

Exhibit No.:
Issue: Iatan Prudence
Witness: Kenneth M. Roberts
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Kansas City Power & Light Company
KCP&L Greater Missouri Operations Company
Case No.: ER-2010-0355/ER-2010-0356
Date Testimony Prepared: January 12, 2011

MISSOURI PUBLIC SERVICE COMMISSION

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

SURREBUTTAL TESTIMONY

OF

KENNETH M. ROBERTS

ON BEHALF OF

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

**Kansas City, Missouri
January 2011**

“****” Designates “Highly Confidential” Information
Has Been Removed
Pursuant To 4 CSR 240-2.135.

SURREBUTTAL TESTIMONY

OF

KENNETH M. ROBERTS

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

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

2 A: My name is Kenneth M. Roberts. My business address is 233 South Wacker Drive, Suite
3 6600, Chicago, Illinois 60606.

4 **Q: Are you the same Kenneth M. Roberts who pre-filed Direct Testimony and Rebuttal**
5 **testimony to MPSC Staff in this matter?**

6 A: Yes.

7 **Q: What is the purpose of your Surrebuttal Testimony?**

8 A: In my Surrebuttal Testimony, I respond to certain allegations raised by Staff witness Mr.
9 Charles R. Hyneman in his Rebuttal Testimony filed on December 8, 2010. In particular,
10 I rebut and attempt to clarify for the Commission Mr. Hyneman's allegations about the
11 role of Schiff Hardin, LLP ("Schiff") on the Iatan Unit 1 and Unit 2 construction project,
12 or simply the "Iatan Project."

13 **Q: Mr. Hyneman alleges that your Direct Testimony in this case was incorrect in**
14 **stating that Schiff was "independent" of KCP&L. How do you respond to Mr.**
15 **Hyneman?**

16 A: Schiff's analysis was independent of KCP&L's on site Project Management Team. Mr.
17 Hyneman is apparently confused by my Direct Testimony and by other Company
18 witnesses' description of Schiff Hardin's actual role on the Iatan Project. We certainly
19 were not independent of KCP&L in the manner an auditor maintains independence, nor

1 did I ever state that we were. Schiff Hardin reported to and acted on behalf of KCP&L's
2 Senior Management team in all respects of our work, from the project controls and
3 reporting to the commercial work we performed. This means that our oversight role was
4 to first help KCP&L set up the Project's project controls systems and then to provide
5 information regarding the Project to Senior Management based upon our own
6 observations that were separate and distinct from those of the project team. This allowed
7 Senior Management to have additional information on which it could base critical
8 decisions regarding the Project. In fact, the following question and answer was in my
9 Direct Testimony:

10 Q. Please describe the services you and Schiff's Construction
11 Group are performing on behalf of Kansas City Power & Light
12 Company ("KCP&L" or the "Company")?

13 A. KCP&L engaged Schiff: (i) to help the Company develop
14 project control procedures to monitor the cost and schedule
15 ("Project Controls") for the infrastructure projects contained in the
16 Company's Comprehensive Energy Plan ("CEP"); (ii) to monitor
17 the CEP's progress and costs, including the review and
18 management of change order requests; (iii) to negotiate contracts
19 with vendors related to the CEP; and (iv) to resolve disputes with
20 vendors that might arise on CEP projects.

21 Mr. Hyneman himself summarizes our services. He testifies, "Schiff employees and
22 subcontractors have been very much involved in the development of the Iatan project
23 schedules, project controls, contract formation, contract negotiations, commercial issue
24 discussions and large-dollar contract settlements over the past six years." See Hyneman
25 Rebuttal Testimony at p. 2, lns 14-17.

26 **Q: Do you claim that Schiff Hardin acted in a manner akin to an independent auditor?**

27 A: No. I don't recall ever so much as intimating that Schiff Hardin was acting
28 independently of KCP&L. In fact, it is impossible to negotiate contracts with vendors

1 and resolve disputes on the Company's behalf and be "independent" in the manner Mr.
2 Hyneman apparently means.

3 **Q: If you were working on behalf of KCP&L's Senior Management, what was**
4 **independent about your role?**

5 A: I meant and I believe my Direct Testimony is fairly clear in stating that our team was
6 independent from the KCP&L project team in that we provided separate and independent
7 reports of the Iatan Project's status to KCP&L's Executive Oversight Committee and to
8 members of KCP&L's Senior Management during the course of the Iatan Project. Our
9 reports to Senior Management at KCP&L were, as I stated in my Direct Testimony,
10 intended in part to provide verification of what the project team was reporting and also
11 highlight risks to the Iatan Project from our knowledge and understanding of industry
12 best practices. My testimony clearly states that Schiff Hardin's reports to senior
13 management would include our "independent view" of the Iatan Project's budget,
14 schedule and procurement status and that we "independently verify the CEP Projects'
15 then-current status" in reports provided to KCP&L's Executive Management.

16 **Q: Do you agree with Mr. Hyneman's statement that Schiff Hardin's role on the Iatan**
17 **Project was one **** [REDACTED]

18 [REDACTED] **** See Hyneman**
19 **Rebuttal Testimony at p. 2, line 19.**

20 A: I agree that we have acted as advocates for KCP&L to the Commission. I disagree that
21 we have had to "defend" ourselves to KCP&L, and I note that Mr. Hyneman fails to cite
22 a single example or fact in support of this conclusion.

23 **Q: Do you believe that Schiff Hardin had a conflict of interest in its role on the Iatan**

1 **Project?**

2 A: Absolutely not. Providing project oversight on large projects on behalf of owners is our
3 team's specialty and we do our work as professionals with the client's interests fully in
4 mind. We have done so as a team for two decades. What has made us successful is
5 maintaining the appropriate professional attitude at all times. I note that Mr. Hyneman
6 has not identified any specific issues he has with the services provided by Schiff Hardin
7 to the Project. He only makes general allegations with respect to our role.

8 **Q: Did Mr. Hyneman include any other inaccuracies in describing Schiff Hardin's role**
9 **on the Iatan Project in his Rebuttal Testimony?**

10 A: Yes. I also note that Schiff Hardin did not perform any "project management work" as
11 Mr. Hyneman contends. KCP&L managed the Iatan Project, and did so to its successful
12 completion. Schiff Hardin provided advice to the project team and to Senior
13 Management.

14 **Q: Mr. Hyneman also asserts because of a response to data request that Schiff Hardin**
15 **did not provide KCP&L with "recommendations, evaluations, assessments, audits**
16 **or advice to KCP&L based on Schiff's independent review and reporting of project**
17 **controls." Do you agree with Mr. Hyneman's conclusion?**

18 A: No. Schiff Hardin did provide KCP&L with its independent recommendations and
19 advice regarding project controls. Mr. Hyneman is incorrect and mischaracterizes the
20 data request response that KCP&L provided. Data Request 418 in the 0089 docket and
21 KCP&L's response are as follows:

22 Question No. :0418

23 Please provide copies of all recommendations, evaluations,
24 assessments, audits, and advice provided to KCPL from Schiff
25 Hardin regarding Schiff Hardin's independent review and

1 reporting of the project controls for the Iatan 1 and 2 construction
2 projects.

3 RESPONSE:

4 KCP&L objects to this Data Request to the extent that it requests
5 documents that are protected by the attorney-client privilege.
6 Additionally, Schiff Hardin is on-site daily and provides advice to
7 KCP&L on a real-time basis. Therefore, much of Schiff Hardin's
8 recommendations, evaluations, assessments and advice are
9 provided to KCP&L verbally. To the extent that KCP&L has
10 copies of unprivileged documents responsive to this Data Request,
11 they will be made available for review in the data room located at
12 KCP&L headquarters located at 1201 Walnut Street 64106.

13 As stated, KCP&L asserted attorney-client privilege regarding our reports, though it is
14 my understanding that KCP&L has produced redacted versions of those documents. The
15 unredacted portions of these reports deal largely with Schiff Hardin's project controls
16 evaluations and advice.

17 **Q: Was Schiff Hardin critical of KCP&L's project controls effort on the Iatan Project?**

18 A: We highlighted areas of concern and reported the facts and data as we saw them. This
19 could be interpreted as critical. Overall, we would spot issues that we believed needed to
20 be corrected in the way that KCP&L's project team was collecting or reporting data,
21 though those occasions were relatively infrequent and usually involved relatively minor
22 adjustments to KCP&L's cost and schedule-keeping methodologies. I believe our
23 reports, which have been made available to Staff, contain a recap our recommendations
24 in this regard. However, every project of the size and complexity of the Iatan Project will
25 have issues that require attention until the project controls reporting suite is fully
26 developed and functional.

27 **Q: Mr. Hyneman also takes exception to your testimony regarding KCP&L's**
28 **treatment of the major contractors on the project. He summarizes your Direct**

1 **Testimony to mean that ** [REDACTED]**
2 **[REDACTED] ** See Hyneman Rebuttal Testimony at p. 3, lns. 27-30. Is this a fair**
3 **characterization of your Direct Testimony?**

4 A: No. Mr. Hyneman also claims that I testified, ** [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] ** See Hyneman Rebuttal Testimony at p. 4, lns 11-14.

8 This is a complete mischaracterization of my Direct Testimony and that of multiple
9 KCP&L witnesses. As I and Company witnesses Mr. Bill Downey, Brent Davis and Bob
10 Bell have previously testified, the active management by KCP&L of the Iatan Project's
11 contractors was a success and that saved the Project's budget and schedule. I also note
12 that Mr. Hyneman provided no specifics whatsoever in support of his opinions and could
13 not identify which of the disallowances Staff recommends are related to these opinions.

14 **Q: Mr. Hyneman states that among the options available to KCP&L was "writing**
15 **strong and enforceable contract terms and conditions." See Hyneman Rebuttal**
16 **Testimony p. 4, line 20. Do you agree with that statement?**

17 A: I agree that strong contractual terms certainly increase the ability of the owner to hold
18 contractors accountable, and I have testified at length in my Direct Testimony and my
19 Rebuttal Testimony to both Staff and to Walter Drabinski (the consultant hired by the
20 Missouri Retailers Association) that KCP&L had very strong contracts which provided
21 KCP&L with the necessary platform to successfully negotiate reasonable changes to
22 those contracts as events transpired. However, as I previously testified, I agree with
23 Company witness Dr. Nielsen that blind enforcement of contract terms, including the

1 assessment of liquidated damages, is not an appropriate or effective means for managing
2 a complex construction project such as the Iatan Project. I note that Mr. Hyneman does
3 not cite a single fact or contract provision that he believes did not meet industry standard
4 nor does he attempt to connect his allegation to any specific disallowance Staff
5 recommends from the Iatan Project's costs.

6 **Q: Mr. Hyneman also alleges that **** [REDACTED]
7 **** Do you agree?**

8 A: No, I don't. I believe that KCP&L has properly notified and enforced its contracts with
9 its vendors throughout the course of the Iatan Project. ** [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] ** This is

16 another example of how Mr. Hyneman and Staff have repeatedly misinterpreted the risks
17 that KCP&L's internal audit, external audit and Schiff Hardin have identified. Staff in its
18 Report mistakes the identification of a risk at the outset of the Iatan Project as the same
19 thing as realizing the full impact of the risk after the project completes. Company
20 witness Mr. Brent Davis addresses the effectiveness of KCP&L's project team's efforts
21 in this regard in his Direct, Rebuttal and Surrebuttal testimony.

22 **Q: Mr. Hyneman also testifies that both you and Company witness Mr. Robert Bell**
23 **testified that you try **** [REDACTED]

1

[REDACTED]

2

[REDACTED] **** See Hyneman Rebuttal Testimony p. 13, lns. 6-10. Do you agree with**

3

Mr. Hyneman's characterization of your and Mr. Bell's testimony?

4 A:

No. Mr. Bell and I each testify regarding circumstances in which the contractors on the

5

Iatan Project were clearly held both responsible and accountable for their performance.

6

The section of Mr. Bell's Direct Testimony quoted by Mr. Hyneman on p. 13 of his

7

Rebuttal Testimony does not support the proposition for which he cites it. As I

8

previously testified, blind enforcement of contracts is highly inadvisable and ineffective

9

on projects of the size and complexity of Iatan.

10 Q:

Does that conclude your testimony?

11 A:

Yes, it does.

HIGHLY CONFIDENTIAL

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

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

AFFIDAVIT OF KENNETH M. ROBERTS

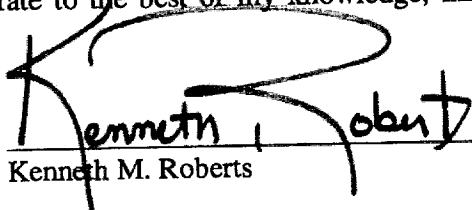
STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Kenneth M. Roberts, being first duly sworn on his oath, states:

1. My name is Kenneth M. Roberts. I am a partner with the firm of Schiff Hardin LLP. Kansas City Power & Light Company engaged the services of Schiff Hardin LLP to provide certain services in connection with the company Comprehensive Energy Plan construction projects.

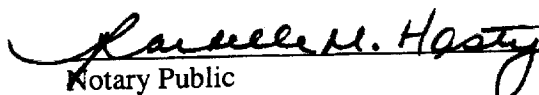
2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company consisting of eight (8) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

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


Kenneth M. Roberts

Subscribed and sworn before me this 3rd day of January, 2011.




Notary Public

My commission expires: _____