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MAY 6 2010

Missouri Public
Service Commission

**Preliminary Report of the Staff Respecting Its Construction Audit /
Prudence Review of Environmental Upgrades to Iatan 1 and Iatan
Common Plant as Directed in the Missouri Public Service Commission's
April 15, 2009 Orders Regarding Construction Audits And
Prudence Reviews and Modified in the June 10, 2009 Orders Regarding
Joint Motion to Extend Filing Dates in Case Nos. ER-2009-0089,
ER-2009-0090 and HR-2009-0092**

Missouri Public Service Commission Staff

June 19, 2009

KCPH-GMO Exhibit No. 6
Date 4-29-10 Reporter KE
File No. EO-200-0259

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of Environmental Upgrades to Iatan 1 and Iatan Common Plant as Directed in the
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1. Executive Summary

a. Background

On April 15, 2009, the Commission issued separate Orders Regarding Construction And Prudence Audits Of The Environmental Upgrades At Iatan 1, Jeffrey Energy Center And Sibley Generating Facility in Case No. ER-2009-0089 and in Case Nos. ER-2009-0090 and HR-2009-0092, respectively.

In "Ordered: 1" on page 6 of the Commission Order in Case No. ER-2009-0089, the Commission directed the Staff to complete and file, no later than June 19, 2009, the construction audit and prudence review of the environmental upgrades at Iatan 1, including all additions necessary for these facilities to operate. The Commission further directed the Staff to identify and explain, with particularity, any disallowances of expenses that it believes are justified. In "Ordered: 5" on page 7, the Commission ordered that any party wishing to file responses or rebuttal testimony to the Staff's construction audit and prudence review to file such responses or testimony by June 26, 2009.

In "Ordered: 1" on page 6 of the Commission Order in Case Nos. ER-2009-0090 and HR-2009-0092, the Commission directed the Staff to complete and file, no later than June 19, 2009, the construction audits and prudence reviews of the environmental upgrades to Iatan 1, Jeffrey Energy Center Units 1 and 3, and the Sibley Unit 3, including all additions necessary for these facilities to operate. The Commission further directed the Staff to identify and explain, with particularity, any disallowances of expenses that it believes are justified. In "Ordered: 5" on page 7, the Commission ordered that any party wishing to file responses or rebuttal testimony to the Staff's construction audit and prudence review to file such responses or testimony by June 26, 2009.

On May 28, 2009 the Staff, Kansas City Power & Light Company (KCPL), and KCP&L Greater Missouri Operations Company (GMO) jointly requested that the Commission extend the filing date of the Staff's construction audit and prudence review reports for the KCPL and GMO cases respecting the environmental upgrades at Iatan 1, Jeffrey Energy Center Units 1 and 3, and Sibley Unit 3 from June 19, 2009 to the filing of the Staff's direct testimony in the next general rate cases of KCPL and GMO.

On June 10, 2009, the Commission issued its Order Regarding Joint Motion To Extend Filing Date. In this Order the Commission found as follows:

1. That in light of the parties' settlement, the Commission finds it reasonable to extend the deadline for Staff to complete the construction audit and prudence review.
2. Staff, having operated under a deadline of June 19, should be able to file at least a preliminary report of its audits no later than that original deadline.

3. The Commission further does not wish to delay completion of the audits beyond the end of this calendar year.

4. By setting a final deadline of December 31, 2009, the Commission will have more time to adequately review Staff's audits, and the parties will have sufficient time to resolve any discovery disputes and file position statements with regard to Staff's reports.

Based on these findings, the Commission ordered that:

1. The deadlines set in the Commission's April 15, 2009 "Order Regarding Construction and Prudence Audits of the Environmental Upgrades at Iatan I, Jeffrey Energy Center and the Sibley Generating Facility" are canceled.

2. The Staff of the Missouri Public Service Commission shall file, no later than June 19, 2009, a preliminary report of its construction audit and prudence review of the environmental upgrades at Iatan I.

3. The Staff of the Missouri Public Service Commission shall complete and file the construction audit and prudence review of the environmental upgrades at Iatan I, including all additions necessary for these facilities to operate, no later than December 31, 2009.

4. The Staff of the Missouri Public Service Commission is directed to provide a specific rationale for each and every disallowance recommended in the construction audits and prudence reviews.

This preliminary report is filed to comply with the Commission requirement that Staff file a preliminary report of its construction audit and prudence review of the environmental upgrades at Iatan I no later than June 19, 2009.

b. Preliminary Analysis

This document is a preliminary report of the Staff's construction audit and prudence review of the environmental upgrades at Iatan I. The Iatan I environmental upgrades include selective catalytic reduction (SCR), wet scrubber, and fabric filter installations for NO_x, SO₂, mercury, and particulate control.

This document is a status report and does not include overall findings and conclusions of the Staff based on its construction audit and prudence review, nor have any overall findings and conclusions been made given that the Staff's analysis is a work in progress at this time. However, to comply with what it believes to be the intent of the Commission's June 10, 2009 Order requiring this preliminary report, the Staff has included a list of areas that will continue to be a focus of the Staff's audit and review. But this list should not be mistaken to necessarily be an exclusive list. As the Staff continues its work, information

may cause the Staff to look at areas that it had previously not looked at or cause the Staff to return to areas for which it had previously completed its review.

The areas of analysis for Iatan 1 air quality control system (AQCS) are contained in the following table. The detailed explanation and specific rationale for each area is contained in the Audit Status section of this report.

Identification Number	Description	Dollar Amount
Iatan 1 #1	Edited Schiff Hardin Invoices remove all description of the work paid for	
Iatan 1 #2	AFUDC on costs recorded before invoice is received or paid	
Iatan 1 #3	AFDC on personal expenses of KCPL Executives	
Iatan 1 #4	Costs related to duplicate payments made to KCPL Executives for mileage for trips to Iatan site.	
Iatan 1 #5	Crane Incident	
Iatan 1 #6	Payment for vendor expenses not in compliance with KCPL policies	

KCPL defines the areas of Iatan 1 - Iatan 2 common plant / Iatan common facilities as facilities shared in some manner by both Iatan 1 and Iatan 2. In its Iatan cost portfolio, KCPL did not separately identify the costs of the common facilities (common costs). Examples of common costs are costs for facilities that are shared by both units such as the new single chimney for Iatan 1 and Iatan 2, costs for facilities that provide operational redundancy, and costs for facilities sized to serve two units. Examples of common costs analysis are contained in the following table. More detailed explanation and specific rationale for each area is contained in the Audit Status section of this report.

Identification Number	Description	Dollar Amount
Iatan Common Plant #1	Edited Schiff Hardin Invoices remove all description of work being paid for	
Iatan Common Plant #2	Great Plains Power, a former KCPL affiliate, costs charged to common costs	
Iatan Common Plant #3	Excessive KCPL Executive's charges	

The Staff used its best efforts to comply with the literal interpretation of the Commission's order consistent with the realities of the task ordered by the Commission. In its current audit and review the Staff is examining the actual cost incurred for the Iatan 1 projects and the Iatan common plant projects and did not limit itself to only a review of construction invoices. Invoices do not represent the only type of costs included the amounts the utility

seeks to recover from its customers. The Iatan 1 project costs included Allowance For Funds Used During Construction (AFUDC), Kansas City Power & Light Company (KCPL) also charges the project for its payroll and payroll benefits, employee expenses. These items reflect project costs not supported directly by an invoice. KCPL charges to the Iatan 1 projects increase KCPL's profitability in the year the costs are incurred because the amount is not reflected as an expense and is partially reimbursed by the project partners. Due to the incentive provided to KCPL from charging costs to the project, the Staff is examining these non-invoice charges for their appropriateness, reasonableness, and prudence.

The Engineering Staff of the Commission's Electric Department reviews project change orders to determine, in particular, if KCPL made prudent engineering decisions when significant changes are made to the Iatan 1 construction project. The Staff has reviewed the support documentation for 119 change orders greater than \$50,000 that have been approved by KCPL. The Staff is aware of at least 18 additional change orders that KCPL has executed. The support documentation for these change orders are being processed by KCPL for delivery to the Staff. To review the change orders and observe the construction process, the Engineering Staff of the Commission's Electric Department has made ten visits of one or two days to the Iatan project construction site.

The Staff is focusing, and will continue to focus, its examination to areas determined by a risk assessment conducted in the initial stage of the audit and review. This evaluation is discussed in the Risk Assessment section of this report.

The fact that the Staff does not propose an adjustment related to costs not specifically addressed in the Staff's construction audit and prudence review report to be filed no later than December 31, 2009 indicates that Staff did not find any or sufficient evidence to justify an adjustment, given resources and time constraints. The fact that the Staff does not address an area of costs in this preliminary report does not indicate that the Staff found the costs incurred and KCPL's activities to be appropriate, reasonable and prudent. Also, the fact that Staff does not address an area of costs in this preliminary report does not indicate that the Staff will not address that area of costs in its report to be filed no later than December 31, 2009. The quality of the audit / review findings and conclusions is dependent on the quality of the audit / review performed. The quality of the audit / review performed is dependent on the time, resources and information available, or lack thereof. As is generally the situation in construction audits / prudence reviews, the practical effect of the requirements is that the burden falls on the Staff. This situation makes construction audits and prudence reviews vulnerable to discovery issues as the utility company has the incentive to delay and prevent the provision of information that might show even the slightest potential of inappropriateness, unreasonableness, or imprudence of costs charged to the project, which are sought to be recovered. This audit has experienced significant discovery problems as are discussed later in this report.

2. *Audit Objectives*

The first objective is to determine the amount that best represents the costs associated with this project. This amount could be higher or lower than the amount reflected on KCPL's books.

The second objective is to determine whether or not any inappropriate, unreasonable, or imprudent charges have been capitalized to KCPL's or GMO's construction work orders for the Iatan 1 AQCS or Iatan common plant projects. If the Staff finds that inappropriate, unreasonable or imprudent costs have been capitalized to the construction projects, the Staff's objective would then be to ensure that neither KCPL's nor GMO's ratepayers pay for these inappropriate, unreasonable or imprudent construction costs in utility rates.

3. *Definition of Prudence and Burden of Proof*

A definition of prudence is needed for the audit / review since one of its objectives is to identify imprudent charges, if any. This section of the Staff's preliminary report reflects the Staff's view of the appropriate approach to this matter and burden of proof. The Staff intends to address these items also in its report to be filed by December 31, 2009.

Prudent is defined in the Webster's Third New International Dictionary of the English Language Unabridged, Copyright © 1976 by G. & C. Merriam Co. as follows:

. . . the quality or state of being prudent: as **a**: wisdom shown in the exercise of reason, forethought, and self-control . . . **b**: sagacity or shrewdness shown in the management of affairs (as of government or business) shown in the skillful selection of, adaptation and use of means to a desired end: DISCRETION . . . : **c**: providence in the use of resources; ECONOMY, FRUGALITY . . . : **d**: attentiveness to possible hazard or disadvantage: CIRCUMSPECTION, CAUTION . . .

Prudent is defined in The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2009 by Houghton Mifflin Company, as follows:

1. Wise in handling practical matters; exercising good judgment or common sense.
2. Careful in regard to one's own interests; provident.
3. Careful about one's conduct; circumspect.

With respect to prudence, this Commission assumes utilities act prudently until that assumption is challenged. In its *Report and Order in Re Union Electric Co.*, Case Nos. EO-85-17, et al., 27 Mo.P.S.C.(N.S.) 183, 192-93 (1985), the Commission agreed with the

following conclusions of the Washington, D.C. Circuit Court of Appeals in *Anaheim, Riverside, Banning, et al. v. FERC*, 669 F.2d 799, 809 (D.C. Cir. 1981):

The Federal Power Act imposes on the Company the “burden of proof to show that the increased rate of charge is just and reasonable.” 16 U.S.C. s 824d(e). Edison relies on Supreme Court precedent for the proposition that a utility's costs are presumed to be prudently incurred. *See Missouri ex rel. Southwestern Bell Telephone Co. v. Missouri Pub. Serv. Comm.*, 262 U.S. 276, 289 n.1 (1923). However, the presumption does not survive “a showing of inefficiency or improvidence.” *West Ohio Gas Co. v. Public Utilities Comm.*, 294 U.S. 63, 55 S.Ct. 316, 79 L.Ed. 761 (1935); see 1 A.L.G. Priest, *Principles of Public Utility Regulation* 50-51 (1969). As the Commission has explained, “utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent.... However, where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.” Opinion No. 86, *Minnesota Power & Light Co. Opinion and Order on Rate Increase Filing*, Docket No. ER76-827, at 14, 20 Fed. Power Service 5-874, 5-887 (June 24, 1980) (footnotes omitted). . . .

Further, in *State ex rel. Associated Natural Gas v. Public Serv. Comm'n*, 954 S.W.2d 520 (Mo.App. W.D. 1997) (*Associated Natural Gas*) and *State ex rel. GS Technologies Operating Co., Inc. v. Public Serv. Comm'n*, 116 S.W.3d 680 (Mo.App. W.D. 2003) (*GS Technologies*), the Western District Court of Appeals upheld that burden of proof standard as follows:

. . . In *Associated Natural Gas*, a utility initiated a proceeding before the Commission to recover from its customers certain costs it incurred in obtaining gas from its suppliers. *Id.* at 522-23. In such a proceeding, the Commission reviews the reasonableness of the costs and, if it determines that the costs have been appropriately incurred, the Commission allows the utility to pass the costs on to its customers. *Id.* at 523. To determine whether the costs were appropriately incurred, the Commission uses a prudence standard. *Id.* Under the prudence standard, the Commission looks at whether the utility's conduct was reasonable at the time, under all of the circumstances. *Id.* at 529. In applying this standard, the Commission presumes that the utility's costs were prudently incurred. *Id.* at 528. Where, however, another participant in the proceeding before the Commission “creates a serious doubt as to the prudence of an expenditure, then the [utility] has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.” *Id.* (citations omitted). . . .

. . . *Associated Natural Gas* was a ratemaking case initiated by the utility, seeking to pass on costs to its customers. *Id.* at 523. In such cases, the utility receives the benefit of the presumption of prudence with regard to its costs until a serious doubt is created with regard to the prudence of an

expenditure. *Id.* at 528. When a serious doubt arises, the burden then shifts to the utility to prove prudence of the expenditure in order to succeed on its request to pass these costs on to its customers. *Id.*

116 S.W.3d at 693-94. Ultimately the Court held in *Associated Natural Gas* that “in order to disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that (1) the utility acted imprudently (2) such imprudence resulted in harm to the utility's ratepayers.” 954 S.W.2d at 529.

There is additional law pertinent to the issue of prudence, law addressing the burden of proof. The only reference to burden of proof in Chapter 386 is in Section 386.430 RSMo 2000, which states that in all proceedings arising under the provisions of the Public Service Commission Law or growing out of the exercise of the authority and powers granted therein to the Commission, the burden of proof is on any party adverse to the Commission or seeking to set aside any determination, requirement, direction or order of the Commission.

The only reference to burden of proof in Chapter 393 is in Section 393.150.2 RSMo 2000, which states that at any hearing involving a rate sought to be increased, the burden of proof to show that the proposed increased rate is just and reasonable is upon the public utility. The Commission's rules indicate that in other instances the burden of proof is also on the moving party. 4 CSR 240-2.110(5)(A) states, in part, that in all proceedings, except investigation proceedings, the applicant or complainant shall open and close. Thus, the party with the burden of proof has the right to open and close at hearing.

Black's Law Dictionary 190 (7th ed. 1999) defines “burden of proof” as comprising two different concepts:

burden of proof. 1. A party's duty to prove a disputed assertion or charge
• The burden of proof includes both the *burden of persuasion* and the *burden of production*

burden of persuasion. A party's duty to convince the fact-finder to view the facts in a way that favors that party. . . .

burden of production. A party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a peremptory ruling such as a summary judgment or a directed verdict. – Also termed *burden of going forward with evidence*, *burden of producing evidence* . . .

It may be argued that the party having the burden of proof must initially meet its burden of producing evidence sufficient to establish a prima facie case. *McCloskey v. Kopley*, 46 S.W.2d 557, 563 (Mo. banc 1932); *Drysdale v. Estate of Drysdale*, 689 S.W.2d 67, 72 (Mo.App. 1985). It further may be argued that once a prima facie case has been established the burden of going forward with the evidence shifts to the adverse party.

Nonetheless, even if the burden of going forward with the evidence shifts, the burden of proof does not shift, absent a statutory provision to the contrary. Also, prima facie evidence does not require a verdict for the party whose contention it supports. *Dehner v. City of St. Louis*, 688 S.W.2d 15, 18 (Mo.App. 1985).¹ See *State ex rel. Rice v. Public Serv. Comm'n*, 220 S.W.2d 61, 65 (Mo. banc 1949).

Regardless of any asserted applicability of the above cases to the Commission, case law in Missouri is clear that where the facts relating to an issue are peculiarly within the control or knowledge of one party, the burden of production falls on that party. Possibly, the clearest statement of the law appears in *Robinson v. Benefit Ass'n of Ry. Employees*, 183 S.W.2d 407, 412 (Mo.App. 1944):

“ . . . The general rule is well put by our Brother Graves in *Swinhart v. Railroad*, 207 Mo. loc. cit. [423] 434, 105 S.W. [1043], as follows: ‘From them all,’ said he (referring to the authorities in review) ‘it is deduced that

¹ A proper understanding of a party’s proof obligations at least under Section 393.150 recognizes that the mere presentation by a utility of costs incurred does not constitute a prima facie showing of the reasonableness of the utility’s claimed costs so as to shift the burden of proof to the party challenging the utility’s proposed rates. As the Utah Supreme Court stated in *Utah Dept. of Business Regulation v. Public Serv. Comm’n*, 614 P.2d 1242, 1245-46 (Utah 1980):

In the regulation of public utilities by governmental authority, a fundamental principle is: the burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the commission, the commission staff, or any interested party or protestant to prove the contrary. A utility has the burden of proof to demonstrate its proposed increase in rates and charges is just and reasonable. The company must support its application by way of substantial evidence, and the mere filing of schedules and testimony in support of a rate increase is insufficient to sustain the burden.

Emphasis added.

In *Petition of Pub. Serv Coordinated Transp.*, 5 N.J. 196, 74 A.2d 580, 591-92 (N.J. 1950), the New Jersey Supreme Court interpreted a statute containing language substantially identical to Section 393.150:

Neither this Court nor the Board (of Public Utility Commissioners) can accept the books of account of a public utility at face value in a rate case in which reasonableness is always the primary issue . . .

[The Board] was under a duty to go behind the figures shown by the companies’ books and get at realities . . .

It must be emphasized that ratemaking is not an adversary proceeding in which the applying party needs only to present a prima facie case in order to be entitled to relief. There must be proof in the record not only as to the amount of the various accounts but also sufficient evidence from which the reasonableness of the accounts can be determined. Indeed, R.S. 48:2-21 (d), N.J.S.A. specifically provides that “the burden of proof to show that the increase, change or alteration (in rates) is just and reasonable shall be upon the public utility making the same.” Lacking such evidence, any determination of rates must be considered arbitrary and unreasonable.

Emphasis added; *Accord Florida Power Corp. v. Cresse*, 413 So.2d 1187, 1190 (Fla. 1982).

generally the burden is upon the plaintiff to make out his case. That if in the statement of his case negative averments are required, and the proof of such negative averments is not peculiarly within the knowledge and power of the defendant, then plaintiff must affirmatively establish such negative averments, but if, on the other hand, the proof of such negative averments lies peculiarly within the knowledge or power of the defendant, then such negative averments will be taken as true unless the defendant speaks and disproves them. Of course, if the knowledge and power to produce the evidence is possessed equally, the plaintiff must make the proof.”

Cf. Kenton v. Massman Construction Co., 164 S.W.2d 349, 352 (Mo. 1942) (“A plaintiff asserting a negative generally has the burden of proof as to such matter along with the other issues on which he bases his case. But there appears to be an exception to this rule where the evidence on such a matter is peculiarly within the knowledge and control of the defendant.”); *Dwyer v. Busch Properties, Inc.*, 624 S.W.2d 848, 851 (Mo. banc 1982). This is a particularly appropriate rule in utility cases, since generally all of the facts and documents relevant to the issues are within the utility’s control. See *City of Eldorado v. Public Serv. Comm’n*, 362 S.W.2d 680, 683-84 (Ark. 1962).

4. Risk Assessment

The purpose of the Staff’s risk assessment was to develop an audit plan that is consistent with the overall audit objectives and that the audit plan is designed with sufficient scope and detail to provide the maximum opportunity to meet the audit objectives. While the results of the risk assessment are the primary driver of the audit plan, the scope of the audit must be designed with other physical and monetary considerations, such as audit filing deadlines. It should be noted that the risk assessment is not a one-time evaluation, but is a continuous process that can lead to modifications to the Staff’s audit scope as new information becomes available and known.

Risk assessment underlies the entire Staff audit process. A direct relationship exists between the degree of risk that material inappropriate, unreasonable, or imprudent costs could exist in a particular area of the construction projects and the amount of audit attention the auditor should devote to that area. Accordingly, the lower the risk that a material weakness could exist in a particular area, the less audit attention the auditor would need to devote to the area.

On the other hand, the higher the risk that material inappropriate, unreasonable, or imprudent cost could exist in a particular area the greater the amount of audit attention the auditor should devote to the area. This relationship between risk and amount of audit attention is consistent with the Staff’s responsibility to plan and perform its construction audit and prudence review so that the risk that the Staff fails to identify a material inappropriate, unreasonable or imprudent cost charged to the Iatan construction projects is appropriately low.

The Staff's risk assessment consisted of a series of tests. Each of the tests was designed to produce information which the Staff would use to develop its audit plan and concentrate its audit focus. These tests include:

1. A comparison of the current forecast of project costs to its definitive estimate or control budget in the event the Company never creates a definitive estimate.
2. Test the effectiveness of the KCPL's internal controls as they relate to construction activities;
3. Test the existence and effectiveness of construction audits performed by KCPL's internal audit department;
4. Test the existence and effectiveness of any construction audits performed by outside auditing firms hired by KCPL;
5. Determine the involvement of KCPL's Senior Executives responsible for oversight of the construction project.
6. Review indications of senior management and project manager effectiveness.
7. Test for KCPL's compliance with its own policies, procedures, and practices as they relate to the construction project, including a review of Senior Executive's expenses charged to the construction projects.

In developing its risk assessment and audit scope, which is an ongoing process, the Staff noted the following transactions or events. While it is important to point out that the Staff has not made any findings or reached any conclusions about the appropriateness, reasonableness, or prudence of the below items, because of the mere existence of these facts, the audit plan for the Iatan 1 and Iatan common plant construction projects is designed to reasonably satisfy the stated audit objectives.

*On May 7, 2008, KCPL in a Securities and Exchange Commission 8-K Report announced the completion of a cost and schedule update for the Iatan 1 environmental project. KCPL announced a total project cost increase (at the high end estimate) of \$123 million or a 33 percent increase in construction costs for the Iatan 1 project.

*In addition to the estimated 33 percent cost increase for the Iatan 1 project, the project's projected completion was extended four months, from December 2008 to April 2009.

*On at least one occasion consultants hired by KCPL to assist it with the management of the Iatan construction project have charged travel expenses that exceed KCPL's policy for expense reimbursement.

*Continuation of the problem noted in Staff testimony in KCPL's previous two rate cases, regarding KCPL's officer expense report process. [REDACTED] serious problems with officer expense reports being noted by KCPL's own [REDACTED] the Staff saw no improvement in KCPL's most recent rate case, Case No. ER-2009-0089. The Staff noted inappropriate and unreasonable expenses charged to the Iatan 1 project by at least one KCPL officer.

*KCPL has experienced significant turnover in the Project Management position for the Iatan construction projects.

*KCPL lack of cooperation in the provision of information related to costs charged to this project.

*On May 23, 2008 a crane which was being operated at the Iatan 1 construction site collapsed resulting in the death of a contract employee (the "Crane Incident"). As a result of the Crane Incident, KCPL has charged over [REDACTED] to the Iatan 1 construction project.

In testimony before the Commission in Case No. EM-2007-0374, KCPL personnel made statements, on June 11, 2008, which indicated that KCPL would not have any financial responsibility as a result of the May 23, 2008 Crane Incident. The statements made by KCPL witnesses and legal counsel are shown below:

STATE OF MISSOURI PUBLIC SERVICE COMMISSION TRANSCRIPT OF PROCEEDINGS Evidentiary Hearing June 11, 2008 Jefferson City, Missouri, Volume 25, EM-2007-0374

Cross-examination of Brept Davis by David Woodsmall, page 3195:

Q. To date, have any additional costs been incurred associated with the crane collapse?

A. We are accruing costs because of the collapse. To give you an example, the lay-down yard, we built that lay-down yard to expedite the process so that it was ready to receive these parts. The parties agreed to accrue all their costs, keep track of them, and that will be settled at a later date.

Cross-examination of Brent Davis by Nathan Williams, page 3197 :

Q. When you said you didn't believe the crane collapse would affect the Iatan 1 budget, why not?

A. The -- the contractual relationship with Alstom is an MPC [sic] engineering procured construct contract, and their contractual relationship with Maxum was -- we don't know what that was, but at this point we see no responsibility for the crane accident.

Q. No responsibility for whom?

A. For Kansas City Power & Light.

Q. You mean financial responsibility?

A. Yes.

Statement of KCPL counsel Karl Zobrist, page 3216:

Mr. Zobrist: Thank you, Judge. ...We believe that the evidence presented here today by Mr. Bassham and Mr. Davis as well as Mr. Cline indicate that it is likely that there will be no further delay in the construction schedule and no material additional costs will be incurred by KCPL and, in fact, that it may remain entirely within the reforecast that was presented to the Commission at the end of April and the beginning of May.

Thus, KCPL representatives indicated that they believed KCPL would ^{**}have no financial ^{**}responsibility for the costs of the Crane Incident, yet KCPL has charged [REDACTED] dollars of costs incurred as a result of the Crane Incident to the construction project. This matter is an issue into which the Staff is inquiring.

5. Audit Scope and Approach

The Staff's audit approach was designed to ensure the attainment of the audit objectives to the maximum extent possible given the scope of the audit and the timeliness/accuracy of actual information provided. In designing the audit approach, the Staff determined that it would be best to use both a bottom up and top down approach to satisfy the stated audit objectives.

By following the top down audit approach, the Staff auditors focus on matters, such as KCPL's internal controls, executive officer oversight and cost philosophy, construction project leadership and effectiveness of day-to-day management. This approach helps identify and isolate from further consideration segments of the construction projects which only have a remote likelihood of including inappropriate, unreasonable, or imprudent

construction costs. The top down approach assists in the identification of problem areas which then can be examined in greater detail for cost and schedule impacts.

The bottom up approach first identifies sizable or systemic charges to the projects. These are charges that are either material by themselves or recurring in nature and the total charges are likely to be material in amount. In addition, smaller charges that are systemic may indicate additional audit scope in other areas is advisable due to weak or non-existent internal controls. The bottom up approach then examines the appropriateness, reasonableness, and prudence of the charge to the project. A substantial portion of the audit time in the bottom up approach consists of contractor invoice review and follow-up data requests on any areas of concern.

Based on the audit objectives and the audit risk assessment, the Staff designed its audit and prudence review into three main categories of audit activities. These categories are:

1. Identify areas which indicate a need for further examination;
2. Identify areas where an initial review shows no significant problems or issues and have a low likelihood of resulting in inappropriate, unreasonable, or imprudent costs being charged to the projects;
3. Identify areas where data exists of inappropriate, unreasonable, or imprudent charges to the construction project.

Each of the three main categories of audit activities directly support the overall audit objectives of identifying any inappropriate, unreasonable, or imprudent charges have been made to the construction projects, and if they have, preventing these inappropriate, unreasonable, or imprudent costs from being charged to Missouri regulated ratepayers in the form of utility rates.

Under each of the three main categories of audit activities are specific audit steps designed to classify construction costs into one of the three categories. For example, a review of KCPL responses to data requests, a review of minutes of construction project meetings and a discussion with construction personnel on site may indicate that a particular segment of the construction project was completed on time and within budget with appropriate project management control. The project costs for this project segment would likely be included in category 2 above and not require any further audit examination with Staff's audit results supporting this classification. While the review of the project costs for another project segment – KCPL officer expenses – may show inappropriate, unreasonable, or imprudent charges being made to the projects. These costs will initially be classified into category three with a determination if further audit actions are required. Finally, as noted above, KCPL charged significant costs to the construction project related to the Crane Incident. These costs will automatically fall into category one and require significant audit examination. Some examples of the specific audit activities that have been performed and will continue to be performed until the completion of the audit are as follows:

- a. KCPL employee interviews
- b. Project manager interviews
- c. Review minutes of periodic CEP Oversight Committee minutes
- d. Meet with other regulatory bodies charged with reviewing the appropriateness, reasonableness, and prudence of the Iatan construction projects.
- e. Review testimony related to the Iatan construction projects of other regulatory bodies charged with reviewing the appropriateness, reasonableness, and prudence of the Iatan construction projects and KCPL's response to such testimony.
- f. Investigate apparent discrepancies in KCPL responses and incomplete KCPL responses to different jurisdictions.
- g. Review KCPL officer expense reports and evaluate the effectiveness of KCPL's officer expense report process internal controls
- h. Review a significant number of, but not all, construction contractor and vendor invoices. Issue follow-up data requests as needed.
- i. Review KCPL Board of Director minutes regarding any matters relating to the construction projects.
- j. Visit the construction work site, among other things, to interview appropriate work site personnel to determine the in-service status of costs charged to the project as well as examine construction activities.
- k. Meet with project management personnel at KCPL's Kansas City headquarters building to review project status and costs.
- l. Project contract evaluation respecting relevant provisions impacting project costs and schedule.

6. *Audit Status*

As ordered by the Commission, the Staff's current deadline for filing its construction audit and prudence review of the environmental upgrades at Iatan 1, including related Iatan 1 and Iatan 2 common plant is December, 31, 2009. The Staff has adjusted its audit / review scope to meet that deadline. Under this adjusted audit / review scope, the Staff is still determining all of the areas that require further detailed examination. The Staff is still progressing in both the top down audit review and the bottom up audit review phases, and

is still developing an understanding of the construction projects, the effectiveness of the management and leadership of the construction projects, and the significant changes and costs increases to the projects that have been incurred to date.

If present and future discovery matters and the Staff's schedule otherwise permits, it is the Staff's intent to share its "preliminary" findings and conclusions with KCPL seeking KCPL's comments before the filing of any construction audit and prudence review report on the Iatan 1 environmental upgrades project. KCPL's comments would either result in modification of the Staff's "preliminary" findings and conclusions or be included in the report to represent KCPL's viewpoint on the matter in question.

In the section above entitled Preliminary Analysis, the Staff listed auditing analysis that requires further examination by the Staff leading to future discussions with, and hopefully further explanation by, KCPL. These items, if not adequately explained and resolved, will likely result in the Staff filing cost adjustment proposals to the Commission, as related below.

1. Schiff Hardin, LLP is a general practice law firm that has been assisting KCPL in its project management duties at Iatan 1. KCPL has paid Schiff Hardin a significant amount of money for its services and charged this cost to both the Iatan 1 environmental upgrades and Iatan common plant project costs. Schiff Hardin has testimony filed that it was engaged by KCPL: (a) to help KCPL develop project control procedures to monitor the cost and schedule for the infrastructure projects contained in KCPL's Comprehensive Energy Plan (CEP); (b) to monitor the CEP's progress and costs, including the review and management of change order requests; (c) to negotiate contracts with vendors; and (c) to resolve disputes with vendors that might arise. In an attempt to evaluate the appropriateness and prudence of the Schiff Hardin costs, the Staff has issued Data Requests seeking information it needs to perform its audit and review. As noted below in the Status of Discovery section, KCPL has made the determination that it will withhold what the Staff believes is relevant information under the argument that such information is protected by attorney-client privilege and/or attorney work product doctrine. If KCPL withholds information related to a charge made to the project, then Staff may propose a cost disallowance of the expenditure unless it can satisfy itself that the withholding of the information is proper and the charge is appropriate, reasonable, and prudent.

2. While initially preventing the Staff from obtaining receipts for KCPL officer expenses charged to the Iatan 2 construction project, KCPL finally agreed to remove the disputed expenses from the Iatan 2 workorder, which also included an amount charged to Iatan common plant. However, KCPL has not yet removed the AFUDC costs associated with these expenses charged to the work order.

3. KCPL may have been recording AFUDC on costs recorded to its books and records prior to receiving the invoices requiring payment for the services or material. Since AFUDC represents KCPL's interest cost and profit requirements on monies spent on the project, these charges may be inappropriate because the financial return on the project costs were accrued prior to the costs being expended

4. The Staff has noted costs related to duplicate payments made to a KCPL executive for mileage for trips to the Iatan site on the same date.

7. *Status of Discovery with KCPL*

In its Order Regarding Joint Motion To Extend Filing Date issued on June 10, 2009 at Ordered paragraph 6, the Commission directed KCPL to cooperate with the Staff by providing all pertinent invoices necessary for the completion of the environmental upgrades at Iatan 1. This section generally discusses the Staff's discovery concerns to this point of the construction audit and prudence review. The Staff's discovery concerns go far beyond receiving invoices.

Essentially all the information the Staff requires to perform its construction audits and prudence reviews it must obtain from KCPL, primarily through discovery. The Staff recognizes KCPL has information that KCPL may protect from disclosure. The Legislature recognized the same by Section 386.480 RSMo 2000, which makes it a crime for the Commission to disclose information provided to it by any person, corporation or public utility except in certain circumstances that do not include discovery.

The Staff is seeking to obtain information from KCPL to allow the Staff to perform the construction audit and prudence review ordered and expected by the Commission, not for public disclosure of information it obtains from KCPL. However, as informally determined by presiding officer Judge Stearley in Case No. ER-2009-0089 after KCPL withdrew some of its objections, at least in the past, KCPL has been overbroad with its objections to Staff's Data Requests pertaining to Iatan construction costs resulting in significant delays in obtaining the requested material.

The following timeline of events shows how respecting certain Data Requests the Staff submitted in January of this year KCPL successfully avoided providing properly requested discoverable information until June of this year. Despite guidance given by presiding officer Judge Stearley, which caused KCPL to reveal much more in the Schiff Hardin documents than KCPL originally provided – e.g., see Attachments 1 and 2 noted below – the Staff will need to file a motion to compel seeking redacted information because the Staff believes KPCL still has redacted information not protected by either the attorney-client privilege or the attorney work product doctrine.

- On January 14, 2009 the Staff issued a number of Data Requests to KCPL in Case No. ER-2009-0089 for purposes of the Staff's construction audit and prudence review of Iatan 1 costs and Iatan common costs.
- On January 23, 2009 KCPL objected to a number of those Staff Data Requests, *inter alia*, based on irrelevance of all Iatan 2 information, attorney client privilege and attorney work product doctrine.
- During the week of February 23, 2009 the Staff verbally relayed to KCPL its opinion the Iatan 2 information was relevant because KCPL was seeking recovery of Iatan common costs in its cases.
- On March 20, 2009 Staff counsel left a telephone message for KCPL counsel regarding KCPL's objections.
- On March 25, 2009 Staff counsel and KCPL counsel had a telephone conference regarding discovery objections in an effort by Staff to narrow the objections to be brought before the Commission. As Staff counsel recalls KCPL relayed it would withdraw its objections based on the contention of the irrelevancy of Iatan 2 information.
- On March 26, 2009 Staff counsel left a telephone message for KCPL counsel Fischer regarding whether KCPL had any documents within the scope of Staff Data Request No. 471. KCPL had objected to this Staff Data Request.
- In a March 26, 2009 e-mail response to Staff counsel from KCPL, counsel for KCPL stated that KCPL has no information within the scope of Staff Data Request No. 471, and that it would withdraw its objection.
- On March 27, 2009 Staff counsel e-mailed KCPL counsel suggesting there may be other Staff Data Requests like Staff Data Request No. 471 where KCPL had objected, but had no information responsive to the Staff Data Request; advising KCPL counsel KCPL should identify with a brief description the documents KCPL is claiming are privileged; and requesting KCPL to specifically identify the Staff Data Requests for which KCPL would provide Iatan 2 information.
- On March 30, 2009 Staff counsel received an e-mail from KCPL counsel Blanc with a pleading withdrawing objections based on irrelevancy of Iatan 2 information, continuing to assert other objections, clarifying certain responses provided and committing to provide a descriptive summary of documents KCPL claims are protected by the attorney-client privilege and/or attorney work product doctrine.

- On March 30, 2009 telephone messages from KCPL counsel clarifying the March 30, 2009 e-mail with respect to what documents had been provided in response to Staff Data Request Nos. 422 and 424. Staff counsel recalls KCPL counsel clarified that the Schiff Hardin documents were provided at the office of KCPL counsel Fischer.
- On April 14, 2009 Staff counsel e-mailed a letter responding to KCPL's March 30, 2009 e-mailed pleading that modified KCPL's objections to certain Staff Data Requests. Among other things in the letter, Staff requested KCPL to identify to the specific Staff Data Request(s) each document was produced to meet. Staff also provided to KCPL rationale for why requested information should be produced by KCPL.
- On April 15, 2009 KCPL updated responses to Staff Data Requests to indicate which additional material related to KCPL objections withdrawn on March 30, 2009 was available at the office of KCPL's counsel in Jefferson City.
- On April 23, 2009 Staff counsel sent an e-mail to KCPL counsel requesting response by 2:00 p.m. April 27, 2009 to Staff counsel's April 14, 2009 e-mail to KCPL counsel.
- May 1, 2009 KCPL counsel e-mailed Staff counsel with KCPL's summary of the then current posture of the discovery disputes.
- On May 6, 2009 there was a Rule 4 CSR 240-2.090(8)(B) conference call between Staff counsel, KCPL counsel and presiding officer Judge Stearley where, based on argument only, presiding officer Stearley advised that the receipts requested in Staff Data Request No. 270.3 were discoverable and set conference call for May 8, 2009 to address Schiff Hardin Reports, which KCPL was to provide to presiding officer Judge Stearley before then.
- On May 6, 2009 KCPL counsel e-mailed Staff counsel advising that KCPL would provide the receipt requested in Staff Data Request No. 270.3, expecting to do so by May 8, 2009.
- In a May 8, 2009 conference call on discovery where presiding officer Stearley went through Schiff Hardin Reports – KCPL withdrew redacting respecting LaCygne Phase 1 environmental upgrade and Spearville wind project material but maintained attorney-client privilege and attorney work product doctrine objections – the presiding officer found those portions protected. After presiding officer Stearley indicated most of the Schiff Hardin invoice documents were not privileged, KCPL committed to providing Schiff Hardin invoice documents with revised redactions following guidance provided by the presiding officer.

- On May 8, 2009 Staff counsel e-mailed KCPL counsel advising of non-receipt of certain expense documents requested in Staff Data Request No. 270.3.
- On May 8, 2009 KCPL counsel e-mailed a response to Staff counsel providing the documents requested in Staff Data Request No. 270.3.
- On May 22, 2009 KCPL counsel e-mail to Staff Utility Services Division Director Schallenberg advising that roughly one-half of Schiff Hardin invoice documents with revised redactions after input from presiding officer Judge Stearley were sent by United Parcel Service (UPS) on May 22, 2009, and that the remainder would be sent the following week.
- On June 2, 2009 Staff counsel e-mailed KCPL counsel advising of non-receipt of balance of Schiff Hardin invoice documents with revised redactions and notifying KCPL that Staff would seek an order compelling production if Staff did not receive the documents by June 5, 2009.
- On June 3, 2009 KCPL counsel e-mailed Staff counsel that the balance of Schiff Hardin invoice documents with revised redactions would be sent for delivery to Staff by June 5, 2009.
- On June 5, 2009 Staff received the balance of Schiff Hardin invoice documents with KCPL's revised redactions.

Staff Data Request No. 415, dated January 14, 2009, asked for an unedited copy of all invoices from Schiff Hardin for work charged to the costs of Iatan 1 and 2. Attachments 1 and 2 are partial responses to Staff Data Request No. 415 containing Highly Confidential copies of invoices for May 2008 of Schiff Hardin for services posted in connection with three categories: (a) General Business Advice, (b) Crane Incident – Legal Advice, and (c) Crane Incident – Document Control. There are other categories. Attachment 1 contains the redacted documents that were first provided. Attachment 2 contains the non-redacted documents that were subsequently provided after the involvement of the presiding officer Judge Stearley.

With resolution of new rates in Case Nos. ER-2009-0089, ER-2009-0090 and HR-2009-0092, and based on the Staff's experiences related above, the Staff intends to spend less time attempting to informally resolve discovery disputes with KCPL before bringing the disputes before the presiding officer and the Commission. The difficulty with discovery relative to KCPL has required the technical Staff to seek the full-time assignment of one Staff attorney to be primarily responsible to handle discovery matters related to the performance of the construction audits and prudence reviews.

KPCL has made objections without providing by the data request production date, or a reasonable time thereafter when production by the production date was unreasonable, the unprivileged parts of documents KCPL asserts contains privileged information. Further,

KCPL has not described by the request production date the information it asserts is protected by its objection. If KCPL continues these practices, then the Staff may assert that KCPL has violated one or more of the conditions associated with the lifting of the \$30 million and \$15 million prudency disallowance limits for KCPL and GMO, respectively.

Further, if KCPL continues to assert the attorney-client privilege and attorney work product doctrine as broadly as it did with the above data requests, then the Staff may seek relief from the Commission imposing the \$30 million and \$15 million prudency disallowance limits for KCPL and GMO, respectively, provided in the Stipulation And Agreements in Case Nos. ER-2009-0089 and ER-2009-0090.

Additionally, the Staff views that based on the delays such as the twenty-eight (28) days between when KCPL committed to revising its redactions of Schiff Hardin invoice documents – which it had provided electronically in unredacted form to the presiding officer – to when it provided the documents with revised redactions – which the Staff believes still redacts material not protected by the privileges asserted – the Commission could already find that KCPL has “engaged in the obstruction of lawful discovery” as that phrase appears in Section 5 of the non-unanimous stipulation and agreements the Commission approved in Case Nos. ER-2009-0089 and ER-2009-0090 so that the Staff “is not bound to proposing a disallowance to KCPL’s Missouri jurisdictional rate base no greater than \$30 million inclusive of Iatan common costs in aggregate amount with regard to such construction audit” and “is not bound to proposing a disallowance to GMO’s Missouri jurisdictional rate base no greater than \$15 million inclusive of Iatan common costs in aggregate amount with regard to such construction audit.”

The Staff does not desire to seek such recourse or question the advisability of it having reached the recent agreements which it entered into. The disallowance caps should not serve as an incentive to KCPL to continue, if not, increase discovery issues and handicap Staff’s Commission ordered construction audits and prudence reviews. The Staff discovery disputes and difficulties with KCPL are significant and can rival those of any other utility in Missouri over which the Commission has jurisdiction.

Attachment 1

Response to Staff Data Request No. 415

Schiff Hardin LLP

May 1 through May 31, 2008

(a) General Business Advice

**COVER PAGE AND PAGES 1-43, 47-56
CONTAINS HIGHLY CONFIDENTIAL
INFORMATION NOT AVAILABLE
TO THE PUBLIC
ORIGINAL FILED UNDER SEAL**

	Income Partner	Carrie L. Okizaki		
05/01/08	Travel.		0.00	0.00
	Project Asst.	Othiel Glover		
05/01/08	Travel home from Kansas City.		0.00	0.00
	Project Asst.	Alexandra L. Rieck		
05/02/08	Travel to Chicago.		0.00	0.00
	Equity Partner	Kenneth M. Roberts		
05/02/08	Travel to Chicago.		0.00	0.00
	Project Controls Analyst	Eric S. Gould		
05/05/08	Travel from Chicago to Kansas City.		0.00	0.00
	Associate	Amanda L. Schermer		
05/05/08	Travel to Kansas City.		0.00	0.00
	Project Asst.	Alexandra L. Rieck		
05/06/08	Travel from Chicago to Kansas City.		0.00	0.00
	Income Partner	Carrie L. Okizaki		
05/06/08	Travel.		0.00	0.00
	Project Asst.	Othiel Glover		
05/07/08	Travel from Kansas City to Chicago.		0.00	0.00
	Associate	Amanda L. Schermer		
05/07/08	Travel.		0.00	0.00
	Project Asst.	Othiel Glover		
05/07/08	Travel from Kansas City home to Chicago.		0.00	0.00
	Project Asst.	Alexandra L. Rieck		
05/08/08	Travel.		0.00	0.00
	Project Asst.	Othiel Glover		
05/09/08	Travel from Kansas City to Chicago.		0.00	0.00
	Income Partner	Carrie L. Okizaki		
05/09/08	Travel to Chicago.		0.00	0.00
	Project Controls Analyst	Eric S. Gould		
05/12/08	Travel to Kansas City.		0.00	0.00
	Equity Partner	Kenneth M. Roberts		
05/12/08	Travel from Kansas City to Chicago.		0.00	0.00
	Income Partner	Carrie L. Okizaki		
05/12/08	Travel to Kansas City.		0.00	0.00
	Project Controls Analyst	Eric S. Gould		

05/13/08	Travel to Chicago. Equity Partner	Kenneth M. Roberts	0.00	0.00
05/13/08	Travel from Chicago to Kansas City. Associate	Amanda L. Schermer	0.00	0.00
05/13/08	Travel to Kansas City from Chicago. Project Asst.	Alexandra L. Rieck	0.00	0.00
05/14/08	Travel to Chicago. Project Controls Analyst	Eric S. Gould	0.00	0.00
05/15/08	Travel from Kansas City to Chicago. Income Partner	Carrie L. Okizaki	0.00	0.00
05/15/08	Travel from Kansas City to Chicago. Associate	Amanda L. Schermer	0.00	0.00
05/15/08	Travel from Kansas City to Chicago. Project Asst.	Alexandra L. Rieck	0.00	0.00
05/19/08	Travel from Chicago to Kansas City. Income Partner	Carrie L. Okizaki	0.00	0.00
05/19/08	Travel from Chicago to Kansas City. Associate	Amanda L. Schermer	0.00	0.00
05/19/08	Travel to Kansas City. Project Controls Analyst	Eric S. Gould	0.00	0.00
05/19/08	Travel from Chicago to Kansas City. Project Asst.	Alexandra L. Rieck	0.00	0.00
05/20/08	Travel to Kansas City. Equity Partner	Kenneth M. Roberts	0.00	0.00
05/21/08	Travel to Kansas City. Equity Partner	Kenneth M. Roberts	0.00	0.00
05/21/08	Traveled to Kansas City. Paralegal	Uzoma Dike	0.00	0.00
05/22/08	Travel from Kansas City to Chicago. Associate	Amanda L. Schermer	0.00	0.00
05/22/08	Traveled to Chicago. Paralegal	Uzoma Dike	0.00	0.00
05/22/08	Travel to Chicago. Project Controls Analyst	Eric S. Gould	0.00	0.00
05/22/08	Travel from Kansas City to Chicago. Project Asst.	Alexandra L. Rieck	0.00	0.00

05/23/08	Travel to Kansas City. Equity Partner Kevin L. Kolton	0.00	0.00
05/24/08	Travel from Kansas City to Chicago. Income Partner Carrie L. Okizaki	0.00	0.00
05/25/08	Travel to Chicago. Equity Partner Kevin L. Kolton	0.00	0.00
05/26/08	Travel to Kansas City. Equity Partner Kenneth M. Roberts	0.00	0.00
05/26/08	Travel from Chicago to Kansas City. Income Partner Carrie L. Okizaki	0.00	0.00
05/26/08	Travel to Kansas City. Project Controls Analyst Eric S. Gould	0.00	0.00
05/27/08	Travel from Chicago to Kansas City. Associate Amanda L. Schermer	0.00	0.00
05/27/08	Traveled to Kansas City. Paralegal Uzoma Dike	0.00	0.00
05/27/08	Travel. Project Asst. Othiel Glover	0.00	0.00
05/27/08	Travel from Chicago to Kansas City. Project Asst. Alexandra L. Rieck	0.00	0.00
05/28/08	Travel to Chicago. Equity Partner Kenneth M. Roberts	0.00	0.00
05/28/08	Travel. Project Asst. Othiel Glover	0.00	0.00
05/29/08	Travel. Income Partner Carrie L. Okizaki	0.00	0.00
05/29/08	Traveled to Chicago. Paralegal Uzoma Dike	0.00	0.00
05/29/08	Travel. Project Asst. Othiel Glover	0.00	0.00
05/29/08	Travel home from Kansas City. Project Asst. Alexandra L. Rieck	0.00	0.00
05/30/08	Travel from Kansas City to Chicago. Associate Amanda L. Schermer	0.00	0.00
05/30/08	Travel to Chicago. Project Controls Analyst Eric S. Gould	0.00	0.00

Attachment 1

Response to Staff Data Request No. 415

Schiff Hardin LLP

May 1 through May 31, 2008

(b) Crane Accident – Legal Advice

**THIS ENTIRE ATTACHMENT
CONTAINS HIGHLY CONFIDENTIAL
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Attachment 1

Response to Staff Data Request No. 415

Schiff Hardin LLP

May 1 through May 31, 2008

(c) Crane Accident – Document Control

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ORIGINAL FILED UNDER SEAL**

Attachment 2

Response to Staff Data Request No. 415

Schiff Hardin LLP

May 1 through May 31, 2008

(a) General Business Advice

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Attachment 2

Response to Staff Data Request No. 415

Schiff Hardin LLP

May 1 through May 31, 2008

(b) Crane Accident – Legal Advice

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Attachment 2

Response to Staff Data Request No. 415

Schiff Hardin LLP

May 1 through May 31, 2008

(c) Crane Accident – Document Control

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