

1 (Witness sworn.)

2 JUDGE DIPPELL: Thank you. Go ahead when
3 you're ready, Mr. Fischer.

4 CHRIS GILES testifies as follows:

5 DIRECT EXAMINATION BY MR. FISCHER:

6 Q. Please state your name and address for the
7 record.

8 A. Chris Giles. My business address is 1201
9 Main, Kansas City, Missouri.

10 Q. Mr. Giles, did you cause to be filed in this
11 proceeding certain true-up rebuttal testimony, that I guess
12 would be marked KCPL Exhibit 121; is that correct?

13 JUDGE DIPPELL: No. I'm sorry. I had
14 already marked the exhibits --

15 MR. FISCHER: Okay.

16 JUDGE DIPPELL: -- before I got to -- so I
17 gave those illustrative exhibits afterwards. I have
18 Mr. Giles as 112.

19 MR. FISCHER: 112. Okay.

20 JUDGE DIPPELL: KCPL 112.

21 MR. FISCHER: 112 HC and 112 NP?

22 (Wherein; KCP&L Exhibit No. KCPL 112 HC and
23 KCPL 112 NP were marked for identification.)

24 JUDGE DIPPELL: Yes.

25 BY MR. FISCHER:

Appendix
LL

1 Q. Mr. Giles, did you have any corrections to
2 that testimony that you needed to make?

3 A. No.

4 Q. If I were to ask you the questions that are
5 contained in that prefiled testimony, would your answers be
6 the same today?

7 A. Yes.

8 Q. Are they true and accurate to the best of
9 your knowledge and belief?

10 A. They are.

11 MR. FISCHER: Judge, I would move for the
12 admission of 112 NP and HC and tender the witness.

13 JUDGE DIPPELL: Thank you. Would there be
14 any objection to KCPL Exhibit 112?

15 Seeing none, then I will receive it into
16 evidence.

17 (Wherein; KCP&L Exhibit No. KCPL 112 HC and
18 KCPL 112 NP were received into evidence.

19 JUDGE DIPPELL: And we can begin then with
20 cross-examination. Is there -- let me see who I'm going to
21 have cross-examination from. Staff and industrials.

22 Anyone else?

23 All right. Then let's just go forward with
24 staff.

25 CROSS-EXAMINATION BY MS. OTT:

1 Q. Good morning, Mr. Giles.

2 A. Good morning.

3 Q. Now, isn't it true Staff's cutoff date for
4 its November 3rd, which would have been Staff's direct case
5 related to the Iatan construction and prudence review was
6 June 30th, 2010?

7 A. That's correct.

8 Q. And provisional acceptance wasn't met for
9 Iatan 2 until September of 2010. Correct?

10 A. What do you mean by provisional acceptance?

11 Q. The provisional acceptance date?

12 A. No. That's not correct. It was met on
13 August 26th.

14 Q. Then are -- so is it your testimony that
15 provisional acceptance date is the same as Staff's
16 in-service criteria date?

17 A. Yes.

18 Q. Okay. So but given that -- if you're using
19 provisional acceptance to mean the in-service criteria
20 date, Staff is -- so let's go back.

21 In relationship to the Alstom contract
22 provisional acceptance date, that was met in September of
23 2010. Correct?

24 A. As I stated in my testimony, that was the
25 date that KCPL authorized the provisional acceptance

1 provisions of the contract. That is --

2 Q. So --

3 A. -- not the date that we could have
4 authorized. We could have authorized August 26th.

5 Q. That's not my question, though. In
6 relationship to the Alstom contract, provisional acceptance
7 was met in September of 2010. Correct?

8 A. No. That's not correct. As I just stated
9 the provisional acceptance could have been given to Alstom
10 on August 26th. KCPL deliberately extended that in order
11 to have an outage on the unit.

12 Q. I'm not asking if they could have granted it
13 in August of 2006. In relationship to the Alstom contract,
14 provisional acceptance in that contract was in September of
15 2010. Correct?

16 A. That is not correct.

17 Q. Well, isn't it true Staff's adjustment in
18 relationship to liquidated damages based on the provisional
19 acceptance date that is post the June 30th, 2010 cutoff
20 date?

21 A. I don't understand your question.

22 Q. So Staff's adjustment for the Alstom 2
23 settlement in relationship to liquidated damages is based
24 on numbers for provisional acceptance achieved after the
25 June 30th, 2010 cutoff date?

1 A. I'm still not following your question.

2 Q. Provisional acceptance wasn't met prior to
3 the June 30th, 2010 --

4 A. No. It was --

5 Q. -- cutoff date --

6 A. -- August 26th.

7 Q. And that was after the June 30th, 2010
8 cutoff date --

9 A. Correct.

10 Q. -- that was based on the November 3rd
11 report? Okay.

12 Can you agree with me liquidated damages are
13 not penalties?

14 A. No.

15 Q. So it is your opinion that liquidated
16 damages are penalties?

17 A. No.

18 Q. Then what are liquidated damages?

19 A. Liquidated damages are incentives or -- to
20 get the contractor to perform, or you could say
21 disincentives.

22 Q. Okay. Now, you've worked with Schiff
23 Hardin, have you not?

24 A. I have.

25 Q. Are they providing any training to you in

1 relationship to liquidated damages?

2 A. I have been in many meetings where those
3 were discussed. Yes.

4 Q. Did they ever provide any literature for you
5 to read?

6 A. No.

7 MS. OTT: I would like to have an exhibit
8 marked.

9 JUDGE DIPPELL: Now, this is in relation to
10 both or one --

11 MS. OTT: Yes.

12 If you could take a moment to look over
13 this, Mr. Giles.

14 JUDGE DIPPELL: Okay. For Staff I have the
15 next exhibit number as KCPL 313.

16 (Wherein; Staff Exhibit No. KCPL 313 was
17 marked for identification.)

18 BY MS. OTT:

19 Q. Are you still reviewing the document,
20 Mr. Giles?

21 A. I am. Do you want me to read this entire
22 document?

23 Q. Well, can you tell me what you're reading
24 right now? what you're looking at.

25 A. It is a document. Schiff Hardin is at the

1 title; Law and Practice Contractor Marketing - Penalty
2 Clauses, dated January/February 2001.

3 Q. And this has been authored by a Schiff
4 Hardin employee?

5 A. It indicates it was written by Mark C.
6 Friedlander. The e-mail address indicates he's an
7 employee, I guess, of Schiff Hardin.

8 Q. Now, if you go into the text of the document
9 it proceeds to discuss what liquidated damages are.

10 MR. FISCHER: Judge, unless the counsel can
11 lay a foundation for this, I don't think there's -- it's
12 proper cross-examination to cross this gentleman on a
13 document he's probably never seen, doesn't know anything
14 about.

15 JUDGE DIPPELL: Ms. Ott?

16 MS. OTT: Judge, having him review it, he's
17 asserted that Schiff Hardin has educated him on what
18 liquidated damages are. This is a document provided by
19 Schiff Hardin. It describes what liquidated damages mean.

20 MR. FISCHER: I think all he said is that he
21 attended a meeting where they talked about liquidated
22 damages with someone at Schiff Hardin. He didn't say
23 anything about talking to Mark Friedlander or knowing
24 anything about a document that talks about penalty clauses.

25 JUDGE DIPPELL: Ms. Ott, maybe you'd like to

1 ask him if he has seen this document or continue to lay a
2 foundation for questioning of this document.

3 BY MS. OTT:

4 Q. Now, Mr. Giles, you testified in
5 relationship to liquidated damages in your true-up direct.
6 where did you obtain your information on what liquidated
7 damages are?

8 A. My experience on the Iatan project.

9 Q. And did you -- and was Schiff Hardin
10 involved in educating you or informing you what liquidated
11 damages were?

12 A. Schiff Hardin and a number of other
13 individuals, yes.

14 Q. Okay. Did they just verbally tell you what
15 liquidated damages were or did they provide any literature
16 or any training?

17 A. No. My discussion with those individuals
18 centered around how were liquidated damages determined. I
19 was informed they're simply a negotiated amount and you can
20 never set that amount to equal any actual damages.

21 Q. Okay. And reading this exhibit, KCPL 313,
22 you go to paragraph -- the very last paragraph in the first
23 column and it defines what the three requirements for
24 liquidated damages are. It says: 1, it is likely that the
25 owner would suffer some damages; 2, the owner's damages are

1 not capable of precise calculation; and 3, at the point in
2 time in which the contract is agreed upon the liquidated
3 damages sum is a reasonable proximation of the owner's
4 likely actual damages. Do you see that?

5 A. I do.

6 Q. Do you agree with that?

7 A. Not in the context of the Iatan project, no.

8 Q. Okay. I'll move on. Now, in regards to the
9 common plant, is there any documentation that shows that
10 the estimate contained in the Jones book was frozen?

11 A. Yes. There is a -- there is a -- in the
12 Jones book itself it indicates there will be additional
13 common outside of the Jones book.

14 Q. And is that the only documentation that says
15 that the estimate in the Jones book is frozen?

16 A. I don't know.

17 Q. Now, did you provide any work papers in
18 relationship to your true-up direct testimony?

19 A. I did not.

20 Q. Do you know what page in the Jones book it
21 says that the estimate contained therein is frozen?

22 A. I do not.

23 Q. If I hand you a copy of the Jones book could
24 you find it for me?

25 A. I can try. Yes. I found it.

1 Q. Okay. what page is that on?

2 A. It's on Page 4 of 5 under the title out of
3 Scope Assets.

4 MS. OTT: Okay. Thank you.

5 If I could just have one moment?

6 JUDGE DIPPELL: You may.

7 MS. OTT: If I could have a moment, I may
8 come back to that question, but Mr. Williams is handling
9 the Spearville issue so he can go ahead and start his cross
10 if that would be more timely.

11 MR. FISCHER: No objection.

12 JUDGE DIPPELL: That's fine. Go ahead,
13 Mr. Williams.

14 MS. OTT: I'm sorry.

15 MR. WILLIAMS: Thank you, Judge.

16 BY MR. WILLIAMS:

17 Q. Good morning, Mr. Giles.

18 A. Good morning.

19 Q. In your rebuttal testimony on Page 14, you
20 make a statement, Schiff Hardin provided many of the same
21 legal services on the Spearville 1 project that was
22 successfully completed on time and on budget. Do you
23 recall that?

24 A. Yes. I see that.

25 Q. Exactly what services did Schiff Hardin

1 A. I -- I don't know what the thought process
2 was when someone prepared this, but Schiff Hardin was
3 evidently providing legal services. I wouldn't
4 characterize that, myself, as a consultant or an advisor,
5 it's legal services.

6 Q. So you don't get advise from attorneys?

7 A. As I said, I don't know who -- how the
8 individual interpreted this that responded. From my
9 perspective, it would be legal services. I would make that
10 distinction.

11 MR. WILLIAMS: I don't have any further
12 questions, but I believe Ms. Ott does.

13 JUDGE DIPPELL: All right. Thank you.
14 Ms. Ott?

15 MR. WILLIAMS: Judge, may I approach and
16 retrieve the exhibit?

17 JUDGE DIPPELL: Yes.

18 MR. WILLIAMS: Thank you.

19 JUDGE DIPPELL: Ms. Ott, you had additional
20 questions?

21 MS. OTT: I did.

22 BY MS. OTT:

23 Q. I want to go back to the provisional
24 acceptance of the Alstrom contract.

25 A. okay.

1 MS. OTT: And I'd like to have an exhibit
2 marked.

3 JUDGE DIPPELL: All right. We're at 317.
4 KCPL 317. And is this one highly confidential?

5 MS. OTT: Yes.

6 (Wherein; Staff Exhibit No. KCPL 317 HC was
7 marked for identification.)

8 BY MS. OTT:

9 Q. Mr. Giles, I just handed you Staff Data
10 Request 658 issued on January 30th, 2011.

11 A. Okay.

12 Q. Do you see that?

13 A. I do.

14 Q. Okay. And under question No. 5 Staff asked
15 KCPL, Please provide -- we might need to go in camera.
16 Sorry. Before I start reading from it.

17 JUDGE DIPPELL: Give me just one moment and
18 we'll go in camera.

19 (REPORTER'S NOTE: At this point an
20 in-camera session was held, which is at Volume 44, Pages
21 4606 to 4608.)

22

23

24

25

1 JUDGE DIPPELL: We're back in to public
2 session. Go ahead, Ms. Ott.

3 CHRIS GILES testifies as follows:

4 BY MS. OTT:

5 Q. Okay. On Line 6 you begin a question with
6 Mr. Hyneman alleges that the project was 14 -- 114 days
7 late based on the Alstom meeting substantial completion on
8 September 23rd, 2010. Do you see that question?

9 A. I do.

10 Q. Did you review Mr. Hyneman's true-up direct?

11 A. I did.

12 Q. Okay. Can you point to me where in
13 Mr. Hyneman's true-up direct testimony he uses the phrase
14 substantial completion?

15 A. I don't believe he does.

16 Q. Okay.

17 A. I don't believe this testimony says he does.

18 Q. Now, do you use the phrase provisional
19 acceptance and substantial completion synonymously?

20 A. No.

21 MS. OTT: I have no further questions.

22 Thank you.

23 JUDGE DIPPELL: Okay. Thank you. Are there
24 questions from the bench for Mr. Giles?

25 Commissioner Davis?

1 QUESTIONS BY COMISSIONER DAVIS:

2 Q. Good aftern-- good morning, Mr. Giles.

3 A. Good morning.

4 Q. Can you help me understand the point that
5 you think that the Commission staff counsel was trying to
6 make and respond to it.

7 A. With regards to --

8 Q. Well, whatever they were just
9 cross-examining you about, because --

10 A. I was trying to distinguish between
11 Mr. Williams and Ms. Ott. So you're referring to Ms. Ott?

12 Q. Yes.

13 A. I believe what they are attempting to
14 indicate here is that as Mr. Hyneman describes in his
15 testimony that the unit was 114 days late and they're
16 calculating that from an original PA date, provisional
17 acceptance of June 1 to the date September 23rd of 2010.

18 And it's my testimony that we never -- the
19 project actually wasn't late. The -- some of the agreement
20 with Alstom extended their PA date to November 1, 2010 and
21 the unit actually was in service. They had accepted it as
22 provisional acceptance by the Commission staff on August
23 26th.

24 At that time KCPL withheld provisional
25 acceptance from Alstom intentionally because KCPL wanted to

1 have a major outage and make sure that boiler came back,
2 that it didn't have any issues with it. So in reality, PA
3 date as August 26th, 2010 and KCPL gave that letter to
4 Alstom on September 23rd.

5 so I think it has to do with how many days
6 they're using to calculate the liquidated damages, which
7 it's my testimony that the liquidated damages never entered
8 into the picture in the first place. I hope that helps.

9 COMMISSIONER DAVIS: No further questions,
10 Judge.

11 JUDGE DIPPELL: Thank you. Commissioner
12 Jarrett?

13 COMMISSIONER JARRETT: Thank you, Mr. Giles.
14 I have no further questions.

15 THE WITNESS: Thank you.

16 JUDGE DIPPELL: And I will point out that, I
17 guess, Commissioner Davis had asked Mr. Giles a couple of
18 questions earlier about his start and end dates and I will
19 allow any additional recross on those questions as well.

20 Is there anything further from anyone?

21 Mr. Mills, did you have anything?

22 MR. MILLS: No, thank you.

23 JUDGE DIPPELL: Okay. From Staff, is there
24 additional cross-examination based on the commissioner's
25 questions?

1 MS. OTT: No. Thank you.

2 JUDGE DIPPELL: Is there redirect?

3 MR. FISCHER: Just briefly, Judge.

4 REDIRECT EXAMINATION BY MR. FISCHER:

5 Q. Let's go back to that last point that you
6 had with Commissioner Davis and make sure the record is
7 clear related to the provisional acceptance date related to
8 the Alstom Unit 2 settlement. Do you recall that?

9 A. Yes.

10 Q. would you explain what the Alstom settlement
11 did with regard to the provisional acceptance date from
12 your perspective?

13 A. Yes. The Alstom settlement first extended
14 the provisional acceptance date to August 1, 2010.
15 Subsequently, that was extended to November 1, 2010. And
16 the rationale behind that was to get the unit in service as
17 quickly as possible at the lowest cost.

18 Q. Had the settlement of the Alstom settlement
19 Unit 2 not occurred, what, in your opinion, would have been
20 the result?

21 A. I truly don't believe that unit would be
22 operating today.

23 Q. Unit 2?

24 A. Unit 2.

25 Q. And why would that be?

1 A. The contractors in this case, the main
2 contractors, Alstom and Keiwit were not in sync as far as
3 construction turnover packages. They were already two to
4 three months behind and what was one of the many things
5 that was accomplished with the settlement to get Keiwit and
6 Alstom both on the same page working together because
7 otherwise Alstom was going to be late. Keiwit then was
8 going to incur additional cost.

9 Keiwit indicated to KCPL that they would
10 charge an additional \$60 million to meet that June 1 date
11 and didn't believe it could ever be met even if they --
12 even if they incurred the \$60 million.

13 Q. Do you know whether a notice of default was
14 ever issued against Alstom?

15 A. No. It was not because the way these
16 projects work is you want to manage the contractors as you
17 go. To sit by and idly do nothing as the project falls
18 farther and farther behind and incurs more costs, would be
19 deemed imprudent. And would certainly, in my opinion, be
20 imprudent. And KCPL actively managed on a day-to-day basis
21 both Alstom and Keiwit to ensure that didn't happen.

22 Q. Staff counsel early on in your cross, I
23 think, asked you about the Jones book. Do you recall that?

24 A. I do.

25 Q. And I believe you were asked to point to a

1 provision. And I think she called it "frozen". Do you
2 recall that?

3 A. I do.

4 MR. FISCHER: I'd like to approach, Judge,
5 if that'd be okay.

6 JUDGE DIPPELL: All right.

7 BY MR. FISCHER:

8 Q. Mr. Giles, I believe you pointed to a
9 paragraph on Page 4 of 5. I'd like for you to read that
10 into the record if you would.

11 A. Assets considered out of scope for the
12 common systems allocation include: 1, all project costs
13 directly attributable to the construction of Iatan 1 and 2;
14 and 2, any project costs that may ultimately be
15 identifiable as common costs in support of the Iatan
16 facility at the time of completion and readiness for
17 service of Iatan 2, that either have not yet been expended
18 or are as of the time of this analysis not readily
19 identifiable by the individuals with professional
20 experience completing the analysis as common facility
21 costs.

22 Q. In layman's words, what does that mean to
23 you?

24 A. What that means is the estimating that was
25 ongoing as part of this Jones book, or the common systems

1 asset valuation methodology, only pertained to the assets
2 that had been identified at that time. And any other
3 assets that would be deemed common, KCPL would track and
4 book separately as common, so there wouldn't be a need for
5 a methodology of allocation. It would actually be
6 identifiable.

7 Q. Do you recall when the Jones book was filed
8 with this Commission?

9 A. It was in the Iatan Unit 1 rate case.

10 Q. That would have been ER-2009-0089?

11 A. Correct.

12 Q. The previous rate case?

13 A. The previous rate case. Yes.

14 Q. Was Iatan Unit 2 completed by that time?

15 A. No. It was not completed.

16 Q. Can you give some examples of -- what's the
17 title? Out of scope projects?

18 A. Right.

19 Q. Could -- off the top of your head, would
20 you -- do you know of some projects that would be
21 considered in that category?

22 MS. OTT: I'm going to object. This is
23 beyond the scope of the questioning related to the Jones
24 book.

25 MR. FISCHER: No. It's going directly to

1 the paragraph that she asked about.

2 JUDGE DIPPELL: I'm going to overrule.

3 THE WITNESS: Yes. For instance, site
4 finishing. Once the plant was completed, we had to close
5 out the site, repair the roads, create the roads, haul the
6 trailers out. There was a substation transmission
7 expansion that occurred at the completion of the plant. An
8 auxiliary boiler, you know, that type.

9 I believe Mr. Hyneman actually lists those
10 in a DR response attached to his testimony.

11 BY MR. FISCHER:

12 Q. would that be schedule 8-2?

13 A. Yes.

14 Q. would you turn to that? Do you have that in
15 front of you?

16 A. I do. Okay.

17 Q. There are -- there's a paragraph there at
18 the bottom called Additional Common Projects. Is that what
19 you were referring to?

20 A. Yes. That's exactly the items that I was
21 referring to; highway improvements, plant communication,
22 site finishing, bridge replacement, permanent aux boiler,
23 345 Kv north bus expansion.

24 Q. were those out of scope projects completed?

25 A. They were completed and they were tracked

1 and booked as common facilities.

2 Q. But they weren't in the Jones book?

3 A. No. They were not in the Jones book. And
4 this is the items that we referred to in the Jones book
5 that are out of scope. We also, as I state in my testimony
6 on numerous occasions, Staff requested is the -- or asked
7 rather, Is the Jones book going to be updated. KCPL
8 repeatedly responded no, it's frozen other than these
9 additional common plants that were accepted from that book.
10 And we've said that consistently.

11 Q. Is that 345 kv line that's listed at the
12 bottom, which is the largest number there, was that
13 necessary for the project?

14 A. Absolutely.

15 Q. Why?

16 A. It is an expansion to be able to serve the
17 load of both units.

18 Q. Were the other projects also necessary?

19 A. Absolutely, yes. And Staff has not
20 indicated they have any qualms that they weren't necessary.

21 Q. Okay. Staff counsel also asked you about a
22 Schiff Hardin document, I believe. It looks like it came
23 from the Internet. Do you recall that?

24 A. I do.

25 Q. Would you flip to the back page of that

1 particular document at Page 4 at the bottom?

2 A. Okay.

3 Q. Would you read into the record the
4 sentence -- two sentences above the website address?

5 A. Sure. This article has been prepared for
6 general information. It is not meant to provide legal
7 advise with respect to any specific matter. The reader
8 should consult a lawyer regarding specific legal advise.

9 Q. Mr. Giles, if you were wanting consulting or
10 technical advise would you go to a lawyer?

11 A. No.

12 Q. Typically, are RFPs related to wind projects
13 largely developed in-house at KCPL, do you know?

14 A. Yes, for the most part. Other than legal.

15 Q. You were also asked some questions, I think,
16 regarding Staff -- from Staff counsel regarding Schiff
17 Hardin's work with the wind project and specifically enXco,
18 I think. Do you recall that?

19 A. Correct. Yes.

20 Q. What's your understanding of the services
21 they provided? What did KCPL get out of that?

22 A. Well, ultimately a resolution of a dispute
23 and 32 wind turbines at a very low cost that has been
24 constructed on schedule and on budget.

25 Q. Do you think that would have happened if you

1 hadn't had lawyers involved?

2 A. Absolutely not.

3 MR. FISCHER: Judge, that's all I have.

4 Thank you very much.

5 JUDGE DIPPELL: Thank you. I think that's

6 all, Mr. Giles. You may step down.

7 (Witness excused.)

8 JUDGE DIPPELL: Was there any need for a

9 short break to regroup before Mr. Ives?

10 MR. WILLIAMS: Yes. Change of attorneys.

11 JUDGE DIPPELL: Okay. Let's go off the

12 record just for a couple of minutes then.

13 (Off the record.)

14 JUDGE DIPPELL: Okay. All right. Then,

15 KCPL has their next witness and he is on the stand.

16 And let me go ahead and swear you in, sir.

17 (Witness sworn.)

18 JUDGE DIPPELL: Thank you. Mr. Fischer?

19 MR. FISCHER: Thank you.

20 DARRIN IVES testifies as follows:

21 DIRECT EXAMINATION BY MR. FISCHER:

22 Q. Please state your name and address for the
23 record.

24 A. Darrin Ives. I work at 1200 Main, Kansas
25 City, Missouri.