

Exhibit No.:
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Witness: Kenneth M. Roberts
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Sponsoring Party: Kansas City Power & Light Company
KCP&L Greater Missouri Operations Company
Case No.: ER-2010-0355/ER-2010-0356
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MISSOURI PUBLIC SERVICE COMMISSION

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

REBUTTAL TESTIMONY

OF

KENNETH M. ROBERTS

ON BEHALF OF

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

**Kansas City, Missouri
December 2010**

“ [REDACTED] **” Designates “Highly Confidential” Information
Has Been Removed.
Certain Schedules Attached To This Testimony Designated “(HC)”
Have Been Removed.
Pursuant To 4 CSR 240-2.135.**

REBUTTAL 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 in this**
5 **matter?**

6 A: Yes.

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

8 A: My Rebuttal Testimony responds to aspects of the Missouri Public Service Commission
9 (“MPSC”) Staff’s Direct Testimony and document titled “Construction Audit and
10 Prudence Review Iatan Construction Project for Costs Reported as of June 30, 2010
11 (“Staff Report”) regarding: (1) the appropriate standard for prudence and the application
12 of same for purpose of this case; and (2) recommended disallowances for alleged
13 imprudence by Kansas City Power & Light Company (“KCP&L”) management of the
14 Iatan Units 1 and 2 Projects.

15 **Q: Please summarize your Rebuttal Testimony.**

16 A: I begin my Rebuttal Testimony by agreeing with Staff with respect to the applicable
17 prudence standard. In essence, KCP&L has the presumption of prudence as to its
18 expenditures on the Iatan Projects until a party raises a serious doubt as to the prudence
19 of a specific expenditure. In order to find a disallowance, the Commission must find both
20 that KCP&L has acted imprudently and that the imprudent actions were the cause of

1 increased costs. Staff's argument that it was unable to perform an independent audit of
2 over \$18 million in budget variances on Iatan Unit 1 and \$93 million on Iatan Unit 2
3 despite being given thousands of detailed and organized documents to support those costs
4 does not meet Staff's burden of "raising a serious doubt" as to the prudence of those
5 costs. The fact that Staff was able to identify specific recommended disallowances on
6 both Unit 1 and Unit 2 underscores that it had the ability to audit all of KCP&L's
7 expenditures in order to identify imprudent costs. Moreover, I would argue that the
8 entirety of the recommended disallowances for which Staff has shifted the burden of
9 proof to KCP&L to justify the prudence of those costs is limited to the specific Staff
10 disallowance adjustments or \$51 million on Unit 1 and \$37 million on Unit 2 identified in
11 Staff's Report.

12 With respect to Staff's proposed disallowance adjustments, I will discuss in my
13 testimony KCP&L's prudent decision-making process with respect to the two settlements
14 that KCP&L negotiated with ALSTOM Power Inc. ("ALSTOM"), the Iatan Project's
15 major EPC contractor. I refer to the ALSTOM settlements as the "ALSTOM Unit 1
16 Settlement Agreement" and "the ALSTOM Unit 2 Settlement Agreement," respectively.
17 I believe that based upon my experience and expertise in the areas of construction law
18 and project oversight, that KCP&L's decisions to enter into both of the ALSTOM
19 Settlement Agreements were reasonable and prudent in light of the circumstances at the
20 time. The intent of both of the agreements was to assure ALSTOM's cooperation in
21 meeting interim completion dates not specified in their original contract that would
22 ensure a workable plan for completion of both Unit 1 and Unit 2. In both instances,
23 ALSTOM released fairly sizeable delay claims and settled other outstanding commercial

1 issues. KCP&L performed detailed analysis of the benefits of these agreements and
2 determined that the most prudent step with ALSTOM would be to wipe the slate clean in
3 exchange for fair and equitable terms that ensured commercial disputes would not
4 interfere with the Iatan Project's progress during the critical execution phases of Iatan
5 Unit 1 and Iatan Unit 2.

6 I also discuss KCP&L's decision regarding the contracting strategy for the Iatan
7 Project, which essentially allowed construction to begin before the design was completed,
8 or "fast-track" the work. This strategy is commonplace and acceptable in the power
9 construction industry, and allowed KCP&L to meet the June 1, 2010 target completion
10 date as well as get out ahead of skyrocketing costs due to an over-heated market. It also
11 was a decision that was thoroughly vetted by the Senior Management team, where all of
12 the benefits and risks of each strategy was discussed and analyzed. I believe that
13 KCP&L's decision with respect to the Project's contracting strategy was both reasonable
14 and prudent in light of the circumstances.

15 Finally, I also provide rebuttal regarding Staff's recommended disallowances
16 regarding Schiff Hardin's billing rates. Staff's disallowances based upon an adjustment
17 of Schiff Hardin's rates are based upon erroneous assumptions of the services provided
18 by Schiff. First, Staff argues that Schiff performs primarily "project management" work
19 and makes an adjustment to Schiff's rates using what Staff purports are project
20 management rates. However, Schiff Hardin did not provide project management, and as
21 such, it is inappropriate to compare Schiff Hardin's rates to those of project management
22 personnel. Schiff Hardin's services included project oversight and legal services, based
23 upon the specialized expertise of their consultants and lawyers. Furthermore, the rates

1 charged by Schiff for its oversight and legal services were both reasonable and within the
2 applicable market based upon the expertise and experience of the Schiff team.

3 **PRUDENCE**

4 **Q: Have you reviewed the section in Staff's Report regarding the applicable prudence**
5 **standard?**

6 A: Yes.

7 **Q: What is your opinion regarding Staff's definition of prudence?**

8 A: In general, I agree with the following:

- 9 • "Under the prudence standard, the Commission looks at whether the
10 utility's conduct was reasonable at the time, under all of the
11 circumstances. . . .In applying this standard, the Commission presumes
12 that the utility's costs were prudently incurred." *See State ex. Re.*
13 *Associated Natural Gas v. Public Serv. Comm'n*, 954 S.W.2d 520 (Mo.
14 App. W.D. 1997); *State ex rel. GS Technologies Operating Co. Inc. v.*
15 *Public Serv. Comm'n*, 116 S.W.3d 680 (Mo. App. W.D. 2003) (citations
16 omitted). *See Staff Report at p. 9, ln. 26-29.*
- 17 • In *Re Union Electric Co.*, Case Nos. EO-85-17 *et al.* stands for the
18 proposition that: "Utilities seeking a rate increase are not required to
19 demonstrate their cases-in-chief that all expenditures were prudent . . .
20 However, where some other participant in the proceeding creates a serious
21 doubt as to the prudence of an expenditure, then the applicant has the
22 burden of dispelling these doubts and proving the questioned expenditure
23 to have been prudent." *See Staff Report at p. 9, ln. 6-11.*

- 1 • In order for the Commission to disallow a utility’s recovery of costs from
2 its ratepayers, the Commission must apply the following two pronged test:
3 (1) the utility acted imprudently (that is, did not act reasonably at the time
4 under the applicable circumstances); and 2) such imprudence was the
5 cause of the harm (increased costs) to the utility’s ratepayers. *See* Staff
6 Report at p. 10, ln. 1-4; *see also Associated Natural Gas*, 945 S.W.2d at
7 529.

8 **Q: On pages 10-11 of the Staff Report, Staff discusses the burden of proof, essentially**
9 **arguing that KCP&L should have the “burden of proof” because all of the facts and**
10 **documents relevant to the issues are within the utility’s control. Do you have an**
11 **opinion about this statement?**

12 A: Staff’s Report is not clear as to its intent with respect to the discussion regarding the
13 burden of proof, though it looks as if Staff is attempting to argue that the burden should
14 shift to KCP&L, despite the applicable law to the contrary. Therefore, I must both
15 disagree with the point I believe Staff is trying to assert and clarify the appropriate
16 standard. The applicable case law to rate cases is clear. There is a presumption that the
17 utility has prudently incurred costs, until another party raises a serious doubt as to the
18 prudence of specific expenditures. Therefore, Staff has the burden of first creating a
19 serious doubt before the burden would shift to KCP&L to establish that the expenditures
20 were in fact prudent. Staff has not met this burden. A good example of Staff not meeting
21 its burden of creating a serious doubt as the prudence of specific expenditures is with the
22 category of costs Staff has titled “Unexplained Cost Overruns.” This category is
23 comprised of \$18,361,836 for Unit 1 and \$93,400,296 for Unit 2. Staff’s argument

1 appears to be that KCP&L has the burden of proof of explaining and supporting each and
2 every cost overrun on the Iatan Project in its case-in-chief as if KCP&L were first
3 required to establish that the costs were prudently spent. However, KCP&L gets the
4 benefit of a presumption of prudence until Staff can “create a serious doubt” as to
5 specific expenditures.

6 **Q: Do you agree with Staff’s claims in pp. 36-7 of its Report that KCP&L refused to**
7 **explain the Iatan Project’s cost overruns, refused to answer data requests and**
8 **refused to provide Staff with “thousands of pages” of documents Staff needed for its**
9 **audit?**

10 A: No. Company witnesses Chris Giles and Forrest Archibald each testify that every month,
11 KCP&L has provided Staff with cost reports and other information that identify the Iatan
12 Project’s cost variances. Mr. Archibald further testifies that KCP&L has provided the
13 back-up documentation to every one of its reforecasts of the Iatan Project’s estimate at
14 completion (“EAC”), including the organized boxes of back-up documentation that
15 explain all of the Iatan Project’s cost increases. KCP&L has also provided Staff with
16 each of the contracts, purchase orders, bid documents, change orders and back-up to
17 change orders. Company witness Daniel Meyer testifies that using the same information
18 that was provided to Staff, he was able to easily identify and review KCP&L’s
19 explanation of every cost increase. If Staff had simply reviewed and analyzed this
20 information, it would have been able to arrive at its own view of the Iatan Project’s cost
21 variances. In fact, Staff did identify \$51 million on Unit 1 and \$37 million on Unit 2 as
22 alleged imprudent costs. While KCP&L’s witnesses will establish that those costs were
23 prudently spent through their testimony in this case, Staff’s identification of certain

1 specific proposed adjustments also shows that Staff was capable of discerning KCP&L's
2 cost data and back-up on those select items. Staff does not explain why it was unable to
3 do so for the remaining costs. As a result, for the remaining cost variances on the Iatan
4 Project, Staff cannot meet its burden to "raise a serious doubt" as to these expenditures by
5 simply refusing to look at the documents KCP&L has provided. I would therefore argue
6 that KCP&L is allowed to put the \$18 million on Unit 1 and \$93 million on Unit 2 into its
7 rate base as prudent costs.

8 **ALSTOM UNIT 1 SETTLEMENT AGREEMENT**

9 **Q: Have you reviewed Staff's recommended disallowance regarding the ALSTOM Unit**
10 **1 Settlement Agreement?**

11 A: Yes. Staff is recommending a ** [REDACTED] ** disallowance for a Settlement Agreement
12 that only added ** [REDACTED] ** to the cost of the Iatan Unit 2 project

13 **Q: Do you agree with Staff's assessment that KCP&L should incur a disallowance of**
14 **\$44 million related to this Settlement Agreement?**

15 A: No. First, the ** [REDACTED] ** paid to ALSTOM in the Settlement was a necessary and
16 prudent cost increase to the project, and an example of how KCP&L actively managed
17 the Project's costs to ensure that it did not suffer a larger cost increase. Company witness
18 William Downey provides a thorough recounting of KCP&L's decision-making process
19 and evaluation of the Settlement amount. ** [REDACTED]

20 [REDACTED]

21 [REDACTED] ** None of the ** [REDACTED] ** settlement amount was paid
22 to ALSTOM due to the imprudent management of KCP&L. I also believe that if KCP&L
23 had allowed the commercial dispute with ALSTOM to fester and had not taken steps to

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1 ensure that both ALSTOM and Kiewit Power Constructors Co. (“Kiewit”) were working
2 cooperatively towards the same interim dates that KCP&L would have ultimately had to
3 pay both contractors much more in delay costs. As a result, the Iatan Unit 1 Project
4 schedule would have been impacted beyond the added outage time, increasing the
5 Project’s costs even more.

6 In general, however, I would like to state that the fact that KCP&L used the
7 project management tools at its disposal to identify the issues at an early stage in the
8 process and then negotiate a resolution with the contractor is evidence of KCP&L’s
9 active and prudent management of the Iatan Project. KCP&L worked with the
10 contractors to resolve commercial disputes at the project level as they arose. As
11 necessary, disputes were elevated in a timely manner to Senior Management for
12 negotiation and resolution. As part of that proactive process, the parties retained the
13 services of a nationally-renowned mediator, Jonathan Marks to facilitate negotiations
14 between or among the parties. If the owner waits until the end of the project to “enforce
15 its contractual rights” in order to resolve a dispute, by that time the damage has already
16 been done. It is critical for the owner to be proactive and resolve disputes as they arise to
17 maintain the contractors’ continued cooperation and commitment to the project.

18 I agree with Company witness Dr. Kris Nielsen that construction disputes are
19 messy and complicated and very rarely is there a clear-cut “winner” or “loser.” For
20 example, if an owner believes that a contractor is behind schedule due to no fault of the
21 owner, and the owner simply waits until the date when it can start accruing liquidated
22 damages, the project would already be late, and in almost every instance in my career, the
23 liquidated damages would not even begin to cover the owner’s actual losses due to the

1 delay. Furthermore, the contractor would also raise several defenses that would
2 potentially absolve it from liability, which could leave the owner with no recovery
3 whatsoever. In such situations, the owner is much better off attempting to work with the
4 contractor to mitigate losses and ensure that commercial disputes do not impact the
5 parties' ability to communicate or work together. With the ALSTOM Unit 1 Settlement
6 Agreement, KCP&L was able to preserve the schedule without expending costs it would
7 have otherwise spent.

8 **Q: Staff's Report cites KCP&L's internal audit findings regarding Burns &**
9 **McDonnell's performance as support for its ** [REDACTED] ** disallowance. Do you**
10 **agree that this was appropriate?**

11 **A:** No. The first audit report cited by Staff is the "Phase I Risk Assessment." Although the
12 audit report is dated March 2007, it was based on a document and information cut-off
13 date of November 1, 2006. Staff makes no attempt to determine if the issues raised in
14 this Risk Assessment were subsequently addressed by KCP&L or if any of those issues
15 actually had any impact on a settlement agreement that occurred almost two years later.
16 The whole purpose of this Risk Assessment was for Ernst & Young to help KCP&L
17 identify risks early in the Iatan Project so that KCP&L could address and mitigate those
18 risks. Obtaining this information is both prudent and good practice. Staff is now
19 attempting to use these internal audits against KCP&L by only pointing to the risks that
20 were identified without determining if the Company addressed these issues, let alone
21 whether there were any cost impacts. A disallowance based on this misuse of internal
22 audits constitutes bad public policy. Staff is taking advantage of KCP&L's transparency

1 which will discourage companies from attempting to identify these issues in the first
2 place on future projects.

3 The second KCP&L internal audit cited by Staff is the January 2009 ALSTOM
4 Power Contract Audit. The quote of this audit in Staff's Report on pp. 61-62 is taken out
5 of context and is misleading. The paragraph prior to Staff's quote states as follows:

6 ** [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 **

19 See ALSTOM Power Contract Audit at p. 2 attached at Schedule KMR2010-11. In other
20 words, the auditors are essentially saying that KCP&L has done everything in its power
21 to remove barriers to ALSTOM's performance, with which I wholeheartedly agree.
22 ALSTOM's poor performance is not the result of KCP&L's impudent management. I
23 will say that despite this Audit finding, Schiff Hardin's schedule analysis showed that
24 although ALSTOM's performance was not perfect, it was very possible if not likely
25 ALSTOM would have met the dates in the Unit 1 Settlement Agreement had the issues
26 with the economizer and the turbine not occurred. Company witness Brent Davis further
27 explains this in his Rebuttal Testimony.

28 Finally, with respect to the audit finding on p. 11 of the ALSTOM Power Contract
29 Audit regarding ** [REDACTED]

30 [REDACTED]

1 [REDACTED]** Nothing in
2 the audit report suggest that this finding had anything to do with the ALSTOM Unit 1
3 Settlement or its evaluation.

4 **Q: What is your opinion regarding Staff's reduction of the Project Costs in the amount**
5 **of ** [REDACTED] ** for unasserted liquidated damages?**

6 A: First, Staff wrongly speculates that KCP&L could have collected ** [REDACTED] ** from
7 ALSTOM in liquidated damages. It does so without a contractual or schedule analysis on
8 which to base its opinion. Given the actual events that occurred during the Unit 1 Outage
9 there is no evidence that KCP&L could have collected ** [REDACTED] ** from ALSTOM.
10 Company witnesses William Downey and Brent Davis discuss the issues with the
11 economizer and the turbine vibration that would have precluded KCP&L from assessing
12 liquidated damages against ALSTOM. Even if those events did not occur, in order for
13 KCP&L to collect liquidated damages, KCP&L would have had to prove that ALSTOM
14 was the sole cause of delay or that ALSTOM's delays exceeded the total amount of all
15 proven excusable delays to the Project (i.e. delay caused by KCP&L, KCP&L's other
16 contractors, or other compensable event under the contract). Given the number of
17 contractors that had to share confined spaces during the Unit 1 Outage, KCP&L would
18 have had great difficulty proving that ALSTOM was the sole cause of the delay. Staff's
19 recommendation to reduce the project costs by ** [REDACTED] ** is highly speculative and
20 completely divorced from an analysis establishing KCP&L's entitlement to ** [REDACTED]
21 [REDACTED] ** in liquidated damages.

22 It appears that Staff took the ** [REDACTED] ** number from two Risk and
23 Opportunity items ("R&O items") that were discussed as part of the May 2008 reforecast.

1 Copies of those documents are attached to Company witness William Downey's
2 testimony at WHD2010-7, that identifies potential liquidated damages somewhere in the
3 range of ** [REDACTED] **. A close reading of those documents establishes that
4 KCP&L considered the possibility of collecting liquidated damages ** [REDACTED]
5 [REDACTED]
6 [REDACTED] **. In other words, if ALSTOM's performance did not improve after
7 the Unit 1 Settlement Agreement, then ALSTOM could have exposure to KCP&L for
8 liquidated damages. The R&O was discussing the possibility of future liquidated
9 damages that *could* accrue, not liquidated damages that had accrued and therefore could
10 be assessed. In fact, under the original contract, liquidated damages could not even begin
11 to accrue until December 17, 2008. As a result, Staff's proposed disallowance for
12 "speculative" liquidated damages is wholly inappropriate.

13 **ALSTOM UNIT 2 SETTLEMENT AGREEMENT**

14 **Q: Staff recommends for disallowance of the incentive payments that KCP&L agreed**
15 **to pay to ALSTOM under the Unit 2 Settlement Agreement. Do you agree with**
16 **Staff that it was an imprudent for KCP&L to enter into this agreement?**

17 **A:** No. Staff argues that the incentive payments agreed to by KCP&L in the Unit 2
18 Settlement Agreement were imprudent. Staff's argument is based on a quote made by
19 Company witness Kris Nielsen in the case before the Kansas Corporation Commission
20 ("KCC") in Docket No. 10-KCPE-415-RTS. Staff took Dr. Nielsen's statement out-of-
21 context, as it was made in support of Dr. Nielsen's proposed disallowance relative to the
22 services provided by Welding Services, Inc, not the Unit 2 ALSTOM Settlement
23 Agreement. In fact, Dr. Nielsen has testified in both the Kansas Corporation Commission

1 (“KCC”) case and in this case that he believes the ALSTOM Unit 2 Settlement
2 Agreement to be both reasonable and prudent. In the KCC case, Dr. Nielsen testified
3 that: ** [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED] ** See Nielsen Rebuttal Testimony KCC Docket 10-KCPE-415-RTS at p.
7 199.

8 **Q: Please describe the circumstances leading up to the ALSTOM Unit 2 Settlement**
9 **Agreement.**

10 A: ** [REDACTED]
11 [REDACTED]
12 [REDACTED] ** KCP&L’s project
13 controls accurately identified the issue, and KCP&L’s project team alerted KCP&L’s
14 Senior Management. ** [REDACTED]

15 [REDACTED]
16 [REDACTED] ** KCP&L had continued with the robust and proactive project management
17 plan it had put in place with Unit 1, including daily coordination meetings with the
18 contractors. ** [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] ** See Schedule KMR2010-12. ** [REDACTED]

5 [REDACTED]
6 [REDACTED] ** Separate and apart from ALSTOM's performance issues, in late
7 April, 2009, ALSTOM discovered the first of the T-23 cracks in the boiler waterwalls.
8 Kiewit had also informed KCP&L that if Kiewit was required to meet the June 1, 2010
9 target in-service date, KCP&L would most likely have to pay Kiewit ** [REDACTED] ** in
10 acceleration costs, ** [REDACTED]
11 [REDACTED]

12 [REDACTED] ** It was imperative that KCP&L work with both contractors to find a
13 reasonable solution that was the best for the Project and KCP&L's customers.

14 **Q: Once KCP&L recognized the problem, what did it do?**

15 A: In the spring of 2009, KCP&L's Project management requested that ALSTOM provide a
16 revised schedule with respect to which ALSTOM had "high confidence" that it could
17 meet and that also allowed sufficient time for KCP&L's other contractors to complete
18 their work. ALSTOM responded with a proposed set of milestone dates that led to
19 discussions with both ALSTOM and Kiewit regarding their ability to support a revised
20 schedule. Kiewit's revised schedule resulted in significant decompression of its work,
21 which, in turn, significantly reduced its projected costs. ** [REDACTED]

22 [REDACTED]
23 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 [REDACTED]** This meant that Kiewit would be significantly delayed in
5 completing its work, which would result in additional compensation to Kiewit.

6 ** [REDACTED]

7 [REDACTED]** All of these issues
8 were threatening the parties' ability to work cooperatively and successfully complete the
9 Project. KCP&L was aware that lack of cooperation among the parties would not only
10 threaten the party's ability to complete construction, but it would also impact KCP&L's
11 start-up and commissioning activities.

12 **Q: Why did KCP&L agree to "incentive" payments to ALSTOM to meet dates that**
13 **were later than ALSTOM's contractual dates?**

14 A: There were two main reasons. First, ALSTOM had presented KCP&L with a
15 ** [REDACTED]** that needed to be resolved. Regardless of whether
16 ALSTOM's claim had merit, defending against the claim would be both expensive and
17 time consuming. Additionally, it would detract from KCP&L's resources that were
18 necessary to complete the project. Second, it did not make any sense for KCP&L to pay
19 Kiewit the costs necessary to accelerate its work to meet an unrealistic schedule. As on
20 Iatan Unit 1, in order for the Iatan Unit 2 Project to complete as cost effectively and
21 expeditiously as possible, KCP&L needed both ALSTOM and Kiewit to agree on the
22 interim CTO dates. ** [REDACTED]

23 [REDACTED]

1 [REDACTED]** Furthermore,
2 ALSTOM stated that if it was held to its original contractual dates, ** [REDACTED]
3 [REDACTED]** which would ensure further delays to the
4 Project. KCP&L felt that the best solution was to drive both ALSTOM and Kiewit to a
5 realistic schedule in order to mitigate cost impacts.

6 Instead of giving ALSTOM a lump-sum payment, KCP&L wanted to ensure that
7 it gave ALSTOM an incentive to meet each one of the critical interim dates while
8 preserving its rights to assess liquidated damages in the event that ALSTOM was the
9 cause of the Project finishing late. KCP&L's management recognized that the best way
10 to reduce the Iatan Unit 2 Project's overall cost was to obtain the utmost cooperation
11 among all the parties.

12 During the negotiations of the Unit 2 Settlement Agreement, KCP&L was also
13 investigating the cause of the cracking in the boiler's waterwalls. ** [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]**

17 **Q: What benefits did KCP&L receive as a result of the ALSTOM Unit 2 Settlement**
18 **Agreement?**

19 **A:** Under the ALSTOM Settlement Agreement, KCP&L was able to secure the following
20 protections from ALSTOM:

21 [REDACTED]** [REDACTED]
22 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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[REDACTED]
• [REDACTED]
[REDACTED]
[REDACTED]**

10 **Q: Do you believe the ALSTOM Unit 2 Settlement Agreement, including the incentive**
11 **payments were reasonable and prudent in light of the circumstances?**

12 **A: Yes.**

13 **STAFF’S DISALLOWANCE FOR SCHIFF HARDIN’S FEES**

14 **Q: Have you reviewed Staff’s analysis of Schiff Hardin’s fees that is on pp. 65-89 of**
15 **Staff’s Report?**

16 **A: Yes.**

17 **Q: Do you agree with Staff’s analysis of Schiff Hardin’s fees?**

18 **A: No. I do not agree with Staff’s analysis. First, Staff made the determination that “80**
19 **percent of the work performed by Schiff employees were related to construction project**
20 **management, including project controls. The remaining 20 percent related to legal and**
21 **paralegal services.” See Staff’s Report on p. 82. Staff says it came to this conclusion**
22 **based upon a description of Schiff’s services provided by Mr. Downey in his Direct**
23 **Testimony and by descriptions provided in Schiff’s invoices. However, Staff does not**

1 identify which activities performed by Schiff Hardin they consider to be “project
2 management” versus “legal” services. Second, Schiff Hardin’s primary responsibilities
3 on the Iatan Project were for oversight and legal services, not project management. Most
4 of the oversight services that I am confident Staff considers to be “project management”
5 were performed by Schiff’s consultants and two Schiff employees—myself and Eric
6 Gould. The remaining lawyers and paralegals on my team primarily provided legal
7 services to the Project. As a result, any deductions made on services provided by our
8 lawyers and paralegals on the basis that they are performing “project management”
9 services is wholly inappropriate. Finally, oversight is not “project management,” and
10 therefore, it is inappropriate for Staff to apply project management rates to any of the
11 individuals performing oversight. Oversight is a highly specialized field that combines
12 construction expertise with legal counsel and corporate governance principles. On a
13 complex project such as Iatan, an oversight team must include individuals with a wide
14 array of experience and a greater understanding of industry best practices than is typically
15 found in construction management personnel.

16 **FAST TRACK**

17 **Q: In the fall of 2005, did you advise senior management of KCPL with respect to how**
18 **they could meet the schedule contemplated by the Stipulation?**

19 A: Yes.

20 **Q: What was your advice?**

21 A: We advised senior management that the best, and probably the only, opportunity for
22 meeting the Iatan Project’s in-service dates was to proceed on a “fast-track” basis,
23 meaning that procurement and construction work should begin before all of the design

1 work was complete. At the time of the decision, Schiff and Burns & McDonnell both
2 advised senior management that it is typical in the industry for such procurements to be
3 made on an EPC basis. We believed that contracting in this manner with an original
4 equipment manufacturer (“OEM”) such as ALSTOM would allow KCP&L to offset the
5 risk of engineering because a large OEM was also willing to accept strict performance
6 requirements. As of that time, we advised KCP&L that it was possible to meet the in-
7 service dates for the Iatan Project, though KCP&L’s senior management needed to make
8 several key decisions fairly quickly.

9 **Q: Can you provide an example of what “fast-track” construction means?**

10 A: Yes. Some form of fast-tracking is used with great success on virtually every large and
11 mega-project constructed in the world today. An example of a portion of the Iatan
12 Project that was fast-tracked with great success was the design and installation of the
13 underground ductbanks that run in virtually every direction beneath the footprint of Iatan
14 Unit 2. Burns & McDonnell expedited this design so that the large concrete imbeds that
15 hold underground electrical cables could be poured and the earth could be restored before
16 the rest of the contractors mobilized on site. Had KCP&L waited until all of the
17 electrical design was completed to release this work, the site would have been carved up
18 and in turmoil during the most intricate part of the construction period. Instead, KCP&L
19 was able to complete this work on fast-track basis well in advance of the other major
20 contractors’ mobilization on site.

21 **Q: With the example you just used, how would Burns & McDonnell know what to**
22 **design for the electrical ductbanks when they didn’t have the rest of the design**
23 **done?**

1 A: Burns & McDonnell used a combination of their knowledge of typical designs from other
2 plants and specific design information that had been provided by ALSTOM and bidders
3 of other work to identify the electrical needs and sized the ductbanks appropriately.

4 **Q: Did KCP&L pay a premium for the fast-tracking of the electrical ductbanks?**

5 A: No, in fact, just the opposite occurred. Had KCP&L not fast-tracked this and many other
6 phases of the work, the Project's schedule would have been constantly disrupted and
7 costs would have certainly exploded.

8 **Q: Was it prudent for KCP&L to proceed with the Iatan Project on a fast-track basis?**

9 A: Yes. KCP&L made the best decision based upon the information available to it at the
10 time. The only way for KCP&L to meet the June 1, 2010 in-service date was to proceed
11 on a fast-track basis, without a full-wrap EPC contractor. In my Direct Testimony, I
12 discuss at length the overheated utility construction market that existed at that time. That
13 market data was indicating that the construction market was tight and only going to get
14 tighter, meaning that costs were escalating significantly for virtually every component of
15 a new power plant. KCP&L needed to begin procurement and securing contractors
16 immediately as a cost-control measure.

17 **Q: Do you believe that the Iatan Projects incurred avoidable costs because of KCP&L's**
18 **decision to proceed on a fast-track basis?**

19 A: There has been no evidence that is the case, and as the example I provided shows, it is
20 quite likely that the Iatan Project would have been much more expensive. Much of the
21 cost increases have incurred due to design maturation. Company witness Mr. Meyer
22 explained in his Direct Testimony the concept of design maturation. (Meyer Direct
23 Testimony at p. 26-27). Design maturation as it relates to cost estimates means that

1 where cost estimates are based upon a very preliminary design, it is necessary to make
2 certain assumptions as to what is going to be in the final design, and those assumptions
3 are subject to broad variation. As the design is being completed, those assumptions
4 ultimately may or may not hold true. As the final design is completed, the cost estimates
5 will begin to reflect the actual design rather than the original assumptions. The fact that
6 the original cost estimate did not contain every single design element is not imprudent.
7 The real question is this: if the final design had been complete prior to the first estimate,
8 what would the cost of the plant have been? If there were costs that would have been the
9 same, there would be no argument that KCP&L's imprudent actions caused the price of
10 the Project to increase.

11 **Q: Can you give an example of this?**

12 A: The increased cost of the turbine building is a very good example. Prior to publishing the
13 Control Budget Estimate, in December 2006, KCP&L discovered that Burns &
14 McDonnell's current design of the turbine generator building was significantly different,
15 i.e., much larger, than the design that the was imbedded in the estimate as it existed in
16 October 2006. As we stated in our November 1, 2006 Schiff Report ** [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] ***) See November 1, 2006 Schiff Report attached as Schedule KMR2010-13

23 at p. 11. As a result, I agree that the costs of more steel, concrete and other commodities

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1 needed to be added to the estimate. However, if Burns & McDonnell had performed
2 perfectly (i.e., included these necessary design elements in its previous estimate or in the
3 PDR estimate), those costs would have already been captured in the Project's estimated
4 costs. In other words, KCP&L's customers have not been harmed in any way by this
5 omission by Burns & McDonnell.

6 **Q: Is your argument legally supported?**

7 A: There is a concept in construction law called "betterment," also known as the "added first
8 benefit rule" or "added value" that I think is also applicable here. This is the idea that an
9 entity who provides cost estimates or pricing based upon a design that is either not
10 complete or is defective is not responsible for increased construction costs if those added
11 costs would have been incurred by the project had the design been perfect from the
12 outset. The basic principle of this rule is that a customer of construction services is not
13 really harmed because if an original estimate had been perfect from day one, it would
14 have always had to pay for certain omitted elements.

15 **Q: Do you have any other evidence regarding the increase in construction of new power
16 plants since you filed your Direct Testimony?**

17 A: Yes. The U.S. Energy Administration ("EIA") recently issued its yearly paper entitled
18 "Updated Capital Cost Estimates for Electricity Generation Plants," which I have
19 attached as Schedule KMR2010-14 and refer to as the "EIA Report." In this year's
20 edition of the EIA Report, the EIA notes that the "overnight capital cost estimates for
21 coal and nuclear power plants are 25 to 37 percent above" those in the prior year's
22 outlook. The EIA commissioned a study from R.W. Beck in which the base cost estimate
23 for a single Advanced Pulverized Coal Facility ("APC") with a nominal capacity of 650

1 MW was \$3,167/kw. (EIA Report, Section 3-3) The current projected cost of Iatan Unit
2 is \$2,297/kw. This data shows that KCP&L made a sound decision to enter the market
3 when it did and not be subjected to the ever-increasing prices of such projects.

4 **SCHIFF HARDIN'S CONSULTANT FEES**

5 **Q: Have you reviewed Staff's analysis of the fees charged by Schiff Hardin for its**
6 **consultants?**

7 A: Yes.

8 **Q: Do you agree with Staff's analysis of those consultant fees?**

9 A: No. Staff's analysis fails to take into consideration the significant experience and
10 industry-specific knowledge of Schiff's consultants and the fact that these consultants
11 were providing oversight services. Additionally, Staff's methodology for determining
12 which activities performed by Schiff employees were "project management" versus legal
13 is not clear. In general, all day-to-day oversight relating to project controls activities
14 were performed by the following individuals: Thomas Maiman, James Wilson, Daniel
15 Meyer, Joseph Byce, and Eric Gould. Their fees were reasonable in light of their
16 background and experience.

17 **Q: Please describe Thomas Maiman's relevant experience.**

18 A: Mr. Maiman's experience is well documented in Staff's Report. Mr. Maiman has over 40
19 years of experience with electrical utilities, including nuclear and fossil generating
20 facilities. He spent the bulk of his career at Commonwealth Edison Company
21 ("ComEd") before retiring from ComEd in 1997. During his time with ComEd, Mr.
22 Maiman served in a number of senior management positions including VP of Corporate
23 Engineering, VP of Fossil Plant Operations, VP and Manager of Engineering and

1 Construction for two nuclear stations, Senior VP of Commercial Operations, and
2 Executive VP and CNO of Nuclear Operations. In addition, Mr. Maiman has significant
3 practical experience. During his many years in this industry, Mr. Maiman was involved
4 in all aspects of the electrical utility industry including operations, maintenance and
5 construction of transmission, and distribution. He has overseen several large construction
6 projects including the construction of two nuclear facilities and participated in the
7 planning, engineering, construction and commissioning of multiple nuclear and fossil
8 plants.

9 After his retirement from ComEd, Mr. Maiman has provided oversight to multiple
10 utilities in the construction and rehabilitation of nuclear and fossil units, including Edison
11 Mission Energy, Constellation Energy and Ontario Power Generation (“OPG”). Mr.
12 Maiman was the Senior Project Advisor for the \$1 billion rehabilitation of OPG’s
13 Pickering Unit 1 nuclear station, during which time he advised the Senior Vice President
14 in charge of the project as well as the OPG project management staff. Mr. Maiman also
15 serves on the Board of Directors of a large, nationally known contractor engaged in
16 energy projects. Staff does not appear to dispute Mr. Maiman’s hourly rate or the
17 services he provided.

18 **Q: Please describe Jim Wilson’s role on the Iatan Projects and his relevant experience.**

19 A: Mr. Wilson brought 35 years of construction management and project scheduling
20 experience in the power and heavy construction industry to provide day-to-day project
21 controls advice regarding the Iatan Project’s schedules, the contractors’ planning and
22 productivity, and oversight of KCP&L’s earned value system. He helped KCP&L
23 develop and set up their procedures for monitoring the contractor’s progress and was

1 instrumental in identifying issues at several points during the Project. Mr. Wilson
2 actively monitors the day-to-day work on a project and brings keen insight to each project
3 in which he participates. Mr. Wilson is highly regarded for problem-solving. On the
4 Iatan Project, for example, he prepared over 150 unique analyses of the Project's
5 schedules and progress, some of which were one-time analyses and others that are
6 updated weekly, to help keep the project on track.

7 What distinguishes Mr. Wilson from a typical scheduler is his unique ability to
8 translate his analysis into tangible results for the project. Schedulers have a tendency to
9 rely too heavily on their computer programs and databases and fail to interact with
10 engineering, procurement, and the construction team in the field. Mr. Wilson drills down
11 on issues and creates work product that is tailored to that issue, so that he is better able to
12 understand the real world problems and formulate and propose to the management team
13 effective solutions.

14 Mr. Wilson also has long experience presenting to Board of Directors,
15 government officials, arbitration panels, mediators, judges and other triers of fact and has
16 a proven track record of taking complex problems in the field and making them appear
17 straight-forward so that individuals without heavy construction experience can grasp the
18 risks and problems he highlights. On the Iatan Project, Mr. Wilson presented his and the
19 Schiff Hardin team's analysis of the Project schedules to Senior Management on a
20 regular basis, both at the Executive Oversight Committee ("EOC") meetings and in
21 weekly meetings with a smaller, more focused management team. Mr. Wilson was a
22 daily resource on the project site by all members of the project management team.

1 Mr. Wilson was instrumental on the Iatan Project in developing a strategic
2 schedule for both units (Schedule CBG2010-5) and tracking the progress to that schedule.
3 The strategic schedule establishes major milestones for the project from start to finish and
4 identifies what has to occur, what can occur concurrently, and the critical path. Using
5 this analysis, Mr. Wilson was able to recommend a five-year strategic plan for the Iatan
6 Project that provided management with confidence and informational perspective for its
7 decision-making.

8 Mr. Wilson was also effective during the bidding stage and contract negotiations.
9 Mr. Wilson was instrumental in providing the negotiating teams for KCP&L with the
10 necessary information at the bid/negotiation phase regarding the sufficiency in the
11 contractors' proposed plans and project controls regimes. He documents contractors'
12 commitments and has devised analyses that hold them accountable for their performance.

13 With respect to his experience, Mr. Wilson actually helped to build Iatan Unit 1 in
14 the 1970's. Mr. Wilson worked for Daniel International Construction Co., the general
15 contractor for the original construction of Iatan Unit 1, from 1975-1979, during the full
16 construction period of Unit 1, from survey through initial start-up; he was one of the first
17 Daniel employees on-site and one of the last to leave. He worked on the engineering,
18 project controls, scheduling and cost engineering (earned value approach) for Unit 1.
19 This is only one example of Mr. Wilson's relevant experience, and it demonstrates his
20 knowledge and experience with this particular site. Mr. Wilson has spent the rest of his
21 career working on scheduling and cost engineering, both of which fall under the umbrella
22 of project controls. The breadth of his experience is further detailed in his resume,
23 Schedule KMR2010-1.

1 **Q: What is Mr. Wilson's hourly rate?**

2 A: Mr. Wilson's hourly rate on the Project has ranged from ** [REDACTED] ** dollars per
3 hour.

4 **Q: Please describe Daniel Meyer's relevant experience.**

5 A: Mr. Meyer provides his experience in his Direct Testimony in this case and his prior
6 Direct and Rebuttal Testimony in Docket No. ER-2009-0089 ("0089 Docket"). In those
7 filings, he has discussed his five decades of experience in the heavy construction
8 industry. His contractor experience ranges from and includes ditch-digger, foreman,
9 superintendent, cost engineer, scheduler and project manager to business unit division
10 manager, Vice President of multiple business units, Group Vice-President, and General
11 Vice-President. He served in these capacities on all types of heavy, power plant and
12 marine construction projects ranging in size from \$500,000 to \$6 billion. He has had
13 bottom-line business unit responsibility, performed cost and schedule analysis and
14 management, and/or presided over dispute resolution matters from 1960 to 1990. He has
15 managed and overseen executive-level divisions for some of the most renowned
16 contractors in the world and has served on over seventy Dispute Review Boards
17 ("DRBs") on major infrastructure projects across the North America. Mr. Meyer was not
18 just another consultant sitting on the bench. He was responsible for making the projects
19 happen. Simply stated, he knows what the work is, how it is done, and how costs are
20 influenced by issues such as those at Iatan. He knows and understands real power plant
21 construction issues, including those at Iatan, and how to root-out the problems.

22 Mr. Meyer's consulting experience includes general management review and
23 evaluation, costs and cost systems evaluations and operations, and scheduling including

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1 resource-loaded computerized scheduling systems and evaluations, and dispute
2 resolution. When he serves on DRBs (seventy each, involving a total of approximately
3 \$15 billion of work), cost and scheduling responsibility for various project events is
4 evaluated, determined, quantified and apportioned to various project parties based on the
5 records and industry norms. Mr. Meyer's DRB experience is particularly invaluable with
6 respect to his industry perspective on project management, including project controls
7 procedures dealing with cost and schedule management. He is also tasked with making
8 decisions similar to the one the Commission is faced with here, in deciding who is
9 responsible for bearing the responsibility for cost variances.

10 Mr. Meyer's specific responsibilities on the Iatan project included vetting of the
11 following: various renditions of Burns and McDonnell legacy-type cost estimates, the,
12 Control Budget Estimate (CBE), actual costs, cost projections—otherwise referred to as
13 “re-forecasts” (one at Unit 1 and four at Unit 2), cost impacts emanating from various
14 schedule analysis and considerations, and analysis of certain vendor impact claims
15 (ALSTOM, Kiewit and others). He also participated in various risk analyses and the
16 evaluation and/or determination of the associated cost impacts.

17 Mr. Meyer is particularly well-qualified to perform these analyses. In addition to
18 what I stated above, Mr. Meyer's experience can be summarized as follows:

19 His first experience with cost, cost analysis and control, cost documentation and
20 cost projection issues was in 1960 while working on a large highway project in Ohio.
21 That was fifty years ago and he has been working with cost issues since then, both as a
22 construction executive in charge of large, heavy and power plant projects and then, for
23 the last 20 years, as a cost consultant in the same arena.

1 His first job out of college was in labor control and cost estimating for a
2 powerhouse project in western Massachusetts (Northfield Mountain). Since that time, he
3 has prepared and have been responsible for preparation of hundreds of cost estimates for
4 heavy construction projects. Some of those estimates have been for power plant projects
5 such as Iatan; Brandon Shores; Ontario Power Generation – Pickering; Northeast Utilities
6 – Seabrook; Greenfield Mountain; Vermont Yankee; Main Yankee; OK Tedi - Papua
7 New Guinea; Basalt Waste Isolation project; Midwesco Energy wood fired power plants
8 and others.

9 In his career, he has been responsible for the actual construction of many power
10 plant projects including: Northeast Utilities – Seabrook; Greenfield Mountain; Vermont
11 Yankee; Main Yankee; OK Tedi - Papua New Guinea; Basalt Waste Isolation project;
12 Midwesco Energy wood fired power plants and others. Because of that experience, he
13 knows issues, including those of management, scheduling, labor productivity, responsible
14 use of contract incentives, cost and cost documentation and the like.

15 In 1999 and again in 2006, he authored chapters on Delay, Disruption and
16 Damage Calculation for the Illinois Institute for Continuing Legal Education. In 2003, he
17 also authored a chapter addressing delay and disruption in Aspen Publishers' *Illinois*
18 *Construction Law*. Many of the issues that were the subject of the above are in play at
19 Iatan.

20 Mr. Meyer works with an associate, Joseph Byce. Mr. Byce has forty years of
21 experience in the field. He has served as a cost engineer, project engineer, project
22 manager and senior executive on a variety of construction projects, including large-scale
23 construction projects for electrical utilities. As a result, he has significant experience in

1 both performing the actual cost forecasts and analyzing and approving them for senior
2 management. His experience enables him to analyze and identify cost variances quickly,
3 as well as identify effective means to mitigate the problems.

4 Together, Mr. Meyer and Mr. Byce bring both managerial and operational
5 experience to the table. They know where to look for problems and identify weaknesses.
6 They provide management with trending data that enables management to make well-
7 informed, timely decisions on the direction of the project.

8 **Q: What is Mr. Meyer's and Mr. Byce's hourly rates?**

9 A: Mr. Meyer's hourly rate has ranged from ** [REDACTED] ** and Mr. Byce's hourly rate is
10 ** [REDACTED] **

11 **Q: Please describe Eric Gould's relevant experience.**

12 A: Eric Gould is a Senior Project Controls Analyst in Schiff Hardin's Energy Construction
13 Group. Since 1986, Mr. Gould has focused on project controls and oversight of complex,
14 multi-year construction projects as well as claims avoidance and alternative dispute
15 resolution on behalf of owners and developers, contractors, governmental entities, and
16 design professionals. Mr. Gould's range of experience includes matters involving
17 upgrades and rebuilding of nuclear and fossil power plants, new fossil plant generation,
18 alternative energy facilities, co-generation facilities, industrial facilities, commercial
19 facilities, sewage treatment plants, sports stadia, ship construction and hospitals. In all,
20 Mr. Gould has been involved with tracking and consulting in the planning, development,
21 procurement, construction, rehabilitation and claims resolution of plants with capacity
22 over 14,000 MW of electric power in North America.

1 With respect to project controls and risk assessments, specifically, Mr. Gould has
2 worked with Schiff's Energy Construction Group's clients, attorneys and consultants in
3 developing project controls methods and metrics for tracking project' budgets and
4 schedules, reports regarding project lessons learned, risk analysis/mitigation, project
5 contingency review and claims avoidance. He has extensive experience assisting clients
6 on complex construction projects regarding identifying and quantifying changes in scope,
7 delay impacts and cost variances. Mr. Gould works closely with client representatives,
8 scheduling experts, cost estimators, cost accountants, damage experts, construction
9 managers, architects, engineers and other technical consultants to analyze and assess the
10 factual and budgetary status of such projects. In doing so, Mr. Gould has developed
11 extensive knowledge of all phases of the design and construction process.

12 Mr. Gould has also developed risk and lessons learned analyses and evaluation of
13 projects in conjunction with industry best practices. Mr. Gould also has extensive
14 experience in assisting in the vetting of contractors' bid proposals including project
15 estimates and schedules and compliance issues, and has participated with the Energy
16 Construction Group's attorneys in negotiation of contracts for large construction projects
17 relating to scope, budget, schedule, project controls and contract administration issues.

18 Mr. Gould has assisted in the development of reports of project progress to the
19 Energy Construction Group's clients' senior management and Boards of Directors.
20 These reports document the status of the project's work, highlight risks and concerns and
21 provide mitigation strategies. Mr. Gould works daily with technical consultants to
22 evaluate and report on mitigation and avoidance of critical problems and report on such

1 problems in a cogent manner. Mr. Gould also works closely with the client's project
2 management teams to properly document issues and project progress.

3 Mr. Gould has spent over five years on nearly a daily basis on the Iatan Project,
4 during which he has provided oversight of the day-to-day workings of the projects and
5 helped KCP&L's management understand and mitigate risks.

6 **Q: What is Mr. Gould's hourly rate?**

7 A: Mr. Gould's rate on the Project has ranged from ** [REDACTED] ** per hour.

8 **STAFF'S DEDUCTIONS REGARDING SCHIFF'S LEGAL SERVICES**

9 **Q: If the Commission finds that your hourly rate is higher than the standard hourly**
10 **rate for a construction lawyer based on the Laffey Matrix, Kansas City law firms or**
11 **otherwise, please describe your skills and experience that would justify a higher**
12 **hourly rate.**

13 A: As I stated in my Direct Testimony, my legal practice is concentrated in the field of
14 construction law, procurement, Project Controls and corporate governance in which I
15 provide independent "eyes and ears" to corporate boards and senior management,
16 particularly on behalf of owners in the energy industry, as to the status of large capital
17 improvement projects. I have handled matters in Brazil, Canada, Texas, Missouri,
18 Kansas, New Jersey, Nevada, Pennsylvania, Massachusetts, Maryland, Alaska, Florida,
19 Illinois, Indiana, and Ohio. I engage in a range of services from preparation and
20 negotiation of contracts, project controls monitoring and advice during on-going projects,
21 negotiation of change orders and contract additions, alternative dispute resolution through
22 mediation and arbitration, and when necessary, litigation.

1 I also consult on a daily and ongoing basis with energy companies' procurement
2 and risk management departments concerning every aspect of planned or ongoing
3 construction projects and outages. The work I have performed for energy companies
4 involves all elements of power plant construction and technology, including construction
5 of air quality control systems ("AQCS"), low NOx burners, heat recovery steam
6 generators ("HRSG"s), selective catalyst reduction ("SCR") systems, precipitators,
7 nuclear waste disposal and storage, coal handling systems, steam generators, gas and
8 steam turbines, boilers, control systems, and other operational and environmental
9 equipment.

10 I also have an extensive background of representing owners, contractors and
11 architect/engineers in multi-faceted, complex disputes involving: delays, disruption and
12 losses of efficiency; breaches of contracts for performance, scope of work and payment;
13 and complex multi-party insurance coverage issues. I work with and manage a team that
14 has extensive experience providing project controls (for tracking budget and schedule)
15 for owners and architect/engineers on a national basis and work daily with the owner's
16 project managers at the construction site. I believe we have a very unique practice with a
17 specialized skill set that justifies a higher hourly rate.

18 **Q: Are there any other unique circumstances that the Commission should consider?**

19 A: Yes. The Commission should also consider the significant personal sacrifice that our
20 attorneys, consultants, paralegals and clerks make with respect to the Iatan Project. As

21 Mr. Riggins noted in response to Keith Majors Data Request No. 852:

22 *The drivers that support the increases in Schiff Hardin's billing rates*
23 *include personal sacrifice, superior performance, and change in status.*
24 *Schiff Hardin's personnel are imbedded in the Iatan construction projects.*
25 *They have offices at the construction site and respond to commercial and*

1 *project control issues on a real time basis. They consistently work 12 to*
2 *15 hours per day. During the course of the Iatan construction project and*
3 *at a significant cost to their personal lives, Schiff Hardin's employees*
4 *have worked at the construction site, away from their families four to five*
5 *days per week. The increases in billing rates reflect Schiff Hardin's*
6 *unusual integration of project controls expertise with construction law*
7 *experience. Some increases also reflect changes in status of personnel*
8 *who have received a promotion. For example, the billing rate for the year*
9 *following Attorney Carrie Okizaki's promotion from associate to partner*
10 *takes into account her change in status.*

11 It is important to note that based upon a request by KCP&L, Schiff has agreed not to
12 increase its billing rates for the Iatan Project from 2009 until its completion. In addition,
13 despite the extensive hours our team has spent traveling to and from Kansas City over the
14 last five-plus years, Schiff Hardin does not bill KCP&L for its travel time.

15 **SCHIFF'S RESEARCH IN SUPPORT OF ITS LEGAL FEES**

16 **Q: Do you believe that Schiff's hourly rates for legal services on the Iatan project were**
17 **reasonable?**

18 A: Yes.

19 **Q: What is the basis for your opinion that Schiff's hourly rates for legal services on the**
20 **Iatan project were reasonable?**

21 A: My opinion is based on market data that is provided to me as a member of Schiff
22 Hardin's Executive Committee for purposes of guiding the Committee's decision in
23 setting hourly rates. I am providing two examples of the data that I have received
24 regarding rates.

25 The first is from a report prepared for Schiff Hardin by Price Waterhouse Coopers
26 in May 2010. *See* Schedule KMR2010-15. Like the Laffey Matrix, which is discussed in
27 detail by Company witness Curtis Blanc, it shows an hourly rate based on years of
28 experience as of a given year (in this instance, 2010). Unlike the Laffey Matrix,

1 however, this data reflects the Chicago market rather than the Washington, D.C. market,
2 and this data is intended to reflect the rates of attorneys across disciplines, not just federal
3 court attorneys litigating cases that involved fee-shirting statutes. As you will note,
4 Schiff's rates are less than or equal to the median in virtually every category, and in no
5 event do they exceed the amount charged by comparable firms in the first quartile.

6 I am also providing the Commission with an excerpt from a report dated
7 September 2010 prepared by Citi Private Bank. *See* Schedule KMR2010-16. That report
8 shows that Schiff's average billing rates for its associates, income partners and equity
9 partners is less than the average billing rates of its primary peers in each category. In
10 fact, the report demonstrates that the gap between Schiff and its primary peers for partner
11 work actually widened from 2008 to 2009. In other words, Schiff's rates for partner
12 work actually fell further behind the increases to partner rates at other firms.

13 These two reports provide objective data that demonstrates that Schiff's hourly
14 rates fall well within the prevailing market rates. They demonstrate that Schiff's hourly
15 rates are objectively reasonable, without adjusting for special skills or experience that
16 would justify a higher hourly rate in light of the unique legal needs of a project as large
17 and complex as the Iatan Project.

18 **Q: Did you request these reports solely for purposes of your testimony before the**
19 **Commission?**

20 A: No. As I noted earlier, these reports were requested by my firm as a part of its due
21 diligence in setting its fee structure and provided copies to me in my capacity as a
22 member of the firm's Executive Committee. They were not requested or generated for
23 purposes of this proceeding or my testimony before the Commission.

1 Q: **Does that conclude your testimony?**

2 A: Yes, it does.

