Drabinski response to Data Request No. 4. Although Mr. Drabinski does  
12 list the change orders he believes to be imprudent for Kissick (\$2.8 million) and the  
13 category titled "Other POs, Indirects and Uncommitted", he not identify the reasons he  
14 believes each change order identified should be disallowed—he simply lists them with no  
15 connection to any event, action or decision that occurred on the Iatan Project. This  
16 further supports the fact that Mr. Drabinski's recommended disallowance amount is not  
17 based upon a balanced, rational and coherent analysis of imprudence imputed to  
18 KCP&L's and the costs that flow from those actions. Instead, Mr. Drabinski's  
19 recommended disallowance is nothing more than a veiled attempt to disallow the bulk of  
20 the increases to the Iatan Project's budget as measured between the original Control  
21 Budget Estimate and the 2010 reforecast, regardless of the reason or causes behind those  
22 increases.

23 **Q: In his testimony, Mr. Drabinski purports to state the basis for his recommended**  
24 **disallowances—what is your opinion of this testimony?**

1 A: Although Mr. Drabinski stated that he was looking for details related to “overtime,  
2 schedule compression, contract extensions, schedule extensions, work deferrals or  
3 restacking or other work that would not have been required if the project was on  
4 schedule, and all work was sequenced as planned.” See Drabinski Direct Testimony at p.  
5 205. However, such items in and of themselves are not inherently imprudent. Further,  
6 —Mr. Drabinski, by measuring all aspects of performance only against the planned  
7 schedule seems to indicate that anything less than perfect performance on the part of the  
8 contractors is what is required for prudent management of the Iatan Project by KCP&L.  
9 This is an impossible standard, not a prudent one, and one that would not be used in the  
10 industry at-large. Mr. Drabinski also states that he looked for instances in which  
11 additional payments were made for services or supplies that should have been included in  
12 the original contract.

13 A detailed look at Mr. Drabinski’s actual analysis shows that his recommended  
14 disallowance amounts are not tied to the two reasons given by Mr. Drabinski. As an  
15 example, approximately \*\* [REDACTED] \*\* of the Kiewit Unit 2 Contract Amendment, of  
16 which Mr. Drabinski recommends disallowances of 140% of the total cost, is for the  
17 insulation and heat trace work. This \*\* [REDACTED] \*\* was not in Kiewit’s original  
18 contract because it was not contemplated at the time of the original Kiewit Contract that  
19 it would be Kiewit performing this work. It was, however, in the Project’s budget and it  
20 was well known that some entity would have to perform this work. However, given the  
21 potential impact that an insulation contractor could have on Kiewit’s productivity,  
22 KCP&L made the prudent decision to award this work to Kiewit and get the would-be  
23 insulator out of the way. This award did not require a contingency draw, nor did it  
24 increase the overall cost of the project, and it certainly was a required scope that needed  
25 to be completed for the project. Mr. Drabinski makes the statement with respect to his

1 proposed disallowance that \*\* [REDACTED]  
2 [REDACTED]  
3 [REDACTED] \*\* See Drabinski Testimony at p.  
4 159. The fact that Mr. Drabinski's recommendation includes costs for insulation and heat  
5 trace, a necessary scope of work that could not have been avoided and was included in  
6 KCP&L's original budget for the project, indicates that Mr. Drabinski has in fact not  
7 carefully evaluated the change orders that make up his proposed disallowance. All of the  
8 new scope items are additional work performed by Kiewit that was not included in its  
9 original contract scope. I cannot think of any good reason why this amount should be  
10 part of Mr. Drabinski's recommended disallowance. This is indicative of Mr.  
11 Drabinski's flawed analysis.

12 Other examples of how Mr. Drabinski's proposed disallowances are not tied to  
13 the two reasons he gives above are the facts that: 1) he simply disallows all of the costs  
14 above the original contract price for both ALSTOM and 2) Burns & McDonnell with no  
15 analysis as to the reasons for the increases to those two contracts and the arbitrary 50%  
16 disallowance for the categories of Aerotek/Nextsource and Professional Services.

17 **REBUTTAL TO VANTAGE - ALSTOM**

18 **Q: Do you agree with the basis of Mr. Drabinski's assessment of KCP&L's**  
19 **management of the ALSTOM contract?**

20 **A:** No. I believe that KCP&L has taken all reasonable measures to control costs on the  
21 ALSTOM contract. Mr. Davis and Mr. Downey discuss at length the measures that  
22 KCP&L has taken throughout the life of the Project to hold ALSTOM accountable for its  
23 performance. With respect to Mr. Drabinski's recommended disallowance, I disagree  
24 with Mr. Drabinski that: (1) ALSTOM's productivity on Iatan Unit 2 led to \*\* [REDACTED]  
25 [REDACTED] \*\*, (2) ALSTOM's contract

1 should all have included every possible change including work completely outside its  
2 scope, and that not \*\* [REDACTED]  
3 [REDACTED] \*\* See Drabinski Direct Testimony at p. 148.

4 **Q: Do you believe that KCP&L has compensated ALSTOM for its productivity losses?**

5 A: No. \*\* [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] \*\*

9 However, this is akin to comparing apples to oranges. As I will discuss, KCP&L paid  
10 ALSTOM amounts above its base contract for myriad and justifiable reasons, including  
11 additional scope. In discussing the impacts of productivity on the Project, Mr. Drabinski  
12 argues “unreasonably low productivity that failed to meet standards” (Drabinski Direct  
13 Testimony at p. 118.) I believe that Mr. Drabinski is misusing the term “standards” here.  
14 As far as I know, there are no construction industry standards that apply to productivity.

15 **Q: What is your opinion of Mr. Drabinski’s recommended \$37.221 million**  
16 **disallowance for the ALSTOM Contract?**

17 A: I disagree. Except for the increases due to interest and tax payments, Mr. Drabinski  
18 proposes disallowance of all other amounts above the original contract amount. After  
19 removing the \*\* [REDACTED] \*\* that was settled as a part of the Unit 1  
20 rate case, the remaining amount of \$37.221 million is the recommended disallowance  
21 amount.

22 **Q: What is your opinion of Mr. Drabinski’s recommendation that “any costs in excess**  
23 **of the \*\* [REDACTED] \*\* should be disallowed?”**

24 A: Mr. Roberts testifies that it is unreasonable in the industry to expect that any contract,  
25 fixed price or not, would not be subject to the effect of changed work that was not

1 included in the base scope of work. My years of construction experience underscores Mr.  
2 Robert's opinion. As I testified earlier, Iatan Unit 2 is a complex project. As Mr.  
3 Roberts states in his Rebuttal Testimony, the technical specification for the ALSTOM  
4 contract is 1,874 pages long. I agree that it would be very difficult to write this document  
5 or the contract so that disputes regarding ALSTOM's scope and responsibility under  
6 these specifications *did not arise at some point during the Project*. Of importance, on any  
7 construction project, there will always be additional scope items that an owner would like  
8 the contractor to perform, and the owner makes a judgment that doing so with the instant  
9 contractor is less costly than making a change at a later time with a different contractor.  
10 In KCP&L's Data Request #7, Staff was asked to provide further clarification to Mr.  
11 Drabinski's position. In its response, Staff replies: "Any additional costs are due to one  
12 of two reasons. Either Alstom did not include the systems resulting in change orders in  
13 the original contract, or KCP&L is asking for equipment not necessary to operate the unit  
14 effectively. In either case, rate payers should not be responsible for the added costs."  
15 *See DFM2010-31, Mr. Drabinski's Response to Data Request No. 7.* In light of Mr.  
16 Roberts contrary testimony and my own experience, and the specific change orders  
17 discussed below, I disagree with Mr. Drabinski.

18 **Q: Do you believe that Mr. Drabinski accurately portrays the costs associated with the**  
19 **ALSTOM contract that are at issue in this case?**

20 A: No. Mr. Drabinski's starting point with the ALSTOM contract value mischaracterizes  
21 the costs for Iatan Unit 2 in at least two ways: (1) by including nearly \*\* [REDACTED] \*\* in  
22 costs that were included in the 246 Docket (i.e. the Unit 1 Rate Case) and that are not part  
23 of this case; and (2) by basing his calculation on an incorrect KCP&L budget figure.

24 As to the first error, putting aside my disagreement with Mr. Drabinski's overall  
25 disallowance analysis, Mr. Drabinski mistakenly recommends disallowances of almost

1       \*\* [REDACTED] \*\* that were included in the Unit 1 rate case (the 0089 Docket). The chart  
2 below illustrates the maximum amount that Mr. Drabinski could possibly state are related  
3 to Iatan Unit 2 from the ALSTOM contract. The amounts that I have highlighted below  
4 in grey are not part of the Iatan Unit 2 costs.

5       \*\*

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]			
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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In particular, item No. 4 was a part of the \*\* [REDACTED] \*\* that Mr. Drabinski agrees was a part of the Unit 1 rate case and has excluded it in its entirety from his calculations or else he will be double counting these costs. As such, merely removing the costs that Mr. Drabinski's erroneously includes in the Iatan Unit 2 amount reduces his recommended disallowance from \*\* [REDACTED] \*\*

1 Q: In addition to the change orders excluded due to the fact that they are applicable  
2 only to Unit 1, please identify other areas where you believe Mr. Drabinski's  
3 analysis with respect to his recommended disallowance for ALSTOM is flawed.

4 A: I do not believe that it is appropriate for Mr. Drabinski to include in his recommended  
5 disallowance amounts paid to ALSTOM for scope additions. Such changes orders would  
6 include the following:

7

	Approved Change Orders	Drabinski Recommended Disallowance	Comments
	Alstom Change Order AP043X160721036 for coal conveyor steel support tower.	\$1.6 M	Design Change by Owner. Could not be anticipated at the time of contracting. ALSTOM awarded this scope of work because ALSTOM was working the immediate area on the boiler steel and was in the best position to perform this work.
	Alstom Change Order AP03289X000016072103289 Boiler chemical cleaning waste disposal.	\$1.3 M	Change to ALSTOM's scope of work.
	TOTAL Scope Changes	\$2.9 M	

8 The change orders set forth above are additions to ALSTOM's scope of work. The actual  
9 change orders are attached to my testimony as Schedule DFM2010-32 and Schedule  
10 DFM2010-33.

11 Q: Were these change orders prudent changes to ALSTOM's scope of work?

12 A: Yes. These changes were both reasonable and prudent. Clearly the coal conveyor steel  
13 support tower, which is a part of the material handling system, was not a part of  
14 ALSTOM's original scope of work. However, KCP&L awarded this scope of work to  
15 ALSTOM due to the fact that ALSTOM was already working in the area and had an

1 available crane that could be used. By awarding the work to ALSTOM, KCP&L  
2 eliminated a potential claim by ALSTOM that it would be impacted in that area by  
3 another contractor with another large erection crane. Changes in scope of this type  
4 reduce the Project's overall cost and facilitate coordination – that is a reasonable  
5 management goal.

6 With respect to the boiler chemical cleaning waste disposal, pursuant to the  
7 technical specifications section 15052.3.23, ALSTOM is responsible for removing from  
8 the site all chemical and water used to execute the Unit 2 Boiler Chemical Cleaning,  
9 except those generated during acid cleaning. ALSTOM's chemical cleaning procedure  
10 for the Unit 2 boiler specifies the use of a one-step di-ammonium EDTA  
11 (ethylenediaminetetraacetic acid) cleaning process. Therefore, based on the original  
12 division of responsibility in the contract, KCP&L decided to award ALSTOM the added  
13 scope of disposing the resulting acid waste product generated during the Unit 2 chemical  
14 cleaning process. Due to the significant physical space necessary for ALSTOM's Unit 2  
15 boiler chemical cleaning subcontractor personnel in and around the Unit 2 Boiler while  
16 executing the Unit 2 boiler chemical cleaning, awarding the disposal scope of work to  
17 another contractor in that area had the potential to create congestion and potential delay.  
18 Thus, it was prudent and reasonable to award the work to ALSTOM.

19 **Q: What other change orders do you believe should not be disallowed?**

20 **A:** The change orders below indicate owner-directed changes.

21 \*\*

	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]

**HIGHLY CONFIDENTIAL**

	[REDACTED]		
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	

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These change orders are not "omissions" where ALSTOM simply did not include such costs in its original estimate, but are instances in which KCP&L wanted ALSTOM to perform work in a certain way that resulted in a higher cost to ALSTOM's contract but ultimately may have saved the project money in compression costs that would have had to be paid to Kiewit. \*\* [REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]\*\* Both KCP&L and ALSTOM acknowledged this fact. ALSTOM, as the EPC

12

contractor, believed that it could improve the quality and productivity of its craft and thus

1 had no intention of changing its means or methods. Copies of the applicable change  
2 orders are attached to Company witness Forrest Archibald's Rebuttal Testimony as  
3 FA2010-08. One of the inherent problems with EPC contracts is an EPC contractor can  
4 and usually will choose the lowest-cost option, which may not be the best option for the  
5 project. ALSTOM was focused on the least-cost option, which it believed was to  
6 continue with the regular union craft workers. \*\* [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] \*\* ALSTOM was not allowed to mark-up this cost, which the  
11 EPC contractor would normally do.

12 Similarly, KCP&L agreed to the change orders for pre-assembly of the boiler  
13 bottom and relocation of the elevator to facilitate good working conditions and reduce  
14 project congestion. The boiler bottom pre-assembly allowed for coordination between  
15 ALSTOM and Kiewit so that Kiewit could work in adjacent areas earlier and with  
16 improved access. The added elevator reduced congestion for obvious reasons.

17 Q: What is your opinion of Mr. Drabinski's recommendation to disallow all of the  
18 \*\* [REDACTED]  
19 [REDACTED] \*\*?

20 A: \*\* [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]\*\*

**REBUTTAL TO VANTAGE - KIEWIT**

**Q: Do you agree with Mr. Drabinski's assessment of KCP&L's management of the Kiewit contract?**

A: No, I do not. I believe that Mr. Drabinski has made a number of erroneous assumptions regarding the basis for Kiewit's estimate and contract, and in part due to those errors, he is unable to properly quantify either the value of the Kiewit contract or his recommended disallowances. As I will show below, Mr. Drabinski has incorrectly identified the basis for the contract amendment that the parties executed in November 2009, and these misassumptions have led him to miscalculate the value of the components of that amendment. Mr. Drabinski also makes allegations about the management of the Kiewit contract, claiming that KCP&L failed to properly control costs. I disagree with Mr. Drabinski's points and do not see evidence that he has performed the necessary independent analysis necessary to draw such conclusions.

**Q: What is the foundation for your opinion that Mr. Drabinski does not understand the basis of the Kiewit contract?**

A: Mr. Drabinski testifies, among other things, \*\* [REDACTED]  
[REDACTED]\*\* (Drabinski Direct Testimony at p. 159). As I stated in my Direct Testimony, I was involved in the vetting of Kiewit's estimate through the summer of 2007 and I do not believe anything even remotely like what Mr. Drabinski

1 imagines actually occurred. Mr. Downey and Mr. Davis testify as to the reasons Kiewit's  
2 estimate was reduced, namely to remove from the estimate work or materials that  
3 KCP&L had already contracted to purchase from others. From a logic standpoint, Kiewit  
4 had no reason to agree to such a deal that arguably put it at risk for non-payment. Mr.  
5 Drabinski also incorrectly claims that KCP&L is required to pay for all of Kiewit's  
6 inefficiencies, which Company witness Mr. Roberts points out is not true.

7 **Q: Why is the basis for Kiewit's cost estimate important for understanding Mr.**  
8 **Drabinski's disallowances?**

9 A: Mr. Drabinski wants the Commission to disallow costs that were reasonably spent as the  
10 design matured and a more full understanding of how and what the Project entailed  
11 became known. However, Mr. Drabinski's point related to the estimate is as irrelevant as  
12 it is flatly wrong.

13 **Q: Why is that?**

14 A: The fact that a cost estimate increases as result of design maturation is not evidence that  
15 the costs of the project were excessive or that there was mismanagement of the  
16 contractors. His analysis of the Kiewit contract provides an excellent example. Mr.  
17 Drabinski alleges in his Direct Testimony that, "The turbine building bust drove much of  
18 these costs (increases)." See Drabinski Direct Testimony at p. 209. Here again, Mr.  
19 Drabinski raises this issue without any evidence that the necessary addition to the turbine  
20 generator building resulted in Kiewit's cost increases. He further states, "\*\*\*

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] \*\*\*" *Id* I agree with Mr. Drabinski that the final quantities of work in

25 the Kiewit contact were not known until the design was completed – this was, as many



1 KCP&L witnesses testify, at the heart of the deal with Kiewit. However, Mr. Drabinski  
2 comes to the conclusion that the fact the design matured resulted in "these imprudent  
3 costs" again without any support whatsoever. He would have the Commission believe  
4 that costs associated with the maturing design are imprudent, which is simply wrong and  
5 grossly out of step in regard to almost universally accepted industry practice. The real-  
6 world reason that Kiewit's estimate changed was the design moved to a state of  
7 completion and that allowed Kiewit to fully price its work.

8 Below, I have performed an analysis of how the Kiewit contract grew and the  
9 reasons for that growth.

10 **Q: Does Mr. Drabinski disagree with KCP&L's decision to hire Kiewit?**

11 A: No. As a threshold matter, Mr. Drabinski clearly states that "it is recognized that  
12 KCP&L's decision to shift from a Multi-Prime strategy to a fixed price contract with time  
13 and material adders based on Unit Prices, was the most effective and least cost approach  
14 to support the BOP work." See Drabinski Direct Testimony at p. 155. Rather, Mr.  
15 Drabinski's argument is based on the cost control and management of the Kiewit  
16 contract, which he argues was inadequate.

17 **Q: What is your understanding of the methodology used by Mr. Drabinski to reach its  
18 recommended disallowance for Kiewit?**

19 A: Frankly, Mr. Drabinski does not explain his methodology regarding his recommendations  
20 whatsoever. In total, Mr. Drabinski recommends a disallowance of \$112,000,000. Mr.  
21 Drabinski testifies, "Vantage is of the opinion that the \*\* [REDACTED] \*\* of the \*\* [REDACTED] \*\* first  
22 group of change orders, the \*\* [REDACTED] \*\*, and \*\* [REDACTED] \*\* and \*\* [REDACTED] \*\* of the last  
23 \*\* [REDACTED] \*\* change to the contract, totaling \$112 million should not be included in rate  
24 base." See Drabinski Direct Testimony at p. 209. Mr. Drabinski testifies, "These were  
25 avoidable had the project been planned and engineered according to proposed standards

1 and had KCP&L's Construction Management team appropriately managed Kiewit." See  
2 Drabinski Direct Testimony at p. 159. Mr. Drabinski does not articulate any other basis  
3 for these recommended disallowances, nor does he provide even a reason why he chose  
4 those seemingly random amounts for disallowances.

5 **Q: Do these costs accurately reflect the Kiewit Unit 2 Contract Amendment?**

6 A: No. Mr. Drabinski appears to be confusing several issues. First, the \*\* [REDACTED]  
7 [REDACTED]  
8 [REDACTED]\*\* are not actually additional costs to the Kiewit Contract. (Drabinski Direct  
9 Testimony at p. 158). In his testimony, Mr. Drabinski cites to "Exhibit B" of the Kiewit  
10 Contract Amendment as the source of this amount. I am assuming (although Mr.  
11 Drabinski does not explain where he comes up with this number) that this \*\* [REDACTED]

12 [REDACTED]  
13 [REDACTED]\*\* However, these two items were not an "add" to  
14 Kiewit's contract. \*\* [REDACTED]

15 [REDACTED]  
16 [REDACTED]\*\* This was a pure straightforward left-pocket-right-pocket accounting  
17 exercise, nothing more.

18 **Q: What is the actual additional cost to the Kiewit Contract from the Kiewit Unit 2**  
19 **Contract Amendment?**

20 A: The Kiewit Unit 2 Contract Amendment's value was an additional \*\* [REDACTED]\*\*  
21 (See Schedule WHD2010-09). This is made up of several different components  
22 including \*\* [REDACTED]\*\* for design maturation, \*\* [REDACTED]\*\* for pricing  
23 escalation, and \*\* [REDACTED]\*\* for scope increases, including the insulation and  
24 lagging work.

1 Q: Mr. Drabinski's criticizes the prices that were in the original Kiewit Contract  
2 stating that \*\* [REDACTED]  
3 [REDACTED]  
4 [REDACTED] \*\* See Drabinski Direct Testimony, p. 157. What is your opinion of this  
5 criticism?

6 A: First, it does not appear that Mr. Drabinski performed an analysis as to how much the  
7 pricing changes actually impacted the overall cost of the Kiewit contract. \*\* [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] \*\* My understanding of the original Kiewit contract is that there was some  
13 pricing that was fixed, and other pricing where KCP&L had the risk of price escalation.  
14 This is not an unreasonable or uncommon practice, based upon my experience. I would  
15 also like to say that Mr. Drabinski's statement that the revised estimates significantly  
16 exceed the original estimates \*\* [REDACTED] \*\* is not readily understood.  
17 See Drabinski Direct Testimony at p. 158. Mr. Drabinski does not identify the estimates  
18 to which he is referring. I am aware of one cost increase of this magnitude that involved  
19 some electrical panels. In that instance, it was not a case of an underestimate in regard to  
20 price but rather the design and specification of the panel itself completely changed so that  
21 the panel that was ultimately installed was wholly different than what was estimated. In  
22 other words, this is a design change, not an instance where the estimate was low.

23 Q: Are you familiar with RS Means?

24 A: Yes. RS Means is only one of many cost reference books, none of which are generally  
25 regarded in the industry as a "standard". Sources like RS Means only provide broad

1 nation-wide cost parameters that are so heavily qualified that they have only a general  
2 limited value when attempting to draw any specific conclusions on Iatan. If there were  
3 such a thing as industry cost standards, there would not be 40,000 contractors in the  
4 country each with its own competitive pricing structure. Most of the contractors that I  
5 know view their pricing structures as highly proprietary. Specific to Mr. Drabinski's  
6 testimony, I have reviewed the RS Means 2006 Heavy Construction Cost Data book that  
7 was in effect during the general period of the Vantage analysis. On page 299 of that  
8 book, 3" rigid conduit is listed at \$25.50/lf while Vantage asserts a price of \$36.74 – a  
9 44% error. Schedule DFM2010-34. If nothing else, it shows that Mr. Drabinski's  
10 analysis itself is suspect, flawed and should be discarded.

11 Q: Do you agree with Mr. Drabinski's assertion \*\* [REDACTED]  
12 [REDACTED]  
13 [REDACTED] \*\*? See Drabinski  
14 Direct Testimony at p. 158.

15 A: No. First of all, KCP&L did "monitor" the unit costs submitted by Kiewit. Every change  
16 in Kiewit's Bill of Quantities that reflected pricing changes was carefully reviewed and  
17 vetted by KCP&L's estimators and project team. Second, the fact that the unit costs  
18 utilized by Kiewit in its original estimate were lower than the actual costs had no impact  
19 on the ultimate cost of Kiewit's work. Notably, Mr. Drabinski does not claim that  
20 KCP&L paid too much for the material; he simply identifies an increase over Kiewit's  
21 initial estimate. Here, Mr. Drabinski merely keeps building his list of anecdotal issues to  
22 which he assigns no lost value apparently hoping that the Commission can do what he  
23 cannot. Thus, Mr. Drabinski does not analyze whether, how or to what extent pricing  
24 increases actually impacted Kiewit's contract price but once that analysis is done it

1 indicates, contrary to Mr. Drabinski's claim that pricing had a significant impact to the  
2 Unit 2 Contract Amendment, that only \*\* [REDACTED] \*\* was added.

3 **Q: How much of the Kiewit Contract Amendment was due to Contractor error?**

4 A: **\*\* [REDACTED] \*\***. This is the amount of rework or work that Kiewit had to do over so as  
5 to correct the errors of other contractors. I have also included in this category any  
6 backcharges against Kiewit for extra costs incurred by KCP&L for Kiewit's defective  
7 work.

8 **Q: Is KCP&L attempting to recoup this money from the contractors that caused Kiewit  
9 to have to perform this other work?**

10 A: Yes. KCP&L has a fairly robust backcharge process. However, based on my experience,  
11 even the most tenacious owners and contractors are only able to recoup modest amounts,  
12 generally not more than 15-20% of backcharge amounts. Many times the value of the  
13 backcharge is exceeded by the administrative and legal costs to recoup the backcharge.

14 **Q: Were these costs incurred due to KCP&L's imprudence or mismanagement?**

15 A: No. As I have already explained, fabrication and other errors are common and inevitable  
16 on projects of this size. KCP&L and the Iatan 2 project should not be judged and held to  
17 a level of perfection standard at odds with industry norms. Even with a perfect QA/QC  
18 and material management program, errors will be made. Here, Mr. Drabinski show his  
19 less than full understanding of how the industry works.

20 **Q: Was is possible to perform a more granular assessment of the Kiewit Contract  
21 Amendment?**

22 A: Yes. Mr. Drabinski had an opportunity to ask for and receive a more detailed break down  
23 of that amendment. On January 26, 2010, Schiff met with Mr. Drabinski at Iatan to  
24 provide him with the detail that is in my testimony. To my knowledge, Mr. Drabinski did  
25 not request any additional information regarding the Contract Amendment.

1 **REBUTTAL TO VANTAGE -- KISSICK**

2 **Q: Please describe Mr. Drabinski's recommended disallowance for Kissick Contract.**

3 A: Mr. Drabinski recommends a \$2,790,294 disallowance for Kissick. Although he lists the  
4 change orders that he proclaims as imprudent, he never really explains why or how those  
5 change orders were caused by KCP&L's imprudence. As a result, Mr. Drabinski fails to  
6 raise a serious and credible doubt as to KCP&L's prudence with respect to those change  
7 orders. Company witness Mr. Davis testifies in his Rebuttal Testimony that KCP&L  
8 made a prudent decision to accelerate Kissick to successfully meet key dates to reduce  
9 the costs of other contractors.

10 **REBUTTAL TO VANTAGE - BURNS & McDONNELL**

11 **Q: Please describe Mr. Drabinski's recommended disallowance for the Burns &**  
12 **McDonnell Contract.**

13 A: Mr. Drabinski recommends that everything above the original cost estimate for  
14 engineering services of \*\* [REDACTED] \*\* million should be disallowed, or \$5,819,845.

15 **Q: Do you agree with Mr. Drabinski's recommended disallowance?**

16 A: No. Mr. Drabinski states that his recommended disallowance is for \*\* [REDACTED]

17 [REDACTED]

18 [REDACTED] \*\* (Drabinski Direct Testimony at p. 155).

19 However, Mr. Drabinski bases his final conclusions upon observations made in the audit  
20 and other reports produced early on in the Project. He completely ignores the fact that  
21 upon being made aware of these issues (as was the intended function of these reports),  
22 KCP&L either corrected or mitigated the risks raised in the audit reports in a reasonable  
23 way. Several company witnesses, including Mr. Davis and Mr. Roberts have testified  
24 regarding KCP&L's prudent management of Burns & McDonnell. On Unit 2, KCP&L  
25 has not had to pay additional money to contractors for Burns & McDonnell's late

1 performance. Furthermore, Mr. Drabinski ignores the fact that the reason Burns &  
2 McDonnell's base contract estimate increased was because it performed work outside the  
3 scope of its original contract.

4 **REBUTTAL TO VANTAGE - INDIRECTS AND MISCELLANEOUS PO's**

5 **Q: Does Mr. Drabinski recommend disallowances other than those for ALSTOM,**  
6 **Kiewit and Burns & McDonnell?**

7 A: Yes. Mr. Drabinski has three other categories in his recommended disallowance: 1)  
8 \$16,522,754 for Aerotek & Nextsource, who provided staff augmentation personnel to  
9 KCP&L; 2) \$11,632,743 for "Professional Support"; and 3) \$44,968,830 for Other Ops,  
10 Indirects, and Uncommitted". The total of these recommended disallowances is  
11 \$73,124,327.

12 **Q: What is your understanding of the basis behind Mr. Drabinski's recommendation**  
13 **related to these four categories?**

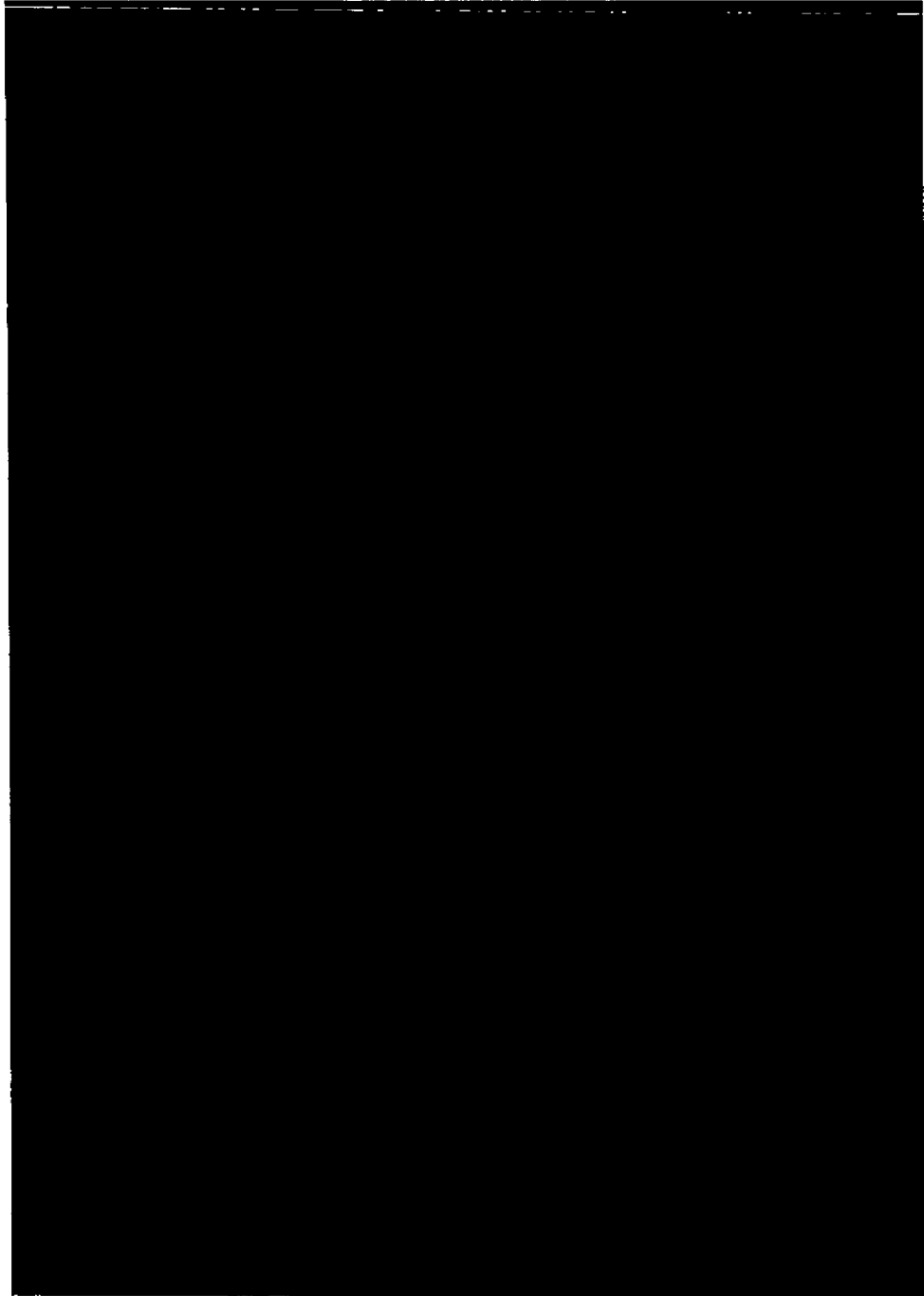
14 A: Quite honestly, I have no understanding of why Mr. Drabinski has recommended these  
15 disallowance amounts and KCP&L's attempts through data requests to ascertain the basis  
16 for Mr. Drabinski's disallowances have proved futile. As for Aerotek & Nextsource and  
17 "Professional Support", Mr. Drabinski's recommended disallowance is simply 50% of  
18 the total spend, without any explanation. Mr. Drabinski does not even define what  
19 constitutes "Professional Support," or which invoices or change orders are tied to this  
20 category. Aerotek & Nextsource supplied KCP&L with much of its project management  
21 team. It is unclear how Mr. Drabinski can argue in the first instance that KCP&L did not  
22 have enough project management personnel, and then argue that 50% of the costs that it  
23 did have should be disallowed. If, as Mr. Drabinski recommends, KCP&L had a much  
24 larger staff in place earlier, the costs would have probably been about the same, even  
25 accounting for the additional costs due to the delay.

1           Finally, with respect to Mr. Drabinski's \$44.968 million recommended  
2 disallowance for "Other Ops, Indirects, and Uncommitted," Mr. Drabinski does not state  
3 a reason as to why the change orders listed on page 212 of his testimony should be  
4 disallowed or what specific imprudent actions by KCP&L caused those increases in cost.  
5 Secondly, it appears that a significant portion of those change orders have been double  
6 counted. When Mr. Drabinski testified with respect to these costs in the Kansas Rate  
7 Case Hearing, he had not provided a detailed list of the items included in the \$44 million  
8 total but represented that his recommended disallowances were not part of other  
9 disallowance categories. See generally, the transcript excerpts provided at Schedule  
10 DFM2010-35 at Tr. Vol. 7, p. 1592, ln. 21 to p. 1593, ln. 8 and p. 1593, ln. 5-8 ("My  
11 sorting was done such that no Alstom, Kissick or Kiewit purchase ordering change orders  
12 would have been included in that."). However, even a cursory review of what Staff  
13 provided shows that this statement is untrue.



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The change orders that begin with an "AP" are related to ALSTOM's scope of work. Indeed, the first two change orders (in the amount of almost \*\* [REDACTED] \*\* of

5

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1 the total \*\* [REDACTED] \*\*) were specifically identified and included by Mr. Drabinski in  
2 his ALSTOM disallowance amounts – this is a double-up. See Drabinski Direct  
3 Testimony at pp. 145-47 (chart entries, items nos. 8, 6 & 10) and cf to Drabinski Direct  
4 Testimony on p. 212. The change orders that start with a “KW” are related to Kiewit,  
5 and are also included in Mr. Drabinski’s analysis of Kiewit costs. Finally, the change  
6 orders that start with a “KI” are Kissick change orders. In all, this chart shows \*\* [REDACTED]  
7 [REDACTED]\*\* that would have been included in Mr. Drabinski’s analysis for those  
8 contractors. Furthermore, Mr. Drabinski does not indicate why he believes each of those  
9 change orders were avoidable costs due to KCP&L’s imprudence and thus leaves the  
10 Commission short in regard to why any credence should be attached to his analysis. In  
11 most instances he does not even identify the contractor that the change order is related to,  
12 much less identify the circumstances that gave rise to the change order. As a result, Mr.  
13 Drabinski has failed to create a serious and credible doubt that these costs were caused by  
14 KCP&L’s imprudence.

15 Q: Does that conclude your testimony?

16 A: Yes it does.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City )  
Power & Light Company to Modify Its Tariffs to ) Docket No. ER-2010-0355  
Continue the Implementation of Its Regulatory Plan )

In the Matter of the Application of KCP&L Greater )  
Missouri Operations Company to Modify Its ) Docket No. ER-2010-0356  
Electric Tariffs to Effectuate a Rate Increase )

AFFIDAVIT OF DANIEL F. MEYER

STATE OF ILLINOIS )  
) ss  
COUNTY OF LAKE )

Daniel F. Meyer, being first duly sworn on his oath, states:


1. My name is Daniel F. Meyer. I am employed by Meyer Construction Consulting, Inc. My services have been retained by Schiff Hardin LLP, who is a consultant for Kansas City Power & Light Company.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company consisting of fifty-eight (58) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

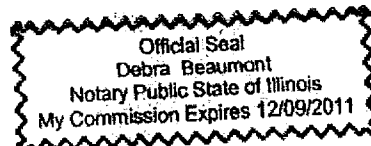
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.

  
Daniel F. Meyer

Subscribed and sworn before me this 13 day of December, 2010.

  
Notary Public

My commission expires: 12/9/11



**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:     Thomas E. Wright, Chairman  
                              Joseph F. Harkins  
                              Ward Loyd

In the Matter of the Application            )  
of Kansas City Power & Light Company\_    )     Docket No. 10-KCPE-415-RTS  
to Modify its Tariffs to Continue the     )  
Implementation of its Regulatory Plan     ).

**ORDER: 1) ADDRESSING PRUDENCE; 2) APPROVING  
APPLICATION, IN PART; & 3) RULING ON PENDING REQUESTS**

The above captioned matter is before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being fully advised in all matters of record, the Commission makes the following findings of fact and conclusions of law:

**I.     BACKGROUND**

**A.     General**

On December 17, 2009, Kansas City Power & Light Co. (KCPL or the Company) filed the captioned Application for a rate change per K.S.A. 66-117 and K.A.R. 82-1-231. The current docket represents the fourth and final rate case in the series of four rate applications that were contemplated in the Stipulation and Agreement (1025 S&A or Regulatory Plan) that was approved by the Commission in Docket No. 04-KCPE-1025-GIE. The Regulatory Plan represented a collaborative effort and resulted in KCPL committing to make substantial investments in its electric infrastructure over a five-year period.

In the 1025 Docket, KCPL, the Commission, the Staff of the State Corporation Commission of the State of Kansas (Staff), the Citizens' Utility Ratepayer Board (CURB), and

**A. Prudence**

**1. The Test for Determining Prudence**

KCPL, Staff, CURB, and Empire filed briefs and presented argument on three prudence issues:

- I. Does K.S.A. 66-128g, or other statute, set the legal standard for determining imprudence in this case given that none of the construction projects will generate nuclear power?
  - A. If "yes," are there any statutory factors contained in that standard that can be legally excluded in determining imprudence and on what basis?
  - B. If "no," then what legal standard should be used for determining imprudence, and what is its basis?
- II. Can the specific legal standard developed above be applied to all types or categories of costs, (e.g. environmental upgrades) alleged as imprudent?
- III. What party bears the burden of proof—Staff to prove imprudence or KCPL to prove prudence—and is either party entitled any presumptions or permitted to shift the burden?<sup>30</sup>

Of interest, some briefs indicated that K.S.A. 66-128g did not set the legal standard for determining prudence in this case; instead they offered, for example, a view that the term prudence used in this statutory scheme was "borne from the definition of the word 'prudence,' which . . . is essentially a negligence standard based upon accepted industry practice."<sup>31</sup> However, the language offered by the parties redefining prudence does not appear in the statutes, the Commission's Wolf Creek Order, or the *Kansas Gas & Electric* case interpreting those two authorities. In fact, the Wolf Creek Order specifically refers to K.S.A. 66-128g as a "statutory mandate" that ". . . also provides notice to the utilities of the general *standards* to be used."<sup>32</sup>

<sup>30</sup> Order Approving Stipulation & Agreement and Addressing Scope of Final Rate Case, Docket No. 09-KCPE-246-RTS, ¶ 23, pp. 10-11 (Jul. 24, 2009).

<sup>31</sup> Staff Brief on Prudence Review and Legal Standards, Docket No. 04-KCPE-1025-GIE, p. 4 (Aug. 31, 2009).

<sup>32</sup> *In re Wolf Creek Nuclear Generating Facility*, Final Order, Docket No. 84-KG&E-197-RTS, p. 14 (Sept. 27, 1985).

We also note that parties split hairs over the terms "factor," "guideline," and "standard," which are used interchangeably in the Wolf Creek Order and the *Kansas Gas & Electric* case interpreting and affirming that Order. In our view that approach amounts to making a distinction without a difference when it comes to applying the express and specific mandate in K.S.A. 66-128g. Under a common ordinary meaning approach, factor is defined as a "cause that contributes to a particular result"; guideline is defined as "a statement of policy or procedure"; and standard as "an accepted measure of comparison for qualitative or quantitative value."<sup>33</sup> Candidly, we see K.S.A. 66-128g as a statute that has all of these definitions working within a self-contained and unambiguous framework.

Therefore, after reviewing all of the briefs and the arguments of the parties, the Commission concludes, as to Issue I and Issue II, that K.S.A. 66-128g, as interpreted by the Kansas Supreme Court in *Kansas Gas & Electric*, and within the context of K.S.A. 66-128 more generally, does apply to the non-nuclear construction projects referred to as Iatan I and Iatan II in this case.<sup>34</sup> That statute is "devoted to a recitation of the various factors to be considered by the Commission in making the determination of 'prudence' or lack thereof."<sup>35</sup> Some of the factors in that statute will bear on our decision more than others; however, the only factor we find clearly irrelevant is (a)(7), which addresses decommissioning, waste disposal, and clean up costs.

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

[t]he factors which shall be considered by the commission in making the determination of "prudence" or lack thereof in determining the reasonable value of electric generating

<sup>33</sup> Black's Law Dictionary, p. 630 (8<sup>th</sup> Ed. 2004); Webster's II, New Riverside Dictionary, pp. 553, 1131.

<sup>34</sup> See *Kansas Gas & Electric*, 239 Kan. at 493 (discussing the Commission's role of assessing the "reasonable value of electric generating property.").

<sup>35</sup> *Kansas Gas & Electric*, 239 Kan. at 493.

property, as contemplated by this act shall include *without limitation* the following [12 enumerated items.] (Emphasis added).<sup>36</sup>

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

[K.S.A. 66-128g(a)(12)], in effect, states that 'prudence or lack thereof' means as that term is commonly used. Black's Law Dictionary 1104 (5th ed. 1979) defines "prudence" as "carefulness, precaution, attentiveness and good judgment."<sup>37</sup>

And it later said:

As noted heretofore in this opinion, the word 'prudence' has a common and ordinary meaning. The various factors listed in K.S.A. 66-128g(a) provide sufficient guidelines for determining prudence which obviates the need for a definition of the term.<sup>38</sup>

Based on the above, we reject the parties' attempts to inject an industry standard of prudence or a requirement for a causal link between the alleged imprudent act and an otherwise avoidable cost. We also reject the use of rewritten negligence standards. These points are not included in the express statutory "guidelines for determining prudence" as those are listed in K.S.A. 66-128g(a)(1-11); nor should they override the very basic definition pertaining to the catchall provision in (a)(12). Therefore, we shall review the evidence submitted on the prudence issue by applying 10 of the 11 factors in the statute, and then the catchall Factor 12, in a straight-forward, methodical manner. We will also rely on the "known and measurable" standard, a benchmark embedded in traditional ratemaking.<sup>39</sup>

As to Issue III, burden of proof, only Staff and CURB filed testimony challenging the prudence of KCPL's construction expenditures. Neither disputed an Order placing the burden of

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<sup>36</sup> K.S.A. 66-128g(a).

<sup>37</sup> *Kansas Gas & Electric*, 239 Kan. at 495; Black's Law 8<sup>th</sup> Ed. defines prudent as "circumspect or judicious in one's dealings; cautious."

<sup>38</sup> *Kansas Gas & Electric*, 239 Kan. at 503.

<sup>39</sup> *E.g. Kansas Industrial Consumers v. Kansas Corp. Comm'n*, 30 Kan. App. 2d 332, 343 (2002); *Gas Service Co. v. Kansas Corp. Comm'n*, 4 Kan. App. 2d 623, 635-36 (1980).

proving imprudence on them, and neither alleged that the presumption in 66-128g(b) applies. That presumption is triggered when costs exceed 200% of the "original cost estimate." In its post-hearing brief, Staff claims in error that it only carries a seemingly lesser burden of persuasion and not the burden of proof.<sup>40</sup> However, Kansas law provides no distinction between those two burdens; it also provides that the requisite level of proof to satisfy the burden of proof is a preponderance of the evidence.<sup>41</sup> Therefore, the Commission concludes that Staff and CURB must prove, by the preponderance of the evidence, that KCPL, under K.S.A. 66-128g, imprudently incurred costs that should be excluded from the rate base. In other words, Staff's evidence of KCPL's imprudent actions must be of greater weight or more convincing than KCPL's evidence that it acted prudently, and Staff must show that its alleged facts of imprudent actions by KCPL are more probably true than not true.

## 2. The K.S.A. 66-128g(a) Factor Analysis

This analysis begins with a review of K.S.A. 66-128(c) which states:

**Valuation of property for ratemaking; evaluation of efficiency or *prudence* of utility; exclusion of all or a portion of costs of excess capacity, when[.]** The [Commission] in *determining the reasonable value of property* [for ratemaking purposes] shall have the power to evaluate the efficiency or *prudence* of acquisition, construction, or operating practices of that utility. In the event the [Commission] determines that a portion of the costs of acquisition, construction or operation were incurred due in whole or in part to a lack of efficiency or *prudence*, or were incurred in the acquisition or construction of excess capacity, it shall have the power and authority to exclude all or a portion of those costs from the revenue requested by the utility.

K.S.A. 66-128g states:

**Determination of 'prudence' in determining the reasonable value of electric generating property; factors to be considered; presumption of lack of prudence of costs in excess of 200% or 'original cost estimate'; definition of 'original cost estimate'; when costs exceeding 200% may be included.** (a) The factors which shall be considered by the commission in making the determination of "prudence" or lack

<sup>40</sup> E.g. Staff Post Hearing Brief at ¶ 33, p. 9.

<sup>41</sup> K.S.A. 60-401(d); *Ortega v. IBP, Inc.*, 255 Kan. 515, 518 (1994).



thereof in determining the reasonable value of electric property as contemplated by this act shall include without limitation the following: . . . [.]

K.S.A. 66-128g(a) then goes on to enumerate eleven specific factors, and one catch all provision for "any other fact, factor or relationship which may indicate prudence or lack thereof as that term is commonly used."<sup>42</sup> As indicated above, the common usage of the term "prudence" has been established by our Supreme Court as carefulness, precaution, attentiveness and good judgment. The Court, and the Commission in the Wolf Creek Order, both implicitly rejected using "hindsight," or in other words, "the perception of the nature and import of events after they have occurred."<sup>43</sup> We see no reason to deviate from statute, the Wolf Creek Order, or the *Kansas Gas & Electric* case in reaching our decision.

The evidence concerning the amount and level of costs that should be excluded from the rate base was highly contested by the three parties who prefiled testimony. First, KCPL built a strong and credible case in defense that its actions were not imprudent; its own expert, however, did testify that with respect to Iatan 2, KCPL should accept a \$20.4 million (\$5.1 million Kansas jurisdictional amount) imprudence disallowance due to the engagement of Welding Services, Inc., and the removal/readdition of an auxiliary boiler as described in Dr. Nielsen's testimony.<sup>44</sup>

Second, Staff argued for a \$231 million (\$57.7 million Kansas jurisdictional) disallowance. In our view, this claim hinges on a hindsight analysis, which is clearly prohibited. Staff's case was also fundamentally flawed because it starts with the premise that the project was 49% over the "original cost estimate" but never equates that term to the term "definitive cost estimate" as is done in the statutory scheme.<sup>45</sup>

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<sup>42</sup> K.S.A. 66-128g(a)(12).

<sup>43</sup> *Kansas Gas & Electric*, 239 Kan. at 503; *In re Wolf Creek Nuclear Generating Facility*, Final Order, Docket No. 84-KG&E-197-RTS, p. 14 (Sept. 27, 1985); Webster's II, New Riverside Dictionary, p. 583.

<sup>44</sup> Nielsen Rebuttal, p. 8, ln. 18 to p. 9, ln. 2.

<sup>45</sup> See K.S.A. 66-128g(b)(1).

Third, CURB presented a very limited analysis; it looked at what it believed to be the original cost estimate, compared it to the latest budgeted costs, and asserted that ratepayers should bear 25% of the cost overruns, and shareholders should bear the difference. CURB's prefiled disallowance amounted to \$33.6 million.<sup>46</sup>

Considering the record as a whole, the Commission finds that KCPL's presentation of evidence on the statutory factors weighed greater in our decision than did Staff's and CURB's. The KCPL managers' own testimony about their own actions and what they directly observed and experienced during the construction and ongoing decision making process was credible and more convincing than Staff and CURB witnesses. On lengthy cross-examination, where we directly observed the KCPL witnesses testify, nothing occurred to undermine the truthfulness or accuracy of their direct or rebuttal testimony.

We also find that as to many of the factors individually and collectively, Staff simply did not meet its burden of proof and neither did CURB. The presentation of Staff's case suffered, as did its overall credibility, when it did not prefile testimony on four of the statutory prudence factors, despite being expressly ordered to do so.<sup>47</sup> Instead, through Staff witness Dr. Glass, rather than by motion, Staff "recommended" that the Commission delay consideration, until the abbreviated rate case,<sup>48</sup> of four factors numbered 1, 2, 5, and 9 of K.S.A. 66-128g(a). As to Factor 10, Dr. Glass also recommended that the Commission accept the evidence of Staff's expert witness Mr. Drabinski and determine that KCPL did not act in the general public interest when making certain management decisions related to the construction of Iatan Unit 2.<sup>49</sup>

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<sup>46</sup> Crane Direct, p. 32, ln. 17; pp. 36-39.

<sup>47</sup> Tr. Vol. 8, p. 1664; *see also* Procedural Order, Docket No. 10-KCPE-415-RTS, ¶ 20, p. 9 (Mar. 12, 2010).

<sup>48</sup> The request to file an abbreviated rate case is treated separately elsewhere in this Order.

<sup>49</sup> Glass Direct, p. 2, ln. 18; Tr. Vol. 8, pp. 1666-67.

In our Order dated July 23, 2010, the Commission rejected Staff's recommendation to defer prudence issues until the abbreviated rate case, and gave four reasons for this decision.

The Commission then concluded:

Therefore, for all the foregoing reasons, Staff witness Glass shall be prepared to answer Commission questions as to the above factors and not assume questions regarding these factors will be deferred to a subsequent proceeding, whatever form we ultimately decide that proceeding takes. With that said, we also anticipate questioning Dr. Glass about factor # 10 concerning the public interest. We are however, mindful of the tight time constraints imposed by rejecting Dr. Glass' recommendation at this juncture, but the procedural posture of the case so dictates.<sup>50</sup>

The July 23, 2010 Order became final without any party asking for reconsideration. When Dr. Glass provided additional and amended direct testimony at hearing, KCPL objected.<sup>51</sup> KCPL was given an opportunity to recross Dr. Glass but did not do so.

On rebuttal, KCPL notes Staff's failure at times to cite properly and systematically to the record. Nevertheless, the Commission has been able to work through the omissions, and each of the factors will now be addressed in turn.

**Factor 1:** A comparison of the existing rates of the utility *with rates that would result if the entire cost of the facility were included in the rate base* for that facility.

**Factor 2:** A comparison of the rates of any other utility in the state which has no ownership interest in the facility under consideration with the *rates that would result if the entire cost of the facility were included in the rate base*.

Factor 1 and 2 have the italicized point of comparison in common. KCPL witness Chris Giles estimated the total net increase in revenue requirement attributable to the inclusion of Iatan 2 into the rate base is approximately \$14 million, or 3.02% of the total revenue requirement. Dr. Glass' figure was higher--approximately \$26.4 million, or 5.52%.<sup>52</sup> Mr. Giles' figure equates to an impact of approximately \$2.50 per month on rates for residential rate payers, while Dr. Glass'

<sup>50</sup> Procedural Order, Docket No. 10-KCPE-415-RTS, ¶ 8, p. 3 (Jul. 23, 2010).

<sup>51</sup> Tr. Vol. 8, p. 1643, ln. 17 to p. 1646, ln. 1.

<sup>52</sup> Tr. Vol 8, pp. 1646-48; Hearing Exh. 87.

figure is approximately \$5.00 per month. On cross-examination, Dr. Glass agreed the gross increase in revenue of \$54 million was reasonable,<sup>53</sup> however, he testified that the difference in the net figures results from different assumptions in the modeling process.<sup>54</sup> Therefore, the Commission finds that Factor 1 does not indicate imprudence on the part of KCPL.

On Factor 2, KCPL witness Giles presented the only comparative evidence in the record. He testified that Westar North's average rates are \$.0768 per kWh compared to KCPL's average of \$.0878, with Iatan 2 included and that such an increase "is minimal and will have no discernable impact on the difference between KCPL and Westar North rates."<sup>55</sup> Neither Staff nor CURB in their briefs have cited to any evidence in the record that would detract from this testimony. Moreover, the Commission has reviewed the cross examination of Mr. Giles, especially that completed by CURB and finds nothing to impeach Mr. Giles' point on this issue. Therefore, the Commission finds that Factor 2 does not indicate imprudence on the part of KCPL.

**Factor 3:** A comparison of the final cost of the facility under consideration to the final cost of other facilities constructed within a reasonable time before or after construction of the facility under consideration.

Staff expert witness Walt Drabinski and KCPL witnesses Dr. Nielsen and Mr. Roberts presented testimony on this factor. It was established at hearing that neither party could strictly comply with the "final cost" mandate concerning Iatan 2 as those figures have not been established. Nevertheless, the cost figures used at hearing were presumed by the experts to be close enough to final and thereby yielded a meaningful analysis. The Commission agrees, but in the alternative, it can consider the analysis under the catchall factor of K.S.A. 66-128g(a)(12).

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<sup>53</sup> Tr. Vol 8, p. 1644, ln. 24 to p. 1645, ln. 1.

<sup>54</sup> Exh. 86, 87; Tr. Vol. 8, pp. 1645-49.

<sup>55</sup> Tr. Vol. 2, p. 438.

Staff compared the cost of Iatan 2 to other coal-fired plants, and emphasized a comparison to one plant in the sample, Trimble County 2.<sup>56</sup> Based on this comparison, Staff seeks to establish "one of the bounding calculations to place Mr. Drabinski's proposed disallowance in perspective and support its reasonableness."<sup>57</sup> In essence, Staff would have the Commission find that since the difference in cost between Trimble County 2 and Iatan 2 is \$497 million, as compared to the \$231 million proposed whole plant imprudence disallowance by Mr. Drabinski, his disallowance must therefore be reasonable.

The Commission has considered all of the evidence by all the witnesses on this factor and in the weighing process we are not persuaded by Staff's approach and gave it little weight. KCPL's rebuttal witness presented more convincing and compelling reasons to view Iatan 2 costs as comparable to other similar coal plants constructed during the time frame, and we so find.<sup>58</sup> Furthermore, KCPL has cited to Drabinski's own adverse admission where he noted: "there are many differences between plants that ultimately justify differences in costs" and "it is difficult to get timely and accurate information and therefore all numbers must be looked at with some reservation."<sup>59</sup> This reservation in our view undercuts the impact of Drabinski's analysis on this point, particularly in terms of its accuracy. An equivocal reservation makes a "bounding calculation" meaningless; it places a ball park figure within a ball park. Further, such reservation together with its impact on the witness' persuasiveness supports our ultimate finding on this point, which is that this factor does not indicate imprudence on the part of KCPL.

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<sup>56</sup> Drabinski Direct, pp. 144-47.

<sup>57</sup> Staff Proposed Findings of Fact and Conclusions of Law, ¶ 71, p. 26.

<sup>58</sup> Meyer Rebuttal, pp. 2-6.

<sup>59</sup> Drabinski Direct, p. 137, ln. 12-13.

**Factor 4:** A comparison of the original cost estimates made by the owners of the facility under consideration with the final cost of the facility.<sup>60</sup>

A major point of disagreement, upon which the prudence determination turns, is this:

What set of numbers make up the "original cost estimate"? That question is the most crucial to the entire prudence analysis because we are being asked to use our delegated "power to evaluate" an allegation that there was a lack of prudence in constructing Iatan 2, and no one agrees on the starting point for the evaluation. CURB, Staff, and KCPL each argue for a different figure and a different point in time for the "original cost estimate." CURB claims that the Project Definition Report which supported the figure of \$1.146 billion presented in the 1025 Resource Plan is the "original cost estimate" which should be compared to the final cost.

Staff claims that the original cost estimate should be \$1.343 billion, the figure prepared in January of 2006, because it was developed from the 2004 Project Definition Report and includes the plant size scale up and other added significant components. Staff also characterizes this figure "as the first reasonable estimate."<sup>61</sup> Finally, KCPL claims the figure should be \$1.685 billion because it is a "definitive estimate" and served as the control budget estimate for the project going forward.

The Commission rejects the figures for the "original cost estimate" offered by CURB and Staff, as neither party attempts to relate their figure or its basis to the controlling law. K.S.A.

66-128g(b) clearly states:

... As used in this act "original cost estimate" means:

(1) For property of an electric utility which has been constructed without obtaining an advance permit under K.S.A. 66-1,159 *et seq.*, and amendments thereto [which pertain to nuclear generation facilities], the "*definitive estimate*[" (Emphasis added.)

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<sup>60</sup> The same limitation concerning "final cost" explained under Factor 3 applies here.

<sup>61</sup> Staff Post Hearing Brief, p. 11.

While the term "definitive estimate" is not defined by statute, KCPL expert witness Dr. Nielsen explained that he relied upon a cost estimate classification system presented by the Association for the Advancement of Cost Engineering (AACE).<sup>62</sup> Also, at hearing, Commissioner Harkins had KCPL witness Meyers identify specifically, on the timeline entered into evidence, the December 5, 2006 event captioned as follows:

KCPL Management presents Control Budget Estimate to the Board of Directors for approval; . . . This is the "definitive cost estimate."<sup>63</sup>

This testimony connecting the CBE to the definitive estimate was never successfully challenged by any party. By proving the CBE was "the definitive cost estimate" KCPL clearly established that per statute the CBE was also the "original cost estimate." Moreover, KCPL established two additional points: First, CURB understood at the hearing on the 1025 Stipulation that the \$1.3 billion figure was quite uncertain. It was understood that because a new plant was being built, nobody really knew what consumer rates would ultimately be.<sup>64</sup> Second, the 1025 Stipulation itself contemplated the future development of a "Cost Control System" that would identify and explain cost overruns during construction.<sup>65</sup> We placed great weight on this evidence, finding it more convincing than other evidence offered for selecting a different set of figures. Therefore, the Commission finds and concludes that KCPL's figure of \$1.685 (\$420.7 million Kansas jurisdictional) is the "original cost estimate" because it is the "definitive estimate."

In making this determination of the "original cost estimate," we considered and weighed all the other evidence in the whole record on this point, including for example, the various press releases, SEC reports, etc., and found them unpersuasive. Under Kansas law, a first estimate, no

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<sup>62</sup> Nielsen Rebuttal, p. 234, ln. 6-14, p. 235, ln. 9-16; *see also* Tr. Vol. 6, p. 1276, ln. 16 to p. 1277 ln. 20 (Mr. Meyers explains that the AACE classification system reflects the truism that "accuracy in the estimates [is] a function of the percent of engineering complete.").

<sup>63</sup> Tr. Vol. 6, pp. 1228-29; *see also* KCPL Post Hearing Brief, p. 9, n. 5.

<sup>64</sup> Evidentiary Hearing Exh. 50, pp.32-33.

<sup>65</sup> Appendix C.1.2, to S&A in Docket 04-KCPE-1025-GIE.

matter how many times it is published, cannot be the "original cost estimate" unless it is the definitive estimate. We also considered the plain, ordinary meaning of "definitive" used in the statute, which means "precisely outlining or defining" or "serving to define or specify precisely."<sup>66</sup> CURB's and Staff's figures are lacking in the precision and specificity that the statute contemplates and simply cannot serve as the baseline point of comparison for this imprudence factor.

Having now established the original cost estimate, it can be compared to the final estimated costs of the plant. The Commission finds that this comparison indicates that KCPL will have exceeded the "definitive estimate," which means the "original cost estimate," by 18%, or \$288 million (whole plant).<sup>67</sup> Given the magnitude of the project, the timeline under which the project was constructed, and the range permitted for a definitive type of cost estimate,<sup>68</sup> the Commission finds that this factor does not indicate imprudence on the part of KCPL.

**Factor 5:** The ability of the owners of the facility under consideration to sell on the competitive wholesale or other market electrical power generated by such facility if the rates for such power were determined by inclusion of the entire cost of the facility in the rate base.

CURB, Staff, and KCPL are all in agreement with Staff witness Dr. Glass on this point. He testified that the actual cost of Iatan 2 does not have any effect on how the addition of Iatan Unit 2 will affect KCPL's ability to sell to the off-system sales market.<sup>69</sup> KCPL witness Giles also explained that this factor is not an issue.<sup>70</sup> Therefore, the Commission finds that this factor does not indicate imprudence on the part of KCPL.

<sup>66</sup> Webster's II, New Riverside Dictionary, 357; Merriam-Webster online at [www.merriamwebster.com](http://www.merriamwebster.com).

<sup>67</sup> Tr. Vol. 3, p. 513.

<sup>68</sup> Nielsen Direct, pp. 234-38; *see also* AACE International Recommended Practice No. 18R-97, p. 6 (noting the range of accuracy for a definitive estimate to be -5 to + 15%).

<sup>69</sup> Tr. Vol. 7, p. 1651, ln. 7-18.

<sup>70</sup> Giles Direct, pp. 6-9.



In making this finding, the Commission carefully considered Staff's proposal for sharing the risk of recovering margins from off-system sales. In that proposal, Dr. Glass suggested a risk sharing mechanism that would result in reducing KCPL's revenue requirement by \$6.0 million. The Commission, however, views that proposal as too speculative and more related to an excess capacity imprudence determination, a claim not before the Commission.<sup>71</sup> It also misses the mark of this Factor's plain meaning and the overall scheme contained in K.S.A. 66-128c and 66-128g. That scheme, applied to the Iatan projects, is designed to determine "the reasonable value of electric generating property" and determine whether a rate base disallowance for lack of prudence during construction is warranted. We therefore gave Staff's proposal no weight in making our determination on this point.

**Factor 6:** A comparison of any overruns in the construction cost of the facility under consideration with any cost overruns of any other electric generating facility constructed within a reasonable time before or after construction of the facility under consideration.

This factor involves comparing Iatan 2 to other plants and has some overlap with Factor 3, which was also a comparative analysis. The Commission would note, however, that this factor also implicates our finding under Factor 4. Simply put, the plain, ordinary meaning of "overrun" is to exceed a budget or estimate.<sup>72</sup> The Commission found under Factor 4 that the definitive estimate was exceeded by 18%. What is lacking in the record, however, is whether the other plants in the comparative analysis exceeded their original, or definitive cost estimates, and by how much. Thus, the Commission has nothing to compare to the 18% overrun figure. Since Staff and CURB have the burden to prove imprudence, the Commission finds, due to a failure of proof, that this factor does not indicate imprudence on the part of KCPL.

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<sup>71</sup> K.S.A. 66-128(c) allows the Commission to evaluate several types of cost exclusion claims. The Wolf Creek case, for example, addressed an excess capacity allegation.

<sup>72</sup> Dictionary.com, available at <http://dictionary.reference.com/browse/overrun>; see also Merriam Webster II, p. 840: "The amount by which actual costs exceed estimates."

**Factor 8:** Inappropriate or poor management decisions in construction or operation of the facility being considered.<sup>73</sup>

Staff's case for imprudence did not adequately apply K.S.A. 66-128c and the K.S.A. 66-128g factors. Instead, Staff heavily skewed its case toward proving a general prudence standard it defines as:

whether the decisions were made in a reasonable manner in light of industry standards, conditions, and circumstances that were known or reasonably should have been known at the time the decisions were made, without the use of hindsight.<sup>74</sup>

It did this by placing the bulk of Staff witness Drabinski's testimony under the catchall Factor 12 provision of K.S.A. 66-128g. For Factor 8 purposes, Staff asks the Commission to "undertake a similar analysis [to that] regarding the general prudence standard."<sup>75</sup>

KCPL, which does not carry the burden on imprudence, asks the Commission to use essentially the same general prudence standard. It also asks us to consider that:

[d]ecisions are deemed to be prudent, regardless of the outcome of such decisions, if the decision-making process was sound.<sup>76</sup>

KCPL also asks the Commission to find that KCPL put proper tools in place to ensure that KCPL's management could make decisions based upon the available data. Though KCPL disagrees, its own expert determined that there were two imprudent management decisions concerning the construction of Iatan 2: 1) the engagement of Welding Services, Inc. with an associated disallowance of \$12,714,596; and 2) KCPL's removal and readdition of an auxiliary boiler to the Iatan 2 project, with an associated disallowance of \$7,754,454.<sup>77</sup> The total exclusion for lack of prudence recommended by KCPL expert witness Dr. Nielsen is

<sup>73</sup> The Commission has omitted a discussion of Factor 7, which relates to the treatment of nuclear waste. Although the K.S.A. 66-128g factors are not permissive, an analysis under this factor is irrelevant and does not materially contribute to our findings of prudence or lack thereof in the construction of Iatan.

<sup>74</sup> Staff Post Hearing Brief, ¶ 37, p. 12.

<sup>75</sup> Staff Proposed Findings of Fact, ¶ 77, p. 29.

<sup>76</sup> KCPL Post Hearing Brief, ¶ 247, p. 102.

<sup>77</sup> Nielsen Rebuttal, pp. 8-9.

\$20,469,050 (whole plant), or \$5,110,791 for the Kansas jurisdictional portion. In other words, according to Dr. Nielsen, \$5,110,791 should be deducted from the costs of Iatan 2 when determining the reasonable value that should go into rate base.

Analytically, the Commission sees a defect in placing a general prudence standard, derived from a statutory catchall provision, on the same footing as the collective 11 factors listed in that same framework. As explained above, Kansas Supreme Court precedent already defines "prudence" as carefulness, precaution, attentiveness, and good judgment; it also tells us that K.S.A. 66-128g is devoted to a recitation of the factors we are to consider in determining prudence, or in this case a lack thereof, as a basis for deducting those imprudent construction costs from the rate base.<sup>78</sup>

Therefore, we conclude that Factor 8, by its language, is properly analyzed by identifying precise management decisions in the construction or operation of Iatan 2 that were either "inappropriate" or "poor." After these decisions are identified, they must be reviewed, without the benefit of hindsight, to determine whether these decisions are imprudent due to a lack of carefulness, precaution, attentiveness, and good judgment—the words used by the Kansas Supreme Court.

From the parties' proposed findings and conclusions, they do not agree as to which particular management decisions comprise this universe. Moreover, Staff's statements in its brief lack the requisite precision at times for us to determine what "management decisions" are at issue. Further, some decisions alleged as "inappropriate or poor" are not linked to the presentation of various "management decisions" embedded in Drabinski's report. Therefore, we decline to place much weight on Drabinski's analysis. Dr. Nielsen, on the other hand, was much

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<sup>78</sup> See *Kansas Gas & Electric*, 239 Kan. at 495, 500-01 (explaining what the Commission is to consider; defining prudence; and noting the "Deduction of Imprudent Construction Costs from the Rate Base.")

more specific in identifying "inappropriate" or "poor" decisions and his approach to that task was more convincing and due greater weight. Therefore, we find that as to decisions, "[w]hat decision was made; when was the decision made; how was the decision made; [and] was the decision reviewed and assumptions and circumstances changed" are elements that define the "decision" being scrutinized.<sup>79</sup>

We turn now to indicate that we have extensively reviewed and considered the management decisions as they were presented in the following places: 1) Staff's Brief, under the heading: "Some of KCPL's actions and decisions in the construction of Iatan Unit 2 were imprudent"; 2) Drabinski's Direct Testimony on pages 28-34 alleging that during the period of 2005 to mid 2007, KCPL made "inappropriate decisions and did not provide adequate control of the Iatan project"; and 3) KCPL's rebuttal brief on p. 36, paragraph 57. We also considered Staff witness Drabinski's entire testimony, the testimony of KCPL, and all the evidence and testimony from the hearing. Based on this review we find that:

- i. KCPL did not have the option in 2005 of entering into an EPC contract for the balance of Plant work on Iatan at a 12% premium. Mr. Giles and Mr. Downey testified at length concerning the contracting strategy choices KCPL had available, and each highlighted how Mr. Drabinski ignored the actual circumstances KCPL encountered.<sup>80</sup> Even Drabinski admitted that it was Staff counsel, and not he who stated an EPC contractor was available.<sup>81</sup> Moreover, we find Mr. Downey's testimony under cross-examination by Staff Counsel persuasive on this point and give it great weight:

[Mr. Smith]: Do you recall the statement that one EPC contractor in particular said that they would do it for 12 to 15% premium based on market conditions?

<sup>79</sup> Nielsen Direct, Docket No. 09-KCPE-246-RTS, p. 18, ln. 1-3 (Feb. 23, 2009).

<sup>80</sup> See Tr. Vol. 3, pp. 778-780; Downey Direct, pp. 5-6, 10, 13; Downey Rebuttal, pp. 7-13, 27-28; Giles Rebuttal, pp. 15-22; Giles Rebuttal, pp. 29-30, 42-48, 50-59.

<sup>81</sup> Tr. Vol. 7, p. 1446, ln. 23 to p. 1448, ln. 2.

[Mr. Downey]: Yes, and that—yes, I did.

[Mr. Smith]: Okay, so why did KCPL decide to go with an owner managed project?

[Mr. Downey]: Well, I think that, that conversation sounds nice and I would refer to it as sales talk in the early phases of pulsing the market. When we really pressed people with regard to their willingness to do an EPC and the associated thing is at a fixed price with a schedule, we didn't have any takers at all and particularly Black & Veatch who we really thought was a hope for an EPC full wrap when we really got down to it, they said, well, you have to sole source with us. We can't give you a price estimate for at least a year and we certainly can't guarantee a fixed price and we can't guarantee a schedule and it's probably gonna be maybe not 2010 but maybe 2011 or 2012. So, yeah, there was a lot of sales talk in the beginning, but when you got right down and start talking to these people, the terms and conditions changed dramatically and we saw no viable response from any of those contractors.<sup>82</sup>

ii. We further find that parts of Dr. Nielsen's Direct Testimony on prudent decision making was more persuasive, and all of the testimony went unchallenged by Staff at hearing.

The following points that Dr. Nielsen made adequately established flaws in Mr.

Drabinski's analysis concerning this factor. Therefore, we more specifically find that:

- a) Mr. Drabinski applied an erroneous standard for prudence review in part because of the holistic approach he used.
- b) Mr. Drabinski finds imprudence as a consequence of the results attained rather than evaluating decisions and the decision making process, connecting the allegations, and then quantifying the impact.
- c) Mr. Drabinski improperly employed hindsight rather than evaluating management decisions at the time.
- d) Mr. Drabinski's use of internal audits to criticize KCPL's decisions ignore the fact that the process of conducting on-going internal audits during a complex construction project is considered part of the prudent management decision making process.<sup>83</sup>

<sup>82</sup> Tr. Vol. 4, p. 779, ln. 10 to p. 780, ln. 9.

<sup>83</sup> Nielsen Rebuttal, pp. 9-10.

iii. Notwithstanding KCPL's reservations, and based on Dr. Nielsen's testimony, we find that the decisions concerning the Welding Services, Inc. contract and the auxiliary boiler demonstrate a lack of carefulness, precaution, attentiveness, and good judgment.<sup>84</sup>

Dr. Nielsen correctly identified the precise decisions lacking prudence, when they were made, how they were made, and did not employ hindsight, change assumptions, or recast the circumstances surrounding the decision. Furthermore, the proposed disallowance was not challenged by CURB and Staff, and KCPL's arguments challenging its own witness are not compelling. Therefore, the Commission concludes that these two management decisions made in constructing Iatan Unit 2 stemmed from a lack of prudence. These decisions lacked carefulness, precaution, attentiveness and good judgment. Therefore, the costs identified by Dr. Nielsen should not be included in the rate base.

iv. KCPL had the proper tools in place to ensure that KCPL's management could make decisions based on available data.

The control budget estimate and the reforecasting process demonstrate KCPL was effectively managing costs. The fact that the project was over budget by only 18% indicates that these tools, among others such as the internal audits, are the best evidence of this effectiveness during the relevant periods. Moreover, KCPL reported at least quarterly to Staff, CURB and other interested parties and prepared extensive reports to communicate the project's status in all material respects. This reporting process clearly was contemplated by the 1025 Regulatory Plan.<sup>85</sup> If parties, especially Staff, had concerns about KCPL's overall strategy, its management decisions, or project problems, etc., then those concerns should have been presented to the

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<sup>84</sup> Nielsen Rebuttal, p. 8, ln. 18-21; p. 241, ln. 1 to p. 247, ln. 11.

<sup>85</sup> 04-KCPE-1025-GIE, Stipulation and Agreement, § B.1, p. 9, Appendix C, ¶ 1.2, p. 8.

Commission in a timely manner.<sup>86</sup> The 1025 docket, which remained open during the entire regulatory period, was suited for this and other reporting purposes.

**Factor 9:** Whether the inclusion of all or any part of the cost of construction of the facility under consideration, and the resulting rates of the utility therefrom, would have an adverse economic impact upon the people of Kansas.

Staff and KCPL concur about the negligible impact on the Kansas economy. Staff stated a potential concern regarding specific industries or companies in Johnson County; however, the witness admitted that he did not perform a study about these concerns. Since Staff and CURB held the burden to prove imprudence, the Commission finds that due to a failure of proof, this factor does not indicate imprudence on the part of KCPL. The record is devoid of evidence showing an adverse economic impact on the people of Kansas.

**Factor 10:** Whether KCPL acted in the general public interest in management decisions in the acquisition, *construction* or operation of the facility.

Staff claims that KCPL did not act in the public interest in making management decisions during the *construction* of the Iatan project; acquisition or operation is not at issue. Staff maintains this factor is satisfied by its other evidence on lack of prudence. Staff presented that evidence in support of its claim that the management decisions by KCPL "caused the Iatan 2 project to unreasonably exceed the original cost estimate . . .[.]"<sup>87</sup> KCPL disagrees with Staff's position and asks the Commission to find that it did act in the public interest.

The Commission finds that Staff's presentation of evidence on this point was limited to Staff witness Dr. Glass. He did not do a prudence audit or evaluate KCPL's management decisions concerning the Iatan project.<sup>88</sup> Instead, Dr. Glass relied completely on the testimony of Mr. Drabinski and his evaluations of KCPL's management decisions. The Commission further

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<sup>86</sup> 04-KCPE-1025-GIE, Stipulation and Agreement, § B.3.g., pp. 11-12.

<sup>87</sup> Staff Post Hearing Brief, p. 73, ¶ 251.

<sup>88</sup> Tr. Vol. 8, p. 1665

finds that Dr. Glass' testimony on this factor is unacceptable for two reasons. First, he admitted that his conclusion on this factor "stands or falls on [Mr. Drabinski's] testimony—on his analysis."<sup>89</sup> We previously found under Factor 8, that Mr. Drabinski's testimony was flawed. Second, Staff erred on the point of law which equates the "original cost estimate" to the "definitive cost estimate." As explained elsewhere, we concluded that Staff used the wrong estimate as the starting point for its entire imprudence analysis. This resulted in an overreaching claim that the cost overrun was nearly 49% when it is closer to 18%. This error also undermines Staff's main premise that Iatan 2 "unreasonably" exceeded original costs, and precludes a finding that KCPL did not act in the public interest.

Further, and more broadly, the "public interest" concept in this imprudence analysis can be simply defined as the general welfare of the public that warrants recognition and protection and justifies government regulation.<sup>90</sup> The "public interest" has also been evaluated by this Commission under either a net-benefit or net-detriment standard.<sup>91</sup>

KCPL witness Giles testified that management made a number of decisions benefiting the public interest. KCPL considered customer needs by: i) adding capacity without adding harmful emissions; ii) maintaining a low overall cost of the Iatan 2 project given market conditions; and, iii) providing the customers with confidence in the company's ability to meet the project's schedule.<sup>92</sup> Staff also admits that Kansas customers benefit from KCPL's construction and ownership of Iatan 2, but did not analyze the benefits due to time constraints.<sup>93</sup>

We also find the record devoid of any evidence concerning detriments to the public interest. KCPL gave ongoing, written, detailed quarterly reports to Staff and CURB during the

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<sup>89</sup> Tr. Vol. 8, p. 1666.

<sup>90</sup> Black's Law Dictionary, 8<sup>th</sup> Ed., p. 1266.

<sup>91</sup> See, e.g., Order Approving Unanimous Settlement Agreement, Docket. No. 08-KMOE-028-COC (Aug. 12, 2008).

<sup>92</sup> Giles Rebuttal, p. 27.

<sup>93</sup> Tr. Vol. 8, p. 1679.



construction of the project. For the first time, these reports were presented to the Commission during the evidentiary hearing. Many of these reports detail management decisions proposed, taken, completed, or underway. At no time did Staff or CURB, or any other intervenor, bring any concerns to the Commission about a lack of prudence in the *construction* of the facility until the 246 docket. And even then, there was never a claim that the general welfare of the public was in jeopardy. Therefore, the Commission concludes that this factor does not demonstrate imprudence on the part of KCPL.

**Factor 11:** Whether the utility accepted risks in the construction of the facility which were inappropriate to the general public interest to Kansas.

Staff's claim that this factor demonstrates imprudence also fails. It relies on its previous contention concerning the EPC versus multi-prime decision and its figure for the "original cost estimate." As established elsewhere, the decision to proceed with a multi-prime strategy can only be faulted by employing hindsight or assuming that KCPL had a choice that it did not have; and the figure used by Staff is incorrect as a matter of law. Therefore, we find here that KCPL did not take risks that jeopardized the public interest. It is factually undisputed that KCPL executed the Regulatory Plan and constructed Iatan 2 in a difficult economic environment. We find that KCPL knew the risks Iatan 2 represented to its customers, took steps to mitigate those risks, and developed tools for further mitigating, reporting and managing those risks.<sup>94</sup> Therefore, the Commission concludes that this factor does not demonstrate imprudence on the part of KCPL.

**Factor 12:** Any other fact, factor, or relationship which may indicate prudence or lack thereof as that term is commonly used.

Under this non-exclusive factor, the Commission finds it appropriate to address only two additional points raised by the parties. These points fairly fall under the catchall provision, and

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<sup>94</sup>Giles Rebuttal, p. 27.

did bear on our decision. First, Drabinski's "holistic" analysis is severely undermined when his starting point for the cost overruns is corrected from a claim of being 49% over budget to about 18%, which is well within reasonableness for definitive cost estimates. Moreover, much of Mr. Drabinski's analysis builds on his perception that there was an imprudent decision to contract using a multi-prime rather than an EPC approach.<sup>95</sup> As established elsewhere, we found that KCPL did not have that option. Therefore, the Commission concludes that the "holistic" approach used by Staff's expert, which resulted in many attempts to "assess reasonable percentage disallowances," is prone to being speculative and arbitrary. Not only is the method far afield from a reasoned, auditable methodology, we agree with KCPL that it runs afoul of standards articulated by our Courts for expert testimony.<sup>96</sup>

Second, the Commission's experience and its findings with regard to the disallowance for imprudence made in the Wolf Creek case are instructive.<sup>97</sup> There, the Commission reviewed why the plant was completed more than 2.5 years late and at a cost nearly three times greater than the definitive estimate. The amount disallowed, and upheld on appeal, was 13.71% of the cost overruns, or 10% of the total project costs.<sup>98</sup> Here, where the project is completed essentially on time, and at a cost of about 18% greater than the definitive estimate, Staff seeks to disallow 76% of the overrun, which equates to approximately 12% of the total project costs.<sup>99</sup> The Commission finds and concludes that the scenario in this case, when compared to what occurred in Wolf Creek, does not suggest imprudence, or a lack of "carefulness, precaution,

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<sup>95</sup> Staff Post Hearing Brief, pp. 9-10 ("KCPL shareholders should be responsible for costs resulting from imprudent actions on the part of KCPL that extend from the inception of the project at the conceptual level through completion of the project.")

<sup>96</sup> See *Kuxhausen v. Tillman Partners, L.P.*, Case No. 98442 (Kan. Sup. Ct., decided October 15, 2010) (rejecting expert testimony based on speculation); *State v. Pappen*, 274 Kan. 149, 159 (2002) (expert must have factual basis for his or her opinions in order to separate them from speculation); *State v. Strucik*, 269 Kan. 95 (2000) (facts underlying expert's opinion and conclusions should be reasonably accurate, not based on guess or conjecture).

<sup>97</sup> KCPL Post Hearing Brief, ¶¶ 131-33, p. 57, and all the evidence cited therein.

<sup>98</sup> *Kansas Gas & Electric*, 239 Kan. at 499 (disallowing \$183 million or about 10%).

<sup>99</sup> See KCPL Post Hearing Brief, p. 58 (Summary Chart).

attentiveness and good judgment."<sup>100</sup> Wolf Creek also instructs that the proper analysis for imprudence begins with the definitive estimate.<sup>101</sup>

While we considered all the points raised by the parties, and all the supporting and detracting evidence related thereto cited by the parties, those not mentioned here or elsewhere in the factor analysis simply did not carry decisive weight, especially when considered with what we have mentioned above. We also afforded no weight to the two step approach advocated by KCPL in making our determination regarding prudence or lack thereof. That strict causation approach, as a matter of policy, would restrict the Commission's discretion, as granted by the legislature, to employ different ratemaking formulas.<sup>102</sup> It is also without support in K.S.A. 66-128g and *Kansas Gas & Electric*.

After considering all of the factors under K.S.A. 66-128g, we conclude that there was a lack of prudence only with respect to those amounts identified by Dr. Nielsen. We also conclude that Staff's and CURB's respective cases alleging a lack of prudence by KCPL were incomplete and irrelevant. As such, they failed to carry their burden of proof, failed to support their conclusions, and therefore we have a right to reject this evidence under *Kansas Gas & Electric*.<sup>103</sup> Therefore, the reasonable value of the Iatan 2 plant shall be set at \$277,690,764 on a Kansas jurisdictional basis, after deducting the \$5,110,791 disallowance for lack of prudence.<sup>104</sup>

### 3. Other Major Imprudence Arguments

CURB witness Andrea Crane analyzed imprudence by comparing the figure submitted for Iatan 2 in the 1025 Regulatory Plan with the final cost of the project. She then arrived at a

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<sup>100</sup> The definition used by the Kansas Supreme Court in *Kansas Gas & Electric*, 239 Kan. at 495.

<sup>101</sup> *In re Wolf Creek Nuclear Generating Facility*, Final Order, Docket No. 84-KG&E-197-RTS, p. 31 (Sept. 27, 1985).

<sup>102</sup> See *Kansas Gas & Electric*, 239 Kan. at 496 (citing authority).

<sup>103</sup> *Kansas Gas & Electric*, 239 Kan. at 503.

<sup>104</sup> Computations based on figures from Confidential GDR-7 and GDR-8.

figure to exclude from the rate base by reasoning that the approved 1025 S&A constituted a regulatory compact between KCPL and its customers. According to Ms. Crane, KCPL violated that compact when it incurred costs beyond that initial 1025 figure and did not seek further regulatory approval.

We concluded elsewhere in this Order that the "original cost estimate" is defined by statute as the definitive estimate. We also found that the definitive estimate was \$1.685 billion, rendered in December of 2006, and served as the Control Budget Estimate. And finally, we found that KCPL gave detailed quarterly reports to the parties, none of whom brought any claims, including that for compact breach to the Commission. Therefore, we conclude that CURB's argument lacks merit.

HISNC also weighed in on the lack of prudence issue. However, they did not conduct discovery regarding that issue, or file any testimony. In any event, and as a threshold matter, HISNC makes the same mistake as Staff and CURB concerning the definitive estimate. Moreover, HISNC's attempt to cast the 1025 S&A as a cap of some sort is unreasonable. While it might have been prudent for Staff, or other parties, to negotiate a cap at the time they entered into the S&A, a "cap" simply cannot be read into the 1025 S&A or otherwise imposed at this time. Therefore, HISNC's argument lacks merit.

The final party to weigh in on the lack of prudence issue is Empire. Empire, a part owner of Iatan 2, recently settled its rate case by a unanimous settlement agreement approved by the Commission. In that settlement, the parties agreed to review the Iatan 1 and Iatan 2 prudence issues, to the extent raised by Empire, in an abbreviated rate case.<sup>105</sup> Therefore, the Commission makes no finding in this docket that would undermine or conflict with that approved settlement.

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<sup>105</sup> Order Approving Stipulation & Agreement, Docket No. 10-EPDE-314-RTS, ¶¶ 74-78 (June 23, 2010).

#### 4. Staff's Proposed Disallowance for Iatan Unit 1 AQCS and Iatan Common Plant

Staff's disallowance has two components: The first amount is a \$4.7 million (Kansas jurisdictional) imprudence disallowance which comes from the cap agreed to in 09-KCPE-246-RTS; the second amount is a \$2.8 million (Kansas jurisdictional) imprudence disallowance stemming from approximately \$56 million in potential costs that had not been submitted for recovery in the 246 docket. A full explanation concerning the treatment and review of these figures is covered in ¶¶'s 20-22 of the 246 S&A attached.<sup>106</sup>

As to the \$4.7 million figure, the Commission finds that KCPL chose not to challenge three of the R&O packages and therefore does not contest an imprudence adjustment in the amount of \$1,016,541 (Kansas jurisdictional, including AFUDC).<sup>107</sup> Therefore the Commission concludes that this amount shall be excluded from the rate base.

As to the \$3.6 million amount remaining, KCPL argues that there is a \$500,000 mathematical error, that its actions related to that amount were prudent and reasonable, and that Staff has failed to carry its burden to prove imprudence.<sup>108</sup> As to this remaining amount, the Commission finds and concludes that Staff failed to carry its burden. Mr. Drabinski conducted his review of the Iatan project under general legal principles developed with the assistance of Staff legal counsel.<sup>109</sup> The list of those principles contains only five factors, omitting the seven other factors in K.S.A. 66-128g(a). He applied these "prudence standards" for example, by asking "whether a knowledgeable person in the industry would have made the same or similar

<sup>106</sup> Order Approving Stipulation & Agreement, Docket No. 09-KCPE-246-RTS, ¶¶ 20-22, pp. 9-19 (Jul. 24, 2009); available at <http://kcc.ks.gov/scan/200907/20090724143741.pdf>; also attached to this Order as Exhibit II.

<sup>107</sup> KCPL Brief, ¶ 262 (citing Giles Direct, Schedule CBG2010-2 (246 Rebuttal)).

<sup>108</sup> KCPL Brief, 107, ¶ 261-62.

<sup>109</sup> Drabinski Direct, Docket No. 09-KCPE-246-RTS, pp. 4-8.

decisions with the information and resources available at the time."<sup>110</sup> He also used the same broad brush percentage disallowance on one of the deductions which we found elsewhere to be problematic, and have disapproved.

Unfortunately, as a party, Staff agreed in the 246 S&A to a provision precluding it from offering additional testimony or modifying its prefiled testimony filed in that docket.<sup>111</sup> It also agreed with KCPL and CURB and asked the Commission to defer its ruling on the prudence standard issues briefed by the parties until this docket.<sup>112</sup> These agreements, though not binding on the Commission, placed us in a difficult position: Without essential evidence, and no acquiescence by KCPL as to these amounts, the Commission concludes that Staff's claim for a disallowance amount beyond the \$1,016,541 figure not contested above, fails for lack of proof.

With regard to the \$2.8 million sum Staff recommends for exclusion, the Commission finds that the 246 S&A also permitted Staff to conduct a prudence review of an additional \$56 million in costs within the context of this 415 docket.<sup>113</sup> Staff also agreed to cap any proposed disallowance at \$2.8 million. The Commission finds, however, that Staff failed to include this amount in its schedules at hearing.<sup>114</sup> The Commission agrees with KCPL and finds that this adjustment appears for the first time in Staff's Brief. We also find that KCPL has not had a chance to rebut this amount, or cross-examine a witness. Moreover, we have no idea what prudence standard Staff used to justify this amount – the standard applied in 246 or that in 415. Therefore, it would be inappropriate to accept this adjustment under these procedural

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<sup>110</sup> Drabinski Direct, Docket No. 09-KCPE-246-RTS, pp. 5-6.

<sup>111</sup> S&A, Docket No. 09-KCPE-246-RTS, ¶ 20.

<sup>112</sup> See KCPL Rebuttal Brief, Docket No. 04-KCPE-1025-GIE, p. 28 (Sept. 10, 2009)(expressing concern about effect of early ruling).

<sup>113</sup> S&A, Docket No. 09-KCPE-246-RTS, p. 7, ¶ 22 (June 18, 2009).

<sup>114</sup> See Rohrer Direct, Schedule GDR-7; Hearing Exhibit No. 64, Schedule A-4, Staff Adjustment No. 7.

circumstances, and thus we conclude that the \$2.8 million proposed exclusion fails for lack of proof.

**B. Revenue Requirement: Capital Issues**

The determination of KCPL's overall rate of return is one of the major components of a rate case, and we have very broad discretion—and are due great deference—in setting that figure. In fact,

there is an elusive range of reasonableness in calculating a fair rate of return. A [reviewing] court can only concern itself with the question as to whether a rate is so unreasonably low or so unreasonably high as to be unlawful. The in-between point, where the rate is most fair to the utility and its customers, is a matter for [our] determination.<sup>115</sup>

The overall rate of return has three elements: return on equity (ROE), cost of debt and capital structure. The level of return, including the ROE, is one of the principal factors in determining whether rates are just and reasonable.<sup>116</sup>

As a specialized decision making body, the statutory authorization to establish "just and reasonable" rates implies flexibility in exercising our complicated regulatory function.<sup>117</sup> That same statutory authorization was not intended to confine the boundary of our regulatory discretion to an absolute or mathematical formula, but rather it was intended to confer power to make and apply policy concerning the appropriate prices charged to utility customers and returns on capital to utility investors in accord with constitutional protections applicable to both interests.<sup>118</sup> Thus, the Kansas courts have always held that our goal is to fix rates within a "zone

<sup>115</sup> *Southwestern Bell Tel. Co. v. KCC*, 192 Kan. 39, Syllabus ¶ 17 (1963).

<sup>116</sup> *Kansas Gas and Electric*, 239 Kan. at 501.

<sup>117</sup> *Kansas Gas and Electric*, 239 Kan. at 512 (construing K.S.A. 66-101b).

<sup>118</sup> *Kansas Gas and Electric*, 239 Kan. at 488-91.

**SCHEDULES DFM2010-29  
through DFM2010-33**

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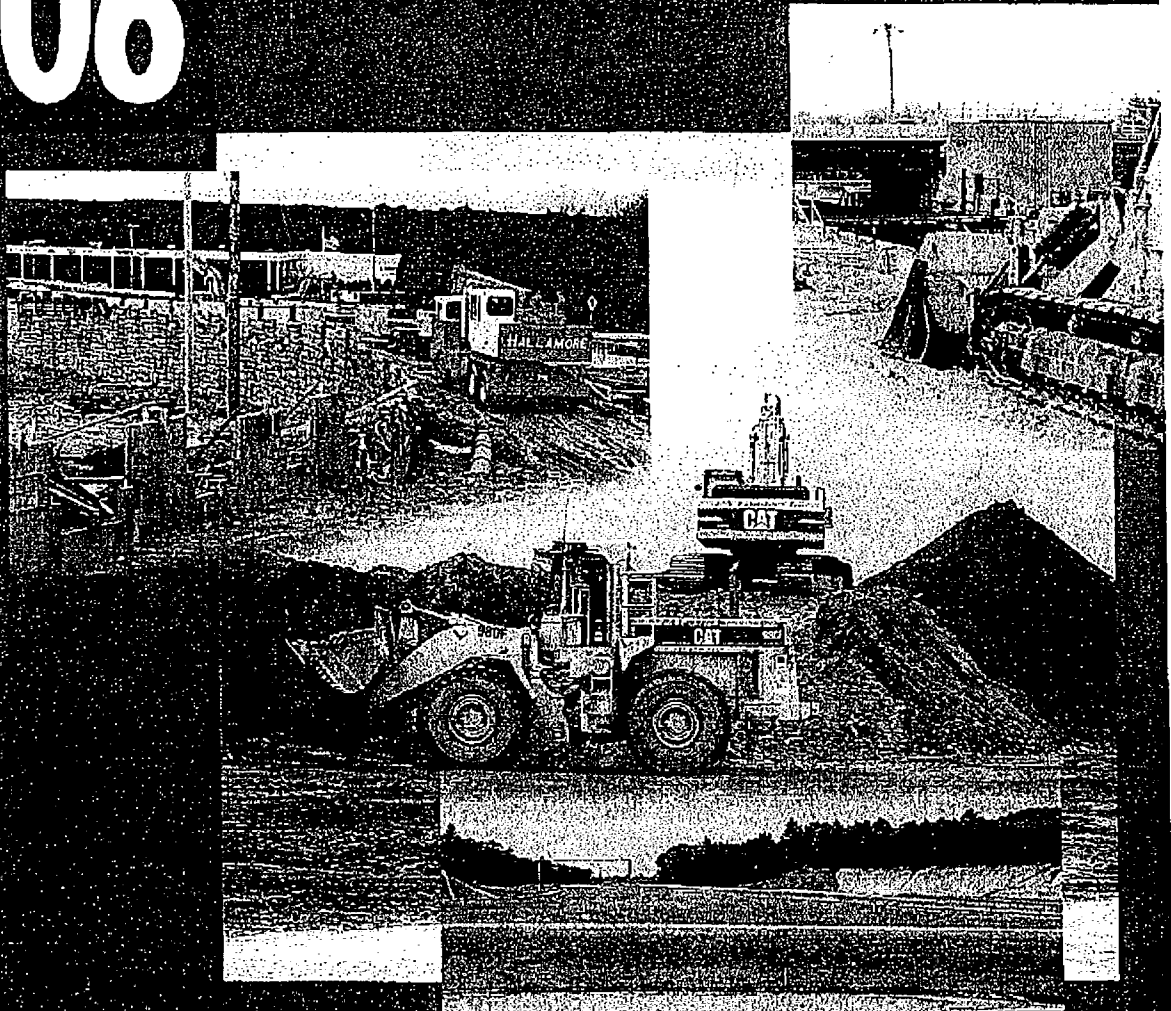


RSMeans

# Heavy Construction Cost Data

*20th Annual Edition*

# 2006



Schedule DFM2010-34

# 6100 | Wiring Methods

## 6132 | Conduit & Tubing

	CREW	DAILY OUTPUT	LABOR HOURS	UNIT	2006 BARE COSTS				TOTAL INCL O&P
					MAT.	LABOR	EQUIP.	TOTAL	
5" diameter	2 Elec	80	.200	L.F.	9.15	8.40		17.55	22.50
6" diameter	↓	60	.267	↓	13.10	11.20		24.30	31
Sweeps, 1" diameter, 30" radius	1 Elec	32	.250	Ea.	15.70	10.50		26.20	33
1-1/4" diameter		24	.333		19.85	14		33.85	43
1-1/2" diameter		21	.381		20.50	16		36.50	46.50
2" diameter		18	.444		21.50	18.65		40.15	51.50
2-1/2" diameter		14	.571		36.50	24		60.50	76.50
3" diameter		10	.800		42	33.50		75.50	96
3-1/2" diameter		8	1		62.50	42		104.50	132
4" diameter		7	1.143		60	48		108	137
5" diameter	↓	6	1.333		91	56		147	184
Couplings, 1/2" diameter					.41			.41	.45
3/4" diameter					.50			.50	.55
1" diameter					.77			.77	.85
1-1/4" diameter					1.02			1.02	1.12
1-1/2" diameter					1.40			1.40	1.54
2" diameter					1.86			1.86	2.05
2-1/2" diameter					3.30			3.30	3.63
3" diameter					3.40			3.40	3.95
3-1/2" diameter					6			6	6.60
4" diameter					8.35			8.35	9.20
5" diameter					21			21	23.50
6" diameter					27			27	30
End bells 1" diameter, PVC	1 Elec	60	.133		4	5.60		9.60	12.75
1-1/4" diameter		53	.151		4.95	6.35		11.30	14.90
1-1/2" diameter		48	.167		4.95	7		11.95	15.90
2" diameter		34	.235		7.30	9.90		17.20	23
2-1/2" diameter		27	.296		8.10	12.45		20.55	27.50
3" diameter		20	.400		8.60	16.80		25.40	34.50
3-1/2" diameter		16	.500		9.40	21		30.40	42
4" diameter		14	.571		10.20	24		34.20	47
5" diameter		12	.667		16.05	28		44.05	59
6" diameter		9	.889	↓	17.60	37.50		55.10	75
Rigid galvanized steel, 1/2" diameter		200	.040	L.F.	2.23	1.68		3.91	4.95
3/4" diameter		170	.047		2.56	1.98		4.54	5.75
1" diameter		130	.062		3.88	2.58		6.46	8.10
1-1/4" diameter		110	.073		5.15	3.05		8.20	10.20
1-1/2" diameter		100	.080		5.95	3.36		9.31	11.55
2" diameter	↓	90	.089	↓	7.65	3.73		11.38	13.95

### CONDUIT IN TRENCH includes terminations and fittings

Does not include excavation or backfill, see div. 02315

Rigid galvanized steel, 2" diameter	1 Elec	150	.063	L.F.	7.35	2.24		9.59	11.45
2-1/2" diameter		100	.080		14.30	3.36		17.66	21
3" diameter	2 Elec	160	.100		17.60	4.20		21.80	25.50
3-1/2" diameter		140	.114		22.50	4.80		27.30	31.50
4" diameter		100	.160		24.50	6.70		31.20	37
5" diameter		80	.200		53.50	8.40		61.90	71.50
6" diameter	↓	60	.267	↓	78.50	11.20		89.70	103

## 6136 | Boxes

### FULL BOXES & CABINETS

Pull box, NEMA 3R, type SC, raintight & weatherproof

R260533  
-70

6" L x 6" W x 6" D	1 Elec	10	.800	Ea.	18.50	33.50		52	70.50
8" L x 6" W x 6" D	↓	8	1	↓	23	42		65	88

ELECTRICAL TC

1 bearing on one another including much of the Schiff  
2 Hardin and the Ernst & Young and the STS as well as  
3 other small --

4 Q. I think we're in the wrong --

5 A. Non controversial --

6 Q. I think we are on the wrong line item. The  
7 other miscellaneous, I see that you have no imprudent  
8 amount?

9 A. That's correct.

10 Q. So you didn't make any recommendations for  
11 disallowance on that line?

12 A. No. I took -- out of the 80 million, I took  
13 the portions that had to do with project support and  
14 put that into a separate and that's where the Schiff  
15 Hardin and some of the others came out.

16 Q. Okay. So even though it was in a line item  
17 in the ledger for KCP&L under miscellaneous, you put  
18 it in project report and that's where 85 would show  
19 that, correct?

20 A. That's correct.

21 Q. All right. And other POs, indirects and  
22 uncommitted, 44 million, is that correct, 44?

23 A. There was a total of 684 million, and we  
24 were able to identify specific purchase orders or  
25 change orders or activities that added up to 44

1 million.

2 Q. Now, am I reading this correctly that those  
3 would be change orders that are not change orders for  
4 Alstom, Kissick or Kiewit?

5 A. I believe that's the case. My sorting was  
6 done such that no Alstom, Kissick or Kiewit purchase  
7 ordering change orders would have been included in  
8 that.

9 Q. And is the back-up for that also in DR-1?

10 A. That's correct.

11 Q. And that's how you got the -- oh, no  
12 numbers.

13 CHAIRMAN WRIGHT: What page is that in  
14 that we're looking at?

15 MS. VAN GELDER: This was part of the  
16 exhibit that was -- the last page of 77. This was his  
17 exhibit that was put in yesterday.

18 CHAIRMAN WRIGHT: Right.

19 MS. VAN GELDER: Mr. Chairman, given the  
20 time and the expressed desire by the Commission to  
21 have questions, I know that there were a number of  
22 issues that you went over earlier. I believe that the  
23 KCP&L will say that it really is the calculations that  
24 we think are the most important thing at this time to  
25 get in. We will waive our questioning on those other