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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

CHARLES R. HYNEMAN

**Great Plains Energy, Incorporated
KCP&L GREATER MISSOURI OPERATIONS COMPANY**

FILE NO. ER-2010-0356

Jefferson City, Missouri
January 2011

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CHARLES R. HYNEMAN
KCP&L GREATER MISSOURI OPERATIONS COMPANY
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1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **CHARLES R. HYNEMAN**

4 **KANSAS CITY POWER & LIGHT COMPANY**

5 **FILE NO. ER-2010-0356**

6 Q. Please state your name and business address.

7 A. Charles R. Hyneman, Fletcher Daniels State Office Building, 615 East
8 13th Street, Kansas City, Missouri.

9 Q. By whom are you employed and in what capacity?

10 A. I am a Regulatory Auditor with the Missouri Public Service
11 Commission (“Commission”).

12 Q. Are you the same Charles R. Hyneman who filed direct testimony and
13 rebuttal testimony in File No. ER-2010-0356?

14 A. Yes, I am.

15 Q. What is the purpose of your surrebuttal testimony?

16 A. The purpose is to address certain statements and allegations made by
17 KCP&L Greater Missouri Operations Company (“GMO”) witnesses in their respective
18 rebuttal testimonies in this case related to the Iatan Construction Project. These
19 GMO rebuttal testimonies were filed in response to the Staff’s November 3, 2010
20 Construction Audit and Prudence Review for the Iatan Construction
21 Project (“Staff Iatan Audit Report”).

22 Q. What rebuttal testimonies will you address in your surrebuttal testimony?

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

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

6 Of these nine witnesses, in my surrebuttal testimony I address the rebuttal testimonies
7 of GMO witnesses Curtis Blanc, William Downey, Chris Giles and Kris Nielsen.

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

11 A. Yes. From my review of GMO’s rebuttal testimony I find that GMO has
12 misconceptions about the authority of the Staff of the Missouri Public Service Commission
13 (“Staff”) to make Iatan construction project cost recommendations to the Commission, and by
14 extension, the Commission’s authority to make adjustments to the level of costs charged to
15 the Iatan construction projects. In addition, while GMO is certainly free to do so, the Staff
16 has a concern that GMO did not present the findings of the Kansas Corporation Commission
17 (KCC) Order in a reasonable context. In my testimony I will rebut the manner in which GMO
18 presented portions of that order.

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1 Q. Does GMO attempt to restrict the Staff and the Commission's authority to
2 make adjustments to Iatan construction costs?

3 A. Yes. Throughout its rebuttal testimony, GMO indicates that in order to adjust
4 any Iatan construction cost the Staff must make a finding of imprudence, under very specific
5 criteria established by GMO, and once that decision or action is found to be imprudent, the
6 Staff must be able to match a specific dollar amount to that management decision or action.
7 For example, GMO witness Mr. Blanc states at page 12 of his rebuttal testimony:

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

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

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

24 Q. Did Mr. Blanc cite any legal or other authoritative basis to support its belief
25 that the Commission is restricted in such a manner?

26 A. No.

27 Q. Does the Staff believe the Commission should be restricted in the manner
28 asserted by Mr. Blanc?

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

11 **GMO WITNESS BLANC**

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

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

21 As it explains in its rebuttal testimony, it is KCPL's position that the tens of thousands
22 of documents that it produced over the last four years of construction are the documents that
23 do in fact identify and explain each cost overrun and it is up to the Staff to find the specific

1 identifications and explanations of the cost overruns in and through these documents.
2 However, these documents are nothing more than what would be expected of KCPL to
3 produce in the execution of projects costing \$2.4 billion. KCPL, however, committed to an
4 additional documentation requirement – that is for it to identify and explain each and every
5 cost overrun over its definitive estimate. However, KCPL has not complied with this
6 requirement.

7 Q. What are cost overruns?

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

11 Q. At page 19 of his rebuttal testimony, Mr. Blanc describes KCPL's
12 Cost Control System. Do you have any concerns with his description?

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

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

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

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

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

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

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

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

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

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

26 Q. At page 20 of his rebuttal testimony, Mr. Blanc says "To my knowledge, no
27 previous utility construction project in Missouri has had such an elaborate, sophisticated,
28 transparent cost control system in place as the one KCP&L has used for the Iatan projects.
29 Is the Staff aware of Mr. Blanc's experience with construction projects in Missouri?"

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

6 Q. Mr. Blanc states at page 20 of his rebuttal testimony that "If KCP&L's cost
7 control system is not adequate for Staff to perform its audit of Iatan 2, it is not clear to me
8 how Staff was able to audit projects built prior to Iatan 2." Please comment.

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

17 Q. Mr. Blanc alleges at page 20 of his rebuttal testimony about some contact
18 between Staff and other utilities concerning KCPL's Cost Control System. Is the Staff aware
19 of any such contact?

20 A. No. Mr. Blanc states "...it is my understanding that Staff has reached out to
21 other utilities in the state requesting that they implement cost control systems similar to the
22 one KCP&L used for the Iatan projects. That seems inconsistent with Staff's argument here
23 that KCP&L's system prevents it from doing its audit work." What is unclear is why

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1 Mr. Blanc would make such a statement without providing the Commission with the facts and
2 circumstances surrounding this purported contact between Staff and other utilities discussing
3 KCPL's Cost Control System. I have asked each Staff individual who would likely have
4 knowledge of this contact and all have indicated that they do not know what Mr. Blanc is
5 referring to. I have also been advised that other Staff auditors assigned to other construction
6 projects have been contacted and have indicated that they do not know what Mr. Blanc is
7 referring to. The Staff by means of a Staff Data Request has inquired to Mr. Blanc as to the
8 details surrounding this alleged contact.

9 Q. Mr. Blanc also alleges at page 20 of his rebuttal testimony that Staff
10 "engineers' review of the Iatan projects has been largely cast aside as a 'non dollar
11 adjustment.'" Is there any truth to this allegation?

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

18 Q. Mr. Blanc reaches a conclusion at page 21 of his rebuttal testimony that the
19 findings of the Staff's Operations Division are contrary to Staff's recommendation to disallow
20 every expenditure in excess of the Control Budget Estimate ("CBE"). Is he correct?

21 A. No. The Staff has made it quite clear to KCPL that the Commission's Utilities
22 Operations Division conducts "engineering reviews" and not audits. The members of the
23 Operations Division have made it very clear to other members of the Staff and KCPL that

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1 they do not audit costs. Their review of change orders is a review of the engineering impacts
2 of the events and circumstances surrounding the change orders.

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

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

15 Mr. Davis testified that he understood Mr. Elliot did not look at costs on the Iatan
16 construction project. While Mr. Davis states Mr. Elliot did not "intensely" review change
17 orders for costs, it is clear to me that Mr. Elliot did not review change orders to audit costs in
18 any manner whatsoever. At page 15 of his rebuttal testimony Mr. Davis states:

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

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

25 A. Yes. For example at page 21 of his rebuttal testimony, he states " It might not
26 be on a single piece of paper, as Staff intimates it should be, but KCP&L's cost control
27 system contains all the data one needs to identify and explain costs incurred in excess of the
28 CBE." If this is true, the Staff wonders why KCPL would not provide such a document to the

1 Staff, a document that identifies and explains these cost overruns. When I refer to a
2 document, I do not mean a one page document. The Staff recognizes a document that
3 identifies and explains approximately \$200 million in cost overruns would probably be
4 multiple pages. Also Mr. Blanc states at page 23 that the creation of a document that lists and
5 describes each cost overrun may not be easy to create, but KCPL can create it:

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

14 Mr. Blanc continues:

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

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

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

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

28 Mr. Blanc's experience is principally in law and not accounting or auditing and he has
29 never completed any education in auditing and never participated in an audit as an auditor, yet

1 he expresses an opinion about what it would take to complete an audit such as the Staff has
2 undertaken.

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

8 Q. At page 22 of his rebuttal testimony Mr. Blanc states that the first time the
9 Staff told KCPL and the Commission that it believed KCPL "disregarded," or somehow failed
10 to satisfy its obligation in the Regulatory Plan to implement an adequate cost control system
11 was the Staff's November 3, 2010 Iatan Report. Is Mr. Blanc correct?

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

13 Although Staff has requested and received on several occasions an
14 explanation as to how the cost control system works and how costs can
15 be tracked through the system, to my knowledge the November 3, 2010
16 Iatan Report is the first time Staff has told KCP&L, or more
17 importantly the Commission, that it believes KCP&L "disregarded," or
18 somehow failed to satisfy its obligation in the Regulatory Plan to
19 implement an adequate cost control system. Staff briefly discussed
20 KCP&L's cost control system in its August 6, 2010 report for Iatan 1,
21 but Staff did not claim that KCP&L had disregarded or otherwise
22 violated its commitments under the Regulatory Plan. (Emphasis added)

23 Mr. Blanc also states at page 22:

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

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

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

9 PAGE 5 - While Staff is not proposing a disallowance of the Iatan 1
10 AQCS cost overruns not identified or explained by the change
11 management system, Staff cannot recommend inclusion of these
12 amounts without identification and corresponding examination. This
13 problem was not anticipated because of safeguards built into KCPL’s
14 Regulatory Plan. Unfortunately, these safeguards failed to be fully
15 implemented by KCPL.

16 PAGE 68 - The KCPL Regulatory Plan contained a provision that in
17 Staff’s view were designed to facilitate an audit of cost overruns in the
18 event any of the Regulatory Plan projects exceeded their definitive
19 estimate. The KCPL Regulatory Plan contained a requirement that
20 KCPL must develop a definitive estimate and maintain a Cost Control
21 System that identifies and explains any cost overruns over this
22 definitive estimate. After Staff’s experience with the construction
23 audits of Wolf Creek and Callaway nuclear stations, Staff understood
24 the significance of a definitive estimate versus other types of estimates
25 that are available before a definitive estimate is developed. Staff
26 experienced the level of difficulty to track costs, especially in the event
27 of cost overruns, with a budget that lacked the specificity of a definitive
28 estimate. In the Wolf Creek and Callaway construction audits
29 reconciliation packages were created to identify and explain the cost
30 overruns that occurred on those projects. It was Staff’s intent to avoid a
31 repeat of that experience by making current identification and
32 explanations a feature of Regulatory Plan projects. KCPL’s
33 Comprehensive Energy Plan Construction Projects Cost Control
34 System was attached to the rebuttal testimony of Steven Jones as
35 Schedule SJ-1. Under section 3.1 Cost Control on page 8 of 30, it
36 states the “The Project team will develop a Definitive Estimate for each
37 Project that will be [sic] provide an analytical baseline for evaluating

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

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1 actual costs are expected to be less than the current or reforecasted
2 budget.

3 Q. At page 25 of his rebuttal testimony Mr. Blanc takes issue with the Staff's
4 claim that KCPL failed to comply with its commitment in the Regulatory Plan and the Staff's
5 proposed adjustment to exclude all unidentified and unexplained costs above KCPL's
6 definitive estimate from Iatan 1 and Iatan 2 plant in service. Please comment on Mr. Blanc's
7 concerns.

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

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

22 Mr. Blanc's second issue is that "prior to the November 3, 2010 Iatan Report, Staff did
23 not inform KCP&L, or more importantly the Commission, that KCP&L creating such a "list"
24 was critical to Staff's audit work." As I described earlier, this statement is not correct.

1 The Staff directly and explicitly notified KCPL and the Commission in its December 31, 2009
2 Report of KCPL's failure to comply with the cost overrun documentation requirement of the
3 Regulatory Plan.

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

13 Q. At page 26 of his rebuttal testimony, Mr. Blanc states that the
14 Commission's Utilities Operations Division did its audit work without such a list, as did
15 Kris Nielsen and Daniel Meyer, who discuss their audit work in their testimony in this case.
16 How do you respond?

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

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

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

10 Q. At page 29 of his rebuttal testimony Mr. Blanc states that the KCC, in its
11 recent order in KCPL's companion Kansas rate case to File No. ER-2010-0355 expressed an
12 opinion about Iatan 2 costing more than the December 2006 Control Budget Estimate. Did
13 Mr. Blanc present these KCC comments in a reasonable context?

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

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

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

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

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

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

18 Q. Mr. Blanc, at page 29 of his rebuttal testimony, continues his quote of the
19 KCC Iatan Order describing how the KCC said KCPL built a strong and credible case its
20 actions were not imprudent. What are your comments on this testimony?

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

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

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

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

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

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

37
38 [t]he factors which shall be considered by the commission in making
39 the determination of "prudence" or lack thereof in determining the
40 reasonable value of electric generating property, as contemplated by

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1 this act shall include *without limitation* the following [12 enumerated
2 items.] (Emphasis added).

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

7 [K.S.A. 66-128g(a)(12)], in effect, states that 'prudence or lack
8 thereof means as that term is commonly used. Black's Law Dictionary
9 1104 (5th ed. 1979) defines "prudence" as "carefulness, precaution,
10 attentiveness and good judgment."

11
12 And it later said:

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

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

25 The KCC concluded this discussion with a very clear statement of how they will restrict their
26 evaluation of the evidence in the case:

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

32 Q. Mr. Blanc at page 29 of his rebuttal testimony states that the KCC hired an
33 outside prudence consultant, Walter Drabinski of Vantage Consulting, a witness in this case,
34 to conduct a construction audit and prudence review of the Iatan Construction Projects.

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1 He also states that in its Order the KCC rejected its own expert's analysis in part because it
2 "hinges on a hindsight analysis, which is clearly prohibited." Please comment.

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

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

8 A. Yes. In its Order, the KCC noted that KCPL's own expert testified that KCPL
9 should accept a \$20.4 million imprudence disallowance due to the engagement of Welding
10 Services, Inc. ("WSI") and the removal/readdition of an auxiliary boiler as described in
11 Dr. Nielsen's testimony. The Staff notes that in its September 16, 2010 POST HEARING
12 BRIEF OF KANSAS CITY POWER & LIGHT COMPANY in Docket No.
13 10-KCPE-415-RTS, KCPL at page 111, paragraph 274, KCPL supported a finding of the
14 Commission adopting Dr. Nielsen's recommendation for a disallowance associated with the
15 costs of the auxiliary boiler, but KCPL rejected the testimony of its own prudence expert with
16 respect to the disallowance due to the engagement of the services of WSI.

17 Q. Mr. Blanc states at page 31 of his rebuttal testimony that his
18 "general observation is that Staff's criticisms are based on the incorrect notion that KCP&L
19 should procure legal services in the same manner it procures offices supplies or some other
20 fungible commodity." What are your comments on this statement?

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

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

3 A. Yes. In July 2010, I submitted Staff Data Request No. 187 in this case to
4 KCPL asking for a meeting to give KCPL an opportunity to meet and discuss the Staff's
5 December 31, 2009 Staff Report concerning the Iatan construction project, including its
6 adjustments. KCPL responded on July 30, 2010, seven months after the Staff filed its
7 December 31, 2009 Report, that it was still evaluation the report and rejected the Staff's
8 request for a meeting:

9 Response to Hyneman Chuck Interrogatories – Set MPSC_20100719
10 Date of Response: 07/30/2010

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

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

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

24 Q. At page 37 of his rebuttal testimony, Mr. Blanc states that “Simply put, there
25 are not many firms in the United States that have significant experience with projects as large
26 and complex as the Iatan projects”. Did Mr. Blanc do any analysis on which to base this
27 statement?

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1 A. No. To support testimony that there are not many firms in the United States
2 that have experience with large projects, Mr. Blanc relied upon his general knowledge. When
3 asked what analysis did Mr. Blanc conduct to arrive at this conclusion, KCPL responded to
4 Staff Data Request No. 611 that “Mr. Blanc did not conduct a specific analysis to arrive at his
5 conclusion. Instead, Mr. Blanc relied upon his general knowledge that there have not been
6 many utility projects as large and complex as the Iatan projects since the last generation of
7 nuclear plants were completed about 30 years ago.”

8 Q. At page 38 of his rebuttal testimony, Mr. Blanc states that “Schiff Hardin’s
9 team for the Iatan projects possesses the requisite skill, knowledge and experience to handle a
10 project as large and complex as the Iatan projects. Few firms in the United States have
11 significant experience with these types of projects.” Did Mr. Blanc do any analysis on which
12 to base this statement?

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

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

20 A. No. There appears to be a lack of understanding that the Staff hoped to
21 address when it requested a meeting with KCPL in July 2010 to answer any question KCPL
22 may have on the Staff adjustments. Instead KCPL decided to write testimony about Staff
23 adjustments it apparently does not understand. At page 30 of his rebuttal testimony,

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1 Mr. Blanc states “[i]n Staff’s disallowance workpapers, they assign the project control work
2 (estimated at 80%) to four specific Schiff Hardin employees . . .” This statement is
3 completely wrong. Nowhere in the Staff’s Report or in the Staff’s workpapers does the Staff
4 assign any percentage to project controls. The Staff’s allocation is to legal work (20 percent)
5 and non-legal or Project Management (80 percent).

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

7 A. Yes. The Staff’s workpapers made no mention of or reference to
8 “project controls.” The Staff, at page 80 of its Report made the basis of this classification
9 very clear:

10 From the description of the Schiff roles and responsibilities provided
11 by Mr. Downey, and the description of the work performed by Schiff in
12 its monthly invoices, the Staff made a determination that 80 percent of
13 the work performed by Schiff employees were related to **construction**
14 **project management, including project controls**. The remaining 20
15 percent related to legal and paralegal services. (Emphasis added).

16 Q. At page 40 of his rebuttal testimony, Mr. Blanc states his belief of how total
17 Schiff Hardin billed hours have been distributed if only the hours incurred by Schiff Hardin
18 personnel (excluding subcontractors) had been considered as Iatan Oversight (32%),
19 Iatan Project Control (10%), Contracts (10%), Contract Administration (46%) and other (2%).
20 Do you believe this allocation is accurate?

21 A. No. It does not appear to be accurate and it is based solely on cost categories
22 established by Schiff Hardin and not by KCPL. First, this breakdown does not include a
23 category for legal work such as providing legal advice to KCPL. It appears this legal work is
24 buried in the other categories that would be classified as non-legal project management-type
25 work. Also, from a review of Schiff Hardin invoices, the Staff notes that one Schiff Hardin
26 employee who has been working on the Iatan construction projects for the last four years has

1 a job title as Project Controls Analyst. However, much of hours billed by this employee are
2 categorized as Project Oversight instead of Project Controls and Mr. Blanc appears to classify
3 Project Oversight services as legal services. It is not clear how a
4 non-attorney project controls analyst could be performing services categorized as
5 legal services. Clearly this is not appropriate and, among other problems, significantly
6 overstates the portion of Schiff work that could legitimately be considered legal services.

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

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

19 A. Yes. In its November 3, 2010 Report the Staff explained that in his
20 direct testimony in this case, KCPL's President and Chief Operating Officer
21 Mr. William Downey explained at pages 8 and 9 why he hired Schiff Hardin. Mr. Downey
22 described how in August of 2005, KCPL retained Schiff Hardin to perform a number of

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1 services on KCPL's behalf. Mr. Downey described the following services provided by Schiff

2 Hardin:

- 3 1. Review and validate the essential milestone dates and critical path
4 activity
- 5 2. Provide procurement advice regarding potential contracting methods
- 6 3. Development of and procurement of the goods and services
- 7 4. Provide project oversight and reporting to the Senior Management
- 8 5. Developing appropriate and industry standard project controls
9 standards and metrics
- 10 6. Development of policies and procedures for the cost and schedule
11 management of the CEP Projects.

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

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

- 16 _____
- 17 1. _____
18 _____
 - 19 2. _____
20 _____
 - 21 3. _____
22 _____
 - 23 4. _____
24 _____
 - 25 5. _____
 - 26 6. _____
27 _____
 - 28 7. _____
29 _____

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- 1 8. _____
- 2 _____
- 3 9. _____
- 4 _____
- 5 10. _____
- 6 _____
- 7 11. _____
- 8 _____
- 9 12. _____
- 10 _____
- 11 _____
- 12 _____
- 13 13. _____
- 14 _____
- 15 14. _____
- 16 _____ **

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

28 Q. In his rebuttal testimony starting at page 41, Mr. Blanc spends considerable
29 effort criticizing Staff's work in attempting to determine a fair and reasonable rate for the
30 work charged by Schiff Hardin to KCPL on the Iatan construction projects. Why was it even

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1 necessary for the Staff to spend a considerable amount of time and effort to arrive at a fair and
2 reasonable rate?

3 A. KCPL failed to make any effort to justify the reasonableness of the hourly rates
4 charged to KCPL by Schiff Hardin employees and the independent construction project
5 management subcontractors hired by Schiff Hardin to work on the project. The Staff, in an
6 attempt to reduce the possibility that unjust, inappropriate, and unreasonable charges would
7 get charged to GMO's customers, decided to make the considerable effort in time to arrive at
8 a dollar adjustment to the Schiff Hardin charges that, if made, will result in a higher
9 likelihood that excess costs for Schiff Hardin services will be not charged to GMO's
10 customers. The Staff is clearly convinced that Schiff Hardin's rates are excessive and
11 unreasonable and Staff has an equal concern that there was even the possibility that Schiff
12 Hardin provided services for KCPL for work that does not appear to be reasonable or
13 necessary for work on the Iatan construction projects and/or that, if necessary, KCPL
14 personnel could have done at a much more cost-effective manner.

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

17 A. Yes. Since March 2006 when he signed a contract with KCPL, KCPL
18 witness Steve Jones was an independent contractor working on Iatan Procurement issues.
19 During the Iatan Construction Project Mr. Jones switched employers from KCPL to
20 Schiff Hardin and changed hourly rates from ** ____ ** per hour to ** ____ ** per hour.
21 Mr. Jones continues to work as an independent contractor and continued to work on the Iatan
22 project, the only difference is that he charged the Iatan project ** ____ ** more per hour
23 (an increase that is more than his hourly rate at KCPL). Schiff Hardin signed an independent

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1 contractor contract with Steve Jones on June 12, 2009 (see Schedule 2, “Schiff & Jones
2 contract”).

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

4 A. Yes.

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

7 A. Yes. In the contract the only duties and responsibilities assigned to Mr. Jones
8 by Schiff Hardin is to “Report directly to Kansas City Power & Light’s VP of Administrative
9 Services and Vice President Regulatory Affairs to provide procurement and regulatory
10 services for Kansas City Power & Light’s Comprehensive Energy Plan Projects”. In a review
11 of the work performed by Mr. Jones for Schiff Hardin in August 2009 shows that Mr. Jones
12 spent 45 hours per week for four weeks at ** ____ ** per hour working on “data requests,”
13 “white papers” and “change management notice and notification.” This was the extent of the
14 description of Mr. Jones’ work on which KCPL paid over \$50,000 in the month of
15 August 2009. It is not clear to the Staff how this work provided any value to the Iatan
16 Construction Project.

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

19 A. Yes. Given the thousands of hours that Schiff Hardin billed KCPL for work
20 performed by independent construction project management subcontractors, and this
21 excessive Schiff Hardin “overhead and profit” charge, GMO’s customers would clearly be
22 charged for costs which are not fair and reasonable without the Staff’s proposed adjustment.

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

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

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

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

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

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

15 The Commission finds expenses requested for Schiff Hardin
16 particularly troubling. This firm served KCPL in several roles. One
17 attorney from Schiff Hardin, Kenneth M. Roberts, testified at the
18 hearing about advice this firm gave KCPL's management related to
19 construction projects, suggesting the firm acted as a consultant. But a
20 significant number of exhibits in the record reflect deleted material
21 based upon KCPL's attorney/client privilege with Schiff Hardin. No
22 attorney from Schiff Hardin entered an appearance in this proceeding,
23 but Roberts and at least one other attorney were present during the first
24 week of the hearing.³⁵⁰ Schiff Hardin invoices confirm the
25 hourly rates for its attorneys exceed those for experienced attorneys in
26 the Kansas City metropolitan area. Roberts testified his hourly rate was
27 \$550.³⁵¹ Recently, the local hourly rate for an experienced attorney in the
28 Kansas City metropolitan area with specialized expertise was
29 determined to be \$295.³⁵² The highest hourly rate for the most
30 experienced attorney representing KCPL from the Kansas City
31 metropolitan area in this proceeding is \$390. Unfortunately, the record

1 is not adequate to allow the Commission to consider whether adopting
2 a "fee customarily charged in the locality for similar legal services" is
3 appropriate for this case, as allowed in KRPC 1.5(a)(3), and, if
4 appropriate, to determine that rate.³⁵³

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

8 **GMO WITNESS DOWNEY**

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

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

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

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

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

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

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

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

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

11 ** Please comment.

12 A. ** _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

20 **

21 Q. At page 24 line 5 of his rebuttal testimony Mr. Downey states that KCPL and
22 Alstom ** _____ ** Is the Staff seriously concerned about this
23 action by KCPL?

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1 A. Yes. The Staff’s concern is based on the fact that whenever ** _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____ **

8 Q. At page 24, line 6 of his rebuttal testimony, Mr. Downey states that KCPL
9 agrees that “to the extent it does recoup some of the costs it incurred related to the
10 Crane Incident from Alstom; KCPL will credit that money back to the cost of the plant.”
11 Is this a reasonable proposal?

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

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

22 A. The Staff did spend a significant amount of time on the Schiff Hardin costs,
23 but the sole reason for this time investment was the manner in which KCPL procured the

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1 services provided by Schiff Hardin. There is nothing unusual about this area of the Staff's
2 audit or any of the areas of the Staff's construction audit. Other than the Hawthorn 5 rebuild,
3 there have not been baseload generating units constructed or owned in part by Missouri
4 regulated electric utilities that have been constructed since the Callaway and Wolf Creek
5 nuclear units. The facts are that KCPL hired Schiff Hardin based on a phone call
6 recommendation of Mr. Downey's former boss at Commonwealth Edison, Mr. Tom Maiman.
7 Also, KCPL paid \$20 million dollars to Schiff Hardin without ever doing any analysis
8 whatsoever of the rates charged by Schiff Hardin or ever soliciting any bids or proposals for
9 any other firm capable of providing the same or similar services as Schiff Hardin.

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

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

19 A. No.

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

22 A. Yes. The Staff treated the costs for the project management consulting firm
23 Cushman & Associates in the exact same manner as it did Schiff Hardin. KCPL hired

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1 Cushman & Associates without any competitive bids and paid excessively high rates for these
2 services. Because Cushman & Associate's time on the Iatan construction projects was limited
3 and did not involve legal fees, the amount of time the Staff had to devote to the discovery,
4 research and other audit procedures to determine whether or not to make a cost adjustment
5 was not as significant as the time required for the Schiff Hardin adjustment. Another factor
6 that made the time required for the Cushman & Associates adjustment less than for the
7 Schiff Hardin adjustment was that unlike Schiff Hardin, KCPL did not redact a significant
8 amount of documentation provided in data request responses. However, the audit process and
9 the adjustment for both Cushman & Associates and Schiff Hardin were exactly the same.

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

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

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

19 A. I do not know the basis of Mr. Downey's statement that the Staff never
20 ventured into whether or not Schiff Hardin performed valuable services. I do agree that the
21 Staff's primary focus on Schiff Hardin was its cost. The Staff was required to have a
22 high-level focus on Schiff Hardin's cost because it was apparent to the Staff that KCPL did
23 not have any concern at all about the cost it was paying to Schiff Hardin and charging to the

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1 Iatan construction projects. The Staff welcomes any evidence whatsoever that KCPL can
2 produce that shows that KCPL had any concern about the cost Schiff Hardin charged KCPL
3 for the period 2005 through 2010. The Staff searched for such documentation and engaged in
4 significant discovery with KCPL in an attempt to obtain this information without success.

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

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

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Surrebuttal Testimony of
Charles R. Hyneman

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

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

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27 I did note a few instances where Schiff was meeting with KCPL internal auditors
28 which it did not seem appropriate to me from an auditing perspective. However, because the
29 Staff did not find several additional instances of this type of behavior and did not notice any
30 complaints from its internal auditors about Schiff Hardin's involvement, it did not elevate



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1 these concerns to KCPL. These concerns are included here, however, to address
2 Mr. Downey's statement that the Staff did not concern itself with Schiff Hardin's
3 performance on the Iatan construction projects.

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

7 A. Yes, I have.

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

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

19 The key question when it comes to this settlement is, is it reasonable, just, or
20 appropriate for Missouri retail ratepayers to pay the settlement or for some other entity, such
21 as the contractors who were at fault and caused the increased costs, or KCPL whose
22 inappropriate, unreasonable or imprudent actions may have resulted in the increased costs that
23 formed the basis of the Alstom Unit 1 Settlement? According to GMO it is its customers who

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

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

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

21 Q. As it relates to the Staff's reference to KCPL internal audits to provide
22 background evidence in support of its adjustments, Mr. Downey states at page 35, lines 16
23 through 17 of his rebuttal testimony that the Staff in its Report "misuses, mistakes and takes

1 great liberties with the content and conclusions of KCP&L’s internal audit reports.” Does
2 Mr. Downey provide testimony to support these allegations?

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

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

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

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

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6 One major finding by Marano was that key members of the Project Team do not appear
7 ** _____ **

8 Mr. Marano also found that Alstom is ** _____
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10 _____ ** This is the specific type of documentation that
11 not only is related to but provides support to the Staff's finding on the Alstom Unit 1 Settlement
12 adjustment.

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

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

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1 **GMO WITNESS GILES**

2 Q. At page 2 of his rebuttal testimony, GMO witness Giles states that “KCP&L
3 has clearly identified and explained the reasons for every cost overrun on the Iatan Project.
4 KCP&L provided to Staff the information it has needed to track the Iatan Project, including
5 all cost data and other information from its Cost Control System. KCP&L has provided
6 nineteen Quarterly Reports to Staff and responses to approximately 2150 data requests.”

7 Is Mr. Giles correct?

8 A. No. The Staff’s position is that KCPL has not identified or explained each cost
9 overrun on the Iatan Project as it is required to do under the terms of the Regulatory Plan.
10 Mr. Giles may state that KCPL has clearly identified and explained the cost overruns, by
11 stating that the identification and explanation can be found somewhere in the Cost Control
12 System that KCPL developed for the Iatan Construction Project, in addition KCPL developed
13 for the Staff nineteen Quarterly Reports, and in the KCPL responses to the 2150 Staff data
14 requests does not meet the terms of the Stipulation and Agreement of the Regulatory Plan.

15 Q. Mr. Giles states at page 2 that the Staff has chosen to focus its auditing
16 activities on marginal costs like executive expenses, mileage charges, fees for its oversight
17 team and travel expenses while essentially throwing its hands in the air and claiming that
18 KCP&L has not explained approximately \$200 million in actual costs to date.
19 Please comment.

20 A. This statement demonstrates a clear lack of knowledge about how the Staff
21 focused its auditing activities. Mr. Giles characterizes an expenditure of \$20 million (fees for
22 its oversight team) as marginal. The Staff disagrees that \$20 million is marginal. With
23 respect to the Staff’s auditing activities related to KCPL’s internal expenditures of excessive
24 expenses and excessive mileage charges, the Staff has a responsibility to identify

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1 inappropriate officer expenses charged to the project. Early on in its audit the Staff focused
2 on KCPL's internal control over costs in an effort to determine if KCPL was following its
3 own internal procedures. To accomplish this audit objective and for other auditing-related
4 reasons the Staff reviewed the expense reports of selected Iatan Project personnel. The Staff
5 found numerous examples of charges inappropriately charged, excessive costs and a general
6 disregard for the level of expenses charged by KCPL officers to the Iatan Project. This Staff
7 finding forced the Staff to expand its review in this area.

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

18 Data Request No. 0556
19 Company Name Kansas City Power & Light Company
20 Case/Tracking No. ER-2009-0089
21 Date Requested 2/26/2009
22 Brief Description WHD Expense Report 9/28/07

23 Description: Reference WHD expense report approved on 9/28/07.
24 1. Please provide the business purpose of WMD traveling from
25 Chicago to Denver instead of KC to Denver (What was his business
26 purpose of being in Chicago) 2. Please provide a copy of the receipts
27 for the \$1,606.38 Dinner charged on 6/18/07 at Kevin Taylor
28 Restaurant in Denver and provide the business purpose of charging this

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1 expense to KCPL's regulated customers. 3. Please provide a copy of the
2 receipts for business meal with L. Cheatum re: personnel on 6/21/07.

3 Objection: KCPL objects to this data request as it calls for information
4 which is irrelevant, immaterial, inadmissible and not reasonably
5 calculated to lead to the discovery of admissible evidence. The costs
6 mentioned in this data request were inadvertently included in KCPL's
7 cost of service. KCPL is no longer seeking recovery in rates of any of
8 the costs mentioned in the data request.

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

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

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

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

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1 A. I believe KCPL's new approach to answering Staff data requests is
2 significantly influenced by its association with Schiff Hardin. Since KCPL hired
3 Schiff Hardin, it has significantly increased the frequency in which it has asserted privileges
4 and has asserted many privileges with a frequency never before seen by the Staff in recent
5 memory. For example, KCPL initially redacted all information on Schiff Hardin invoices,
6 including information that describes clearly project management duties and administrative
7 tasks. KCPL has since ceased this practice of wholesale redactions, but only after being
8 prompted to do so by the Staff. To this date, the Staff has been unable to review thousands of
9 documents that it believes are relevant to its audit. The Staff would not classify KCPL's
10 behavior on this audit as transparent under any circumstances.

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

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

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1 considered privilege in a locked section of the data base to prevent Staff access and provide
2 access to the remainder of the data base.

3 Q. At page 11 of his rebuttal testimony, Mr. Giles states that “In auditing the
4 Iatan Unit 2 Project’s costs over four years on the project, the charge repeatedly cited by Staff
5 as the proof of this accusation is a single \$400 meal charge that it found over two years ago
6 which KCP&L removed from the costs of the Project once Staff brought the charge to
7 KCP&L’s attention.” Is Mr. Giles correct in stating that the Staff audited Iatan 2 for over
8 four years?

9 A. No. KCPL did not allow the Staff to audit Iatan 2 until some date after
10 February 2009. As noted in its response to Staff Data Request No. 491 in Case
11 No. ER-2009-0089, KCPL refused to provide any documents related to Iatan 2 until some
12 date after the date of this data request. When Staff asked for data related to the Iatan 2
13 contingency in February 2009, KCPL characterized this request as, among other things,
14 irrelevant and immaterial. Yet, Mr. Giles continues to describe KCPL’s behavior as
15 “transparent.”

16 Case: ER-2009-0089
17 Date of Response: 02/03/2009
18 Information Provided By: Gerry Reynolds
19 Requested by: Schallenberg Bob

20 Question No: 0491 Please provide copies of all the documentation
21 supporting the development, review, analysis and approval of the
22 contingency and executive contingency included in the control budget
23 estimate for Iatan 2.

24 Response: KCPL Objects to this data request to the extent it calls for
25 information pertaining to Iatan 2 and therefore seeks discovery of
26 information which is irrelevant, immaterial and inadmissible and whose
27 discovery is not reasonably calculated to lead to the production of
28 relevant and admissible evidence.

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1 Response provided by Iatan Construction Project, Project Controls
2 Department.

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

5 A. Yes. In Staff Data Request No. 490 in Case No. ER-2009-0089 the Staff asked
6 for basic documentation supporting KCPL's budget for Iatan 1. KCPL responded that it will
7 not provide this documentation to the Staff but requires the Staff to travel to its Kansas City,
8 Missouri Headquarters building to review this basic budget information.

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

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

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

27 Seeking further clarification about what data would be provided in response to this
28 Staff Data Request, KCPL indicated only three documents were available. However, KCPL
29 claimed privilege on two of the documents in total and completely redacted all meaningful
30 data from a third document (Memo from Ken Roberts and Eric Gould to Steve Easley
31 October 18, 2006). It is completely unreasonable for KCPL to prevent the Staff from

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1 reviewing basic information in the development of the Control Budget Estimate. This is
2 another example of a complete lack of transparency on the part of KCPL.

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

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

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

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

22 Mr. Giles' comments criticizing Staff auditors in his rebuttal testimony are just
23 another attempt by KCPL to obscure its failure to identify Iatan cost overruns above the

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1 definitive estimate. The Regulatory Plan is clear that KCPL is required to identify and
2 explain any cost overrun over the definitive estimate.

3 As will be discussed in the surrebuttal testimony of Staff witness Keith Majors, once
4 KCPL fails to provide documentation supporting the development of its Control Budget
5 Estimate contingency amounts, it is impossible to determine from the budget variances, the
6 specific costs that should be charged to the contingency and the specific costs that are true
7 budget overruns. Mr. Giles should be able to explain why KCPL will not provide to the Staff
8 all the documentation it has related to the development of the budget, the very same budget
9 it insists the Staff has the ability to track cost overruns against. Mr. Giles should
10 understand that for the Staff to be able to know what types of costs should be charged to
11 the contingency; it has to be able to read and understand all the documentation that
12 describes and supports the development and evolution of the budget contingency. Mr. Giles
13 should also understand that the determination of what cost is a cost overrun has to come from
14 the Project Management Team.

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

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1 The Staff's unidentified/unexplained cost overrun adjustment was actually very
2 conservative in its dollar amount. The Staff took all of its adjustments and classified them as
3 cost overruns instead of contingency items, thereby reducing the size of the
4 unidentified/unexplained cost overruns adjustment. In this manner, no cost charged to the
5 budget contingency for Iatan 2, \$220 million, was adjusted. In effect, the Staff made no
6 adjustment to any budget costs of for procurement, construction and indirect costs, and no
7 adjustment to the amount of costs in excess of these baseline budget components up to
8 \$220 million. It is only when KCPL's baseline budget amounts were exceeded by
9 \$220 million did the Staff's adjustment come into play. The Staff could have assumed that all
10 of its specific audit adjustments came from the contingency which would have made its
11 unexplained/unidentified cost overrun adjustment significantly higher.

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

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

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

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1 Had Staff read the actual records of KCP&L's cost overruns on Unit 1,
2 it may have concluded that \$10 million of the allegedly \$18 million it
3 allegedly couldn't find was in two purchase orders for the procurement
4 of the material and the construction for increasing the surface area of
5 the existing Unit 1 economizer. (Schedule CBG2010-1). Staff would
6 have also discovered that the reason this was an "overrun" to KCP&L's
7 Control Budget Estimate because KCP&L could not have anticipated
8 needing to do this work until after the ALSTOM contract was executed
9 and KCP&L had time to evaluate this work as compared to other
10 alternatives to determine the least-cost option for meeting key
11 performance requirements.

12 Q. Is Mr. Giles correct that KCPL's cost overruns for Iatan 1 include
13 \$10 million dollars for the Unit 1 economizer?

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

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

1 **GMO WITNESS NIELSEN**

2 Q. At page 97 of his rebuttal testimony, GMO witness Dr. Kris Nielsen, quoting
3 Mr. Walter Drabinski, admits that Iatan site activities had begun “almost one year” prior to
4 the publication of the Project Execution Plan (“PEP”). Is this significant?

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

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

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

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

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

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

Surrebuttal Testimony of
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1 A. Yes.

2 Q. Was the June 2007 PEP revised?

3 A. According to KCPL, no. KCPL provided the June 2007 PEP in response to
4 Staff Data Request No. 380. In Staff Data Request No. 380.1 in Case No. EO-2010-0259, the
5 Staff asked for any changes to the PEP. KCPL responded that “there are no updates to the
6 Project Execution Plan provided in Data Request 0380 in Case
7 No. ER-2009-0089.”

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

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

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

17 Response provided by Iatan Construction Management Attachment:
18 Q0380.1 Verification Form.pdf

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

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

24 The Project Organization is in a state of transition. The Project Execution Plan
25 (PEP) and organization chart are currently being revised, and a number of
26 policies and procedures are still in development, with the expectation that
27 they be compiled into a manual by year-end. Despite some uncertainty created
28 by and during this transition, near unanimity was expressed during interviews
29 that the Project Organization had improved over the last six months, and

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1 while additional improvements could be made, the project was “on the right
2 track.” (Emphasis Added)

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

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

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

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

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

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

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

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

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

24 A. No. The Staff’s review of the June 2007 PEP indicated that the earliest any
25 section of the document was scheduled to be completed was in April 2007. It does not appear
26 that any sections were complete, much less issued, in the fall of 2006. No section of the

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1 June 2007 PEP was signed as complete prior to June 2007, including the Safety section which
2 was signed as complete on June 11, 2007.

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

5 A. Yes. At page 169, lines 6 through 8 of his rebuttal testimony, he states that
6 “In this regard, KCP&L’s PMT began development of the Project Execution Plan (PEP) in
7 January 2007, involving all the Iatan Project team participants, including contractors.”
8 If KCPL began the development of the PEP in January 2007, it is not clear how parts of it
9 could have been developed and issued in 2006.

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

12 A. Yes.

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

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

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

4 A. I agree that a construction audit can be described as an examination of the
5 costs to execute construction projects, but it is not a financial audit in any sense. Dr. Nielsen
6 is confusing a construction audit with an audit of the company’s published financial
7 statements, such as a balance sheet, income statement, and statement of cash flows. There is
8 no similarity or relationship between a construction audit (especially the type of construction
9 audit performed by the Staff in this case) and a financial audit. They are two completely
10 separate and unrelated endeavors.

11 Q. Mr. Hyneman, are you a certified public accountant (“CPA”)?

12 A. Yes, I am.

13 Q. Have you reviewed the description of a financial audit at page 48 of
14 Dr. Nielsen’s rebuttal testimony?

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

17 Typically, financial audits are intended to be “tests” of financial
18 statements produced by the entity being audited. The goal is to
19 establish with reasonable certainty that the auditing party can rely on
20 what is reported within those financial statements. Once the test is
21 completed, and assuming it is determined that those financial
22 statements issued present a reliable source of information relative to the
23 financial actions of the party audited, the financial test is “passed” and
24 the financial statements are then used for such other purposes for which
25 they are intended.

26 Q. Do you concur with Dr. Nielsen’s description of a financial audit?

Surrebuttal Testimony of
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1 A. No. I have not previously seen financial audits described in this manner and
2 this description does not come from any authoritative accounting or auditing literature of
3 which I am aware. I am familiar with the purpose of an audit on financial statements
4 presented in accordance with generally accepted accounting principles (GAAP) and this is not
5 a description of this type of financial audit. A GAAP audit is not a test and the goal is not for
6 the auditors to be able to rely on the financial statements. I am not aware of the term
7 “reasonable certainty” being used as the description of an audit of financial statements in any
8 authoritative accounting or auditing literature.

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

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

16 I also did not note where he concluded that any of the dollars associated with Alstom’s
17 claims were not based on poor specifications or late specifications from Burns & McDonnell.
18 If he did, and found that a portion of Alstom’s claims were legitimate due to poor contractor
19 performance, he should have deemed it prudent for KCPL to pay the Alstom claim and then
20 backcharge Burns & McDonnell for amount of the settlement payment poor performance.
21 Also, if he found that KCPL was responsible for a portion of the Alstom claims through poor
22 performance, or negligence or imprudence, his testimony should include a recommendation
23 for KCPL to absorb these costs and not charge them to GMO’s ratepayers.

Surrebuttal Testimony of
Charles R. Hyneman

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

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

10 Q. Does this conclude your surrebuttal testimony?

11 A. Yes.


BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

AFFIDAVIT OF CHARLES R. HYNEMAN

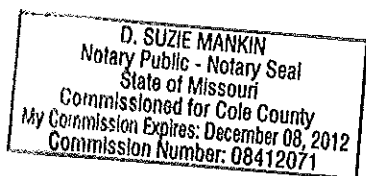
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)


Charles R. Hyneman, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 60 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



Charles R. Hyneman

Subscribed and sworn to before me this 12th day of January, 2011.





Notary Public

SCHEDULES 1 - 3

HAVE BEEN DEEMED

HIGHLY CONFIDENTIAL

IN THEIR ENTIRETY

NP