

**CONSTRUCTION AUDIT AND PRUDENCE REVIEW**

**IATAN 1 ENVIRONMENTAL UPGRADES (AQCS)**

**FOR COSTS REPORTED AS OF  
APRIL 30, 2010**

**MISSOURI PUBLIC SERVICE COMMISSION  
STAFF REPORT**

**FILE NO. ER-2010-0355**

**AND**

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



*Jefferson City, Missouri  
August 6, 2010*

**\*\*Denotes Highly Confidential Information\*\***

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1 **I. Executive Summary**

2 *Staff Expert: Robert E. Schallenberg*

3 This Report is the third Report the Staff of the Missouri Public Service Commission (Staff)  
4 files regarding the Iatan 1 AQCS costs unless specifically ordered to do otherwise. Staff is  
5 currently involved in the audits of eight (8) construction projects. These projects are Iatan 1  
6 AQCS, Iatan 2 and Iatan Common Plant, Plum Point, Jeffrey 1-3 Flue Gas  
7 Desulphurization (FGD) Rebuild, Sibley 3 Selective Catalytic Reduction (SCR) equipment,  
8 Taum Sauk Rebuild, Sioux Wet Flue Gas Desulphurization (WFGD), and Spearville Wind 2  
9 addition. Staff adjusted its work activity from the other construction projects to complete this  
10 audit report by the time frame specified in the Missouri Public Service Commission's  
11 (Commission) July 7, 2010 Order.

12 In its Order Regarding Construction and Prudence Audits dated July 7, 2010, the  
13 Commission ordered the Staff to complete and file no later than August 6, 2010 all audit activity,  
14 of any type, associated with the environmental upgrades to Iatan 1 (Iatan 1 AQCS). This report is  
15 filed to comply with this Commission directive. This Report is an update of the portion of the  
16 Iatan Staff Report filed on December 31, 2009 in Case No. ER-2009-0089 and Case No.  
17 ER-2009-0090 related to the Iatan 1 AQCS segment of the overall Iatan Project and the Iatan  
18 Project Common Plant needed to operate Iatan 1. The Commission's July 7, 2010 Order  
19 specified that Iatan Common Plant including the Common Plant needed to operate Iatan 1 is to  
20 be addressed in conjunction with the Iatan 2 generating facilities addition which Staff's expects  
21 to be addressed in two (2) future filings. Staff expects these filings to be made on November 3,  
22 2010 and January 30, 2011.

23 The objective for the audit addressed in this Report was to determine whether the  
24 Iatan Project costs for the Iatan 1 AQCS segment contain unreasonable, imprudent,  
25 inappropriate, or charges not of benefit to ratepayers. Costs that are unreasonable, the result of  
26 imprudent decisions or actions, are inappropriate. Charges not related to the building of the  
27 Iatan 1 AQCS segment physical facilities are not appropriately charged or assigned to Iatan 1  
28 AQCS. The scope of the audit was influenced by prior information, preliminary tests, risk  
29 assessment, and internal control evaluation in addition to audit parameters specified in  
30 Commission orders. It is impractical to examine every charge relative to an endeavor as large as  
31 the Iatan Project or the Iatan 1 AQCS segment. The Commission's July 7, 2010 order caused up

1 to approximately <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> dollars<sup>1</sup> not to be subject to audit. Staff used an April 30, 2010  
 2 cutoff of costs for its audit. Staff received this information on July 15, 2010 for this audit Report.  
 3 The April 30, 2010 date allowed Kansas City Power & Light Company (KCPL or KCP&L)  
 4 approximately a year to complete its financial activity relative the Iatan 1 AQCS equipment. The  
 5 Iatan 1 AQCS was placed in service April 19, 2009 as fully operational and used for service.

6 Staff's audit found multiple items charged to Iatan 1 AQCS segment of the Iatan Project that  
 7 should be removed from consideration of the amount of the Iatan 1 AQCS segment that should  
 8 be included in KCP&L's and Greater Missouri Operations Company (GMO) Missouri  
 9 jurisdictional rate bases. The following chart lists the Staff Adjustments representing  
 10 disallowance of the Iatan 1 AQCS costs incurred by KCPL and also allocated to joint partners.  
 11 Company specific Allowance for Funds Used During Construction (AFUDC) is also listed:

	Total Project	KCPL AFUDC	GMO AFUDC	
Total Project Costs Subject To Joint Partner Allocation at 4/30/2010	** [REDACTED]	** [REDACTED]		
Less Accruals and Retention	** [REDACTED]	** [REDACTED]		
Less Common Plant	** [REDACTED]	** [REDACTED]		
Actual Iatan 1 Costs Subject To Joint Partner Allocation at 4/30/2010	** [REDACTED]	** [REDACTED]		
AFUDC, Company Specific		** [REDACTED]	[REDACTED]	**
<b>Staff Adjustments</b>				
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	**
<b>Total Project Adjustments</b>	** \$ [REDACTED]	** \$ [REDACTED]	** \$ [REDACTED]	**



1 Some of Staff's adjustments are not disallowances, but instead are transfers of Iatan 1 AQCS  
 2 costs to other areas of the Iatan Project where the decision regarding the appropriateness of  
 3 charge is outside the scope of this audit and is subject to a different allocation factor to determine  
 4 the amount related to Missouri's jurisdictional operations. The transfer amounts will be  
 5 addressed in the Iatan 2 and Common Plant Report. The following chart lists the Staff's  
 6 adjustments that transfer Iatan 1 AQCS costs to other areas of the Iatan Project:

Staff Transfers	Total Project	KCPL AFUDC	GMO AFUDC
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total Project Transfers</b>	<b>\$** [REDACTED]</b>	<b>\$** [REDACTED]</b>	<b>\$** [REDACTED]</b>

7  
 8 The following chart is a summary of Staff's transfers and adjustments:

Total Project Adjustments and Transfers	Total Project	**KCPL AFUDC	**GMO AFUDC
** [REDACTED]	** [REDACTED]	** [REDACTED]	** [REDACTED]
** [REDACTED]	** [REDACTED]	** [REDACTED]	** [REDACTED]
** [REDACTED]	** [REDACTED]	** [REDACTED]	** [REDACTED]

15 The following chart lists the Staff's adjustments to KCPL only Iatan 1 costs:

KCPL Only Costs	Total KCPL	KCPL AFUDC
** [REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]
** [REDACTED]	[REDACTED]	[REDACTED]
<b>Net KCPL Only Costs Costs, 4/30/2010</b>	<b>\$** [REDACTED]</b>	<b>\$** [REDACTED]</b>

1 The Iatan 1 AQCS experienced significant cost overruns from the Definitive Estimate basis  
2 established in the KCPL Regulatory Plan. These overruns amount to approximately [REDACTED]\*\*  
3 by April 30, 2010. The amount of overruns will continue to grow until the Iatan 1 AQCS  
4 segment is closed and reflect final costs. Cost overruns subsequent to April 30, 2010 are beyond  
5 the scope of Staff's audit. The continued growth of costs overruns will not be addressed by Staff  
6 except for the known issue related to permanent auxiliary boilers issue discussed in detail in  
7 Section III.T, Permanent Auxiliary Boiler.

8 Iatan 1 AQCS costs are not complete and closed even though the equipment has been  
9 completed and has been in service for over a year. Current information would indicate that  
10 approximately [REDACTED]\*\* will be beyond the scope of this audit. <sup>ii</sup>

## 11 **II. Audit Objectives, Risk Assessment, Audit Scope and Audit Activities**

12 *Staff Expert: Robert E. Schallenberg*

### 13 **Introduction**

14 The Commission directed in Ordered item 8 of its July 7 Order that “[a]ll audit activity, of  
15 any type, associated with the environmental upgrades to Iatan 1, if not already filed, shall be  
16 completed and filed no later than August 6, 2010.” Thus the following Staff audit objectives,  
17 risk assessment, and scope are designed to comply with the Commission’s order.

#### 18 **A. General Description of Iatan 1 AQCS Costs**

19 *Staff Expert: Robert E. Schallenberg*

20 Iatan Unit 1 Electric Generating Station (Iatan 1) is a 670 megawatt (MW) pulverized  
21 coal-fired power generating facility located near Weston, Missouri. As part of the  
22 Iatan Construction Project (Iatan Project) and Comprehensive Energy Plan (CEP), KCPL  
23 retrofitted Iatan 1 with Selective Catalytic Reduction (SCR), Fabric Filters (FF), and wet Flue  
24 Gas Desulphurization (FGD) systems referred to as Air Quality Control System (AQCS). The  
25 AQCS construction was completed on February 2, 2009 and placed in service April 19, 2009.  
26 During the overhaul to place AQCS into service, other equipment including new Low NOx  
27 Burners and Over-Fire Air System, Bottom Ash Chain Conveyor Systems, new Digital Control  
28 System (DCS) and new economizer were installed. The Iatan Project also includes the

1 construction of a new 850MW coal-fired steam electric generating facility (Iatan 2) with  
2 upgrades to common facilities at the site for operation of both units.

3 Thus the Iatan Project consists of the Iatan 1 AQCS and Iatan 2 segments. The  
4 Common Plant additions and modifications to the Iatan site are contained partially in the budgets  
5 of the Iatan 1 AQCS and Iatan 2 segments. The Iatan 1 AQCS segment is an integrated  
6 component of the Iatan Project. The Iatan Project costs were reported as two segments,  
7 Iatan 1 AQCS and Iatan 2. Portions of the plant common to both segments were included in the  
8 Iatan 1 AQCS and Iatan 2 budgets. The Commission's July 7, 2010 Order has identified  
9 three (3) components of the Iatan Project to be addressed by its Staff audit activities.

10 The three Iatan Project components are:

11 **Iatan 1 AQCS** This segment is related to costs that are solely related to the  
12 operation of the Iatan 1 generating unit.

13 **Common Plant** This segment is related to the Iatan Project costs that are related to  
14 the operation of both Iatan 1 and 2.

15 **Iatan 2** This segment is related to costs that are solely related to the operation of  
16 the Iatan 2 generating unit. This generating unit is not yet fully operational and used for  
17 service at the time of this Report.

18 These three segments are not distinguishable from each other on an actual cost basis. <sup>\*\*</sup> [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 <sup>\*\*</sup> [REDACTED] In addition, actual costs incurred were not invoiced or recorded in a  
22 manner that allowed for the recognition of the Iatan Project's actual expenditures related to each  
23 of these three segments

24 This Report covers Staff's audit of the actual costs of the Iatan 1 AQCS segment as of  
25 April 30, 2010.

26 **B. Prudence**

27 *Staff Expert: Steve Dottheim*

28 A definition of prudence is needed for the prudence element of Staff's prudence review since  
29 the objective audit/review is to determine whether the Iatan 1 AQCS segment contains any



1 inappropriate charges, including costs related to imprudent actions or decisions. This section  
2 reflects the Staff's view of the appropriate approach to this matter and burden of proof.

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

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

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

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

17 With respect to prudence, this Commission assumes utilities act prudently until that assumption  
18 is challenged. In its *Report and Order in Re Union Electric Co.*, Case Nos. EO-85-17, et al.,  
19 27 Mo.P.S.C.(N.S.) 183, 192-93 (1985), the Commission agreed with the following conclusions  
20 of the Washington, D.C. Circuit Court of Appeals in *Anaheim, Riverside, Banning, et al. v.*  
21 *FERC*, 669 F.2d 799, 809 (D.C. Cir. 1981):

22 The Federal Power Act imposes on the Company the "burden of proof to  
23 show that the increased rate of charge is just and reasonable." 16 U.S.C.  
24 s 824d(e). Edison relies on Supreme Court precedent for the proposition  
25 that a utility's costs are presumed to be prudently incurred. *See Missouri ex*  
26 *rel. Southwestern Bell Telephone Co. v. Missouri Pub. Serv. Comm.*,  
27 262 U.S. 276, 289 n.1 (1923). However, the presumption does not survive  
28 "a showing of inefficiency or improvidence." *West Ohio Gas Co. v. Public*  
29 *Utilities Comm.*, 294 U.S. 63, 55 S.Ct. 316, 79 L.Ed. 761 (1935); see  
30 1 A.L.G. Priest, *Principles of Public Utility Regulation* 50-51 (1969). As  
31 the Commission has explained, "utilities seeking a rate increase are not  
32 required to demonstrate in their cases-in-chief that all expenditures were  
33 prudent.... However, where some other participant in the proceeding  
34 creates a serious doubt as to the prudence of an expenditure, then the  
35 applicant has the burden of dispelling these doubts and proving the  
36 questioned expenditure to have been prudent." Opinion No. 86, Minnesota

1 Power & Light Co. Opinion and Order on Rate Increase Filing, Docket  
2 No. ER76-827, at 14, 20Fed. Power Service 5-874, 5-887 (June 24, 1980)  
3 (footnotes omitted). . . .

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

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

24 . . . *Associated Natural Gas* was a ratemaking case initiated by the utility,  
25 seeking to pass on costs to its customers. *Id.* at 523. In such cases, the  
26 utility receives the benefit of the presumption of prudence with regard to  
27 its costs until a serious doubt is created with regard to the prudence of an  
28 expenditure. *Id.* at 528. When a serious doubt arises, the burden then  
29 shifts to the utility to prove prudence of the expenditure in order to  
30 succeed on its request to pass these costs on to its customers. *Id.*

31 116 S.W.3d at 693-94. Ultimately the Court held in *Associated Natural Gas* that "in order to  
32 disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that  
33 (1) the utility acted imprudently (2) such imprudence resulted in harm to the utility's ratepayers."  
34 954 S.W.2d at 529.

35 There is additional law pertinent to the issue of prudence, law addressing  
36 the burden of proof. The only reference to burden of proof in Chapter 386  
37 is in Section 386.430 RSMo 2000, which states that in all proceedings  
38 arising under the provisions of the Public Service Commission Law or

1 growing out of the exercise of the authority and powers granted therein to  
2 the Commission, the burden of proof is on any party adverse to the  
3 Commission or seeking to set aside any determination, requirement,  
4 direction or order of the Commission.

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

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

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

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

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

23 It may be argued that the party having the burden of proof must initially meet its burden of  
24 producing evidence sufficient to establish a prima facie case. *McCloskey v. Kopley*, 46 S.W.2d  
25 557, 563 (Mo. banc 1932); *Drysdale v. Estate of Drysdale*, 689 S.W.2d 67, 72 (Mo.App. 1985).  
26 It further may be argued that once a prima facie case has been established the burden of going  
27 forward with the evidence shifts to the adverse party. Nonetheless, even if the burden of going  
28 of forward with the evidence shifts, the burden of proof does not shift, absent a statutory  
29 provision to the contrary. Also, prima facie evidence does not require a verdict for the party  
30 whose contention it supports. *Dehner v. City of St. Louis*, 688 S.W.2d 15, 18 (Mo.App. 1985).<sup>iv</sup>  
31 *See State ex rel. Rice v. Public Serv. Comm'n*, 220 S.W.2d 61, 65 (Mo. banc 1949).

32 Regardless of any asserted applicability of the above cases to the Commission, case law in  
33 Missouri is clear that where the facts relating to an issue are peculiarly within the control or

1 knowledge of one party, the burden of production falls on that party. Possibly, the clearest  
2 statement of the law appears in *Robinson v. Benefit Ass'n of Ry. Employees*, 183 S.W.2d 407,  
3 412 (Mo.App. 1944):

4 “ . . . The general rule is well put by our Brother Graves in *Swinhart v.*  
5 *Railroad*, 207 Mo. loc. cit. [423] 434, 105 S.W. [1043], as follows: ‘From  
6 them all,’ said he (referring to the authorities in review) ‘it is deduced that  
7 generally the burden is upon the plaintiff to make out his case. That if in  
8 the statement of his case negative averments are required, and the proof of  
9 such negative averments is not peculiarly within the knowledge and power  
10 of the defendant, then plaintiff must affirmatively establish such negative  
11 averments, but if, on the other hand, the proof of such negative averments  
12 lies peculiarly within the knowledge or power of the defendant, then such  
13 negative averments will be taken as true unless the defendant speaks and  
14 disproves them. Of course, if the knowledge and power to produce the  
15 evidence is possessed equally, the plaintiff must make the proof.’”

16 *Cf. Kenton v. Massman Construction Co.*, 164 S.W.2d 349, 352 (Mo. 1942)(“A plaintiff  
17 asserting a negative generally has the burden of proof as to such matter along with the other  
18 issues on which he bases his case. But there appears to be an exception to this rule where the  
19 evidence on such a matter is peculiarly within the knowledge and control of the defendant.”);  
20 *Dwyer v. Busch Properties, Inc.*, 624 S.W.2d 848, 851 (Mo.banc 1982). This is a particularly  
21 appropriate rule in utility cases, since generally all of the facts and documents relevant to the  
22 issues are within the utility’s control. *See City of Eldorado v. Public Serv. Comm’n*, 362 S.W.2d  
23 680, 683-84 (Ark. 1962).

## 24 C. Engineering Review

25 *Staff Expert: David W. Elliott*

### 26 1. Scope

27 As part of a Staff Construction Audit, engineers in the Engineering Analysis Section of the  
28 Energy Department, Utility Operations Division, monitor the progress of the project during  
29 construction by making periodic field visits to the site. Field visits begin at the on-set of the  
30 construction and continue until a project is determined to meet criteria to be considered fully  
31 operational and useful for service. During a field visit, engineering staff meet with construction  
32 and company personnel to review the overall progress of construction, review documents related

1 to changes including changes in the schedule and costs, and receive updates of safety related  
2 aspects of the project. The engineers also review the change orders associated with the project.  
3 Change order reviews include the evaluation, from an engineering perspective, of the need for,  
4 scope and cost of the change order. If it is determined there are engineering concerns with a  
5 change order, the engineers would share this information with the auditing Staff and consult with  
6 Staff management to determine the appropriate response. In addition, the engineers work with  
7 auditing Staff on specific issues that are raised during the course of the construction audit to  
8 ensure that both an engineering and an auditing perspective are provided. The work performed  
9 by the engineers is sometimes referred to as a construction audit (although it is only a part of the  
10 Staff's Construction Audit), but should probably more accurately be referred to as an  
11 engineering review.

## 12 **2. Activities and Conclusions**

### 13 **Staff Engineering Review of Iatan 1 Air Quality Control System**

- 14 1. Staff visited the Iatan site eleven (11) times starting in June 2007. During these site visits  
15 staff toured the construction site, discussed construction progress and future milestones,  
16 and reviewed any relevant documentation. Occasionally Staff also attended progress  
17 meeting of multiple contractors and KCPL where scheduling issues, safety issues, and  
18 contractor interference issues were discussed.
- 19 2. Staff requested copies of all KCPL approved change orders with a value of \$50,000 or  
20 greater for the project. Staff received copies of 227 change orders in total. Of these  
21 change orders, 101 were determined to be non-engineering issues, such as insurance  
22 payments, site cleanup, labor rate revisions, etc. Staff reviewed 79 of the remaining  
23 126 change orders which represented approximately [REDACTED] or [REDACTED] of the total  
24 amount of 126 KCPL approved change orders.
- 25 3. Staff discussed with KCPL a majority of these change orders in order to better understand  
26 the reason for the change order. Reasons include design maturation, design changes,  
27 interference issues, and improved operation/maintenance.
- 28 4. Staff has determined there are no engineering issues regarding the change orders  
29 reviewed.

## 30 **D. Audit Objectives**

31 *Staff Expert: Robert E. Schallenberg*

- 32 1. Determine whether the Iatan 1 AQCS segment of the Iatan Project contains  
33 inappropriate charges. If inappropriate charges are found, then adjustments are to  
34 be developed to remove these costs from the Iatan 1 AQCS segment; and
- 35 2. Cease all audit activities relative to Iatan 1 AQCS costs by August 6, 2010.

1       **E. Risk Assessment**

2       *Staff Expert: Robert E. Schallenberg*

3       Staff determined the risk of inappropriate charges to the Iatan 1 AQCS Project segment was  
4 high based upon Staff's prior audit activities as discussed in Staff's December 31, 2009  
5 Audit Reports. Staff has found in its audit activities inappropriate charges that are discussed in  
6 the detailed findings portion of this Report. Most of the low dollar but highly inappropriate costs  
7 were charged by KCPL to the Iatan 2 and Common Plant segments of the Iatan Project and will  
8 be addressed in the audit report dealing with the audit of those segments.

9       Staff assessed that the risk that at least some of the cost overruns were the result of imprudent  
10 management was high after Staff discovered the project schedule was handicapped by KCPL's  
11 delay in hiring of a project manager, losing at least six (6) months of time needed to meet the  
12 June 1, 2010 CEP in-service date for Iatan 2, and KCPL's allowing a personnel matter to cause  
13 further delay placing the Iatan Project behind in both documentation and planning.

14       **F. Audit Scope**

15       *Staff Expert: Robert E. Schallenberg*

16       Staff's first step in determining the audit scope for this Report was to select a time period  
17 cutoff for the audit. To comply with the Commission's Order to complete the audit and file the  
18 audit report no later than August 6, 2010, the latest cost data available to Staff were costs  
19 through April 30, 2010. The Staff received this cost information from KCPL on July 15, 2010.  
20 The April 30, 2010 date would allow a one-year time period between the completion of the  
21 Iatan 1 AQCS segment and the cost cutoff related to this audit.

22       The Staff's August 6, 2010 Iatan 1 Report is based on updating the Staff's  
23 December 31, 2009 Reports with April 30, 2010 actual cost information. The Staff issued data  
24 requests to KCPL designed to identify any Staff adjustments proposed in the December 31, 2009  
25 Staff Iatan 1 AQCS and Iatan 1 Common Plant Reports that KCPL has recorded against the costs  
26 of Iatan 1 as of April 30, 2010 to determine whether all these items are at issue. KCPL's  
27 response to Staff Data Request No. 971 in File No. EO-2010-0259 indicated that no such  
28 adjustments had been made by KCPL. The Staff attempted to inquire as to the status of KCPL's  
29 position regarding items that the Staff identified as inappropriate charges. The Staff requested a

1 meeting with KCPL to inquire regarding the status of and KCPL's position regarding all other  
2 content of the December 31, 2009 Staff Reports. These inquiries were designed to explore  
3 KCPL's views on these matters to see if Staff had missed key points, whether there is any  
4 common ground for possible resolution or what issues do exist, and provide an opportunity to  
5 talk to KCPL regarding the Audit Reports. This activity also was designed to see if it might be  
6 possible to reduce the scope of work to complete an Audit Report for August 6, 2010. KCPL has  
7 never discussed the Staff's December 31, 2009 Report with Staff other than in the context of the  
8 depositions and hearings for File No. EO-2010-0259. KCPL initiated its issues with Staff's  
9 December 31, 2009 Reports without any benefit of discussion with Staff of KCPL's concerns.  
10 Staff used a formal Staff Data Request to hopefully increase the possibility that a meeting would  
11 occur, but KCPL's response to Staff Data Request No. 187 was:

12 KCPL is still evaluating this report, and expects to file its position in the  
13 Rebuttal Testimony in the pending KCPL rate case and therefore a  
14 meeting would not be helpful at this time.

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

19 Schedule 1 to this Report is a copy of Staff's Data Request No. 187 and KCPL's response.  
20 This response was unexpected since KCPL had made significant allegations regarding  
21 Staff's Report in its requested two (2) day hearing and briefs and other pleadings. KCPL has had  
22 Staff's Report for over six (6) months. Currently, KCPL will not discuss the December 31, 2009  
23 Report and this Report until December 2010 under the proposed procedural schedule in the  
24 current rate cases.

25 The Common Plant portion of the December 31, 2009 Staff Reports will be updated,  
26 transferred to, and addressed in the Staff's Iatan 2 and Common Plant Audit Reports to be filed  
27 based on the procedural schedule in File No. ER-2010-0355 and File No. ER-2010-0356 on  
28 November 3, 2010. The Staff will transfer any costs related to the Iatan 1 three (3) permanent  
29 auxiliary electric boilers matter from the Iatan 1 AQCS costs to the Iatan Project Common Plant  
30 segment. Detailed finding III. T. contains the discussion of this matter.

31 The Staff issued a data request to KCPL regarding the identification and explanation for the  
32 cost overruns for the Iatan 1 AQCS segment of the Iatan Project. KCPL's response was

1 evaluated by the Staff in conjunction with the Staff's Iatan 1 AQCS audit and review to  
2 determine whether cost overruns have been adequately identified and explained. Staff is very  
3 well aware of its longstanding disagreement with KCPL regarding the adequacy of any KCPL  
4 compliance with the Regulatory Plan regarding a Cost Control System. Staff conducted a final  
5 test to determine whether KCPL could identify and explain the cost overruns for the Iatan 1  
6 AQCS project segment.

7 KCPL's response to Staff Data Request No. 969 provided the identification that <sup>\*\*</sup>██████████<sup>\*\*</sup>  
8 of cost overruns exist at April 30, 2010 for the Iatan 1 AQCS cost segment. Schedule 2 is a copy  
9 of the Staff data request and KCPL's response. KCPL's response does not identify the cost  
10 overruns nor provide an explanation for the overruns as anticipated by the cost control feature  
11 contained in KCPL's Regulatory Plan. KCPL's response does provide a general description  
12 regarding how a party could attempt to create its own version of the cost overruns identification  
13 and explanation feature. Schedule 2, attached to this Report, also includes Staff Data  
14 Request No. 970 and KCPL's related response as referenced in the response to Staff Data  
15 Request No. 969.

16 Historically, the Staff has treated cost overruns that have not been adequately identified and  
17 explained as Staff adjustments and will likely continue to propose that such items be reflected as  
18 adjustments. This matter is more fully discussed in Staff's Cost Overruns section of this Report.  
19 At page 5 of both of its December 31, 2009 Staff Reports, the Staff stated <sup>\*\*</sup>██████████<sup>\*\*</sup> in Iatan 1  
20 AQCS cost overruns would be examined in conjunction with Staff's audit of Iatan 2 cost  
21 overruns. The Staff's December 31, 2009 Reports state that while Staff was not at that time  
22 proposing a disallowance of the Iatan 1 AQCS cost overruns not identified or explained by the  
23 change management system, the Staff could not recommend inclusion of these amounts without  
24 identification, explanation, and review. Both December 31, 2009 Staff Reports further stated at  
25 page 5 that subsequent Staff audit work on Iatan 2 and the remaining Common Plant, with  
26 additional interaction with KCPL representatives, was expected to result in further refinement of  
27 this <sup>\*\*</sup>██████████<sup>\*\*</sup> number leading to an opinion by the Staff whether costs are justified or should  
28 be disallowed. This refinement is more fully discussed in Staff's Cost Overruns section.

29 The KCC Staff in KCPL's currently pending Kansas rate case has proposed KCC Staff  
30 Adjustment No. 7 (RB-7) which decreases KCPL's pro forma test year plant in service by  
31 \$13,702,672 (total company [KCPL] amount is \$30,024,896). The KCC Staff's adjustment is the



1 disallowance of Iatan 1 and Iatan Common Plant, plant in service costs, previously proposed by  
 2 the KCC Staff in Docket No. 09-KCPE-246-RTS, KCPL's prior rate case before the KCC. The  
 3 adjustment is based upon the testimony of Walter Drabinski, the KCC Staff consultant. Staff has  
 4 investigated the KCC situation and discusses its activities and findings in the  
 5 Kansas Corporation Commission (KCC) Proceedings section of this Report.

6 The Commission ordered that all Staff audit activity, of any type, associated with the  
 7 environmental upgrades to Iatan 1, if not already filed, must be completed and filed no later than  
 8 August 6, 2010. On August 7, 2010, the Iatan 1 AQCS project will not be formally closed by  
 9 KCPL. The Staff expects up to <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of dollars of Iatan 1 related activity to occur outside  
 10 the scope of this audit.

11 The amount of Iatan 1 AQCS costs being examined in this audit was approximately  
 12 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> before consideration of allocation to KCPL or GMO of its share of jointly owned  
 13 costs. The following table provides a breakdown of the <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of Iatan 1 AQCS costs  
 14 examined in this audit as well as the change in costs levels examined in Staff's  
 15 December 31, 2009 Report:  
 16

	Costs May 2009	Costs April 2010	Change
PROCUREMENT	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
CONSTRUCTION	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
INDIRECT	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
COSTS SUBJECT TO JOINT PARTNER ALLOCATION	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
<i>KCPL Only Costs</i>			
PROPERTY TAX	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
AFUDC	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
PROJECT 05-00051 (KCPL)	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
PROJECT 05-00051 (KCPL) AFUDC	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
TOTAL PROJECT COSTS	<sup>**</sup> [REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>

17  
 18 Staff has examined an additional <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of additional costs from the level examined in  
 19 its December 31, 2010 Report. The <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> in the above table contains at least <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>  
 20 of Iatan Project Common Costs, which is beyond the scope of this Audit Report and will be  
 21 addressed in conjunction with Iatan 2 costs consistent with the Commission's July 7, 2010 Order.



1 Due to the fact that a majority of the Iatan Project Common Plant Estimate cannot be traced to  
2 actual costs, Staff specifically examined KCPL's methodology to assign approximately  
3 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of Iatan 2 indirect costs to the Iatan Project Common Plant Estimate while charging  
4 no Iatan 1 indirect costs to its share of the Iatan Project Common Plant Estimate although  
5 assigning approximately <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of direct costs.

### 6 **G. Auditing Procedures**

7 *Staff Expert: Charles R. Hyneman*

8 Staff auditors held several meetings with KCPL Iatan Project Management personnel as well  
9 as KCPL Accounting personnel to gain an understanding of several of the key issues involved in  
10 the Iatan 1 construction project. Staff also held meetings with individual responsible for the  
11 major Iatan 1 construction contracts as well as the key Iatan project individuals responsible for  
12 the creation and development of monthly projects costs reports. The Staff participated in  
13 quarterly meetings with KCPL representatives responsible for the successful completion of the  
14 projects. The Staff reviewed and analyzed the Cost Portfolio and supporting documentation to  
15 track actual costs in relationship to budgets. In addition, the Staff reviewed thousands of  
16 documents received through data requests that were specifically related to the costs charged to  
17 the Iatan 1 construction project.

18 Some examples of the other specific audit activities that were performed during the audit are  
19 as follows:

- 20 a. KCPL employee interviews
- 21 b. Project manager interviews
- 22 c. Review minutes of periodic CEP Oversight Committee minutes
- 23 d. Meet with other regulatory bodies charged with reviewing the  
24 appropriateness, reasonableness, and prudence of the Iatan  
25 construction projects.
- 26 e. Review testimony related to the Iatan construction projects of other  
27 regulatory bodies charged with reviewing the appropriateness,  
28 reasonableness, and prudence of the Iatan construction projects and  
29 KCPL's response to such testimony.

- 1 f. Investigate apparent discrepancies in KCPL responses and  
2 incomplete KCPL responses to different jurisdictions.
- 3 g. Review KCPL officer expense reports and evaluate the  
4 effectiveness of KCPL's officer expense report process internal  
5 controls
- 6 h. Review a significant number of, but not all, construction contractor  
7 and vendor invoices. Issue follow-up data requests as needed.
- 8 i. Review KCPL Board of Director Minutes regarding any matters  
9 relating to the construction projects.
- 10 j. Visit the construction work site, among other things, to interview  
11 appropriate work site personnel to determine the in-service status  
12 of costs charged to the project as well as examine construction  
13 activities.
- 14 k. Meet with project management personnel at KCPL's Kansas City  
15 headquarters building to review project status and costs.
- 16 l. Project contract evaluation respecting relevant provisions  
17 impacting project costs and schedule.

18 **H. Cost Overruns**

19 *Staff Expert: Robert E. Schallenberg*

20 KCPL has approximately <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of cost overruns for the Iatan 1 AQCS project segment  
21 as of April 30, 2010. At this time, the cause and explanation of these cost overruns are unknown.  
22 Staff Data Request Nos. 405 and 969 failed to identify any of the items causing Iatan 1 AQCS  
23 cost overruns. Since 1) the Iatan 1 AQCS project segment includes costs for  
24 Iatan Project Common Plant as well as Iatan 1 AQCS equipment and 2) the costs attributable to  
25 the Iatan Project Common Plant is not based on actual costs, it is indeterminable whether the cost  
26 overruns were caused by Iatan Project Common Plant activities or Iatan 1 AQCS equipment.  
27 Thus Staff has transferred a portion of the unidentified cost overruns contained in the  
28 Iatan 1 AQCS April 30, 2010 costs to the Iatan Project Common Plant segment. The amount  
29 transferred was <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>. The amount was developed by using the factor shown on the  
30 attached Schedule 3 line 5 to the amount of unidentified cost overruns at April 30, 2010. The  
31 result of the transfer is to assign <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of unidentified cost overruns to the Iatan 1 AQCS  
32 project which is the scope of this Audit Report. The transferred portion of the unidentified cost

1 overruns will be addressed in the Staff future audit reports when Iatan 2 and Common Plant will  
2 be addressed. After the transfer of the unidentified cost overruns to the Iatan Common Plant  
3 segment, Staff adjustments related to Alstom, Schiff Hardin, and the Crane Accident charges  
4 address cost overruns for the Iatan 1 AQCS project segment.

#### 5 **I. Inappropriate Charges**

6 *Staff Expert: Robert E. Schallenberg*

7 Staff addressed this area in its December 31, 2009 Report. The inappropriate charges  
8 discussed in that Report were mainly charges to Iatan 2 and assigned to the Iatan Project  
9 Common Plant Estimate. In the Commission's July 7, 2010 order, Iatan Project Common Plant  
10 is to be audited in the same time period as Iatan 2. Thus the discussion of the inappropriate  
11 charges will be addressed in the Staff's future Iatan 2 and Common Plant Audit Reports.

#### 12 **J. Kansas Corporation Commission (KCC) Proceedings**

13 *Staff Expert: Charles R. Hyneman*

14 The Staff has learned that the Staff of the Kansas Corporation Commission (KCC) is  
15 currently addressing Iatan 1 prudency disallowances in KCPL's 2010 rate case,  
16 Docket No. 10-KCPE-41S-RTS. The disallowances were initially proposed in KCPL's 2009 rate  
17 case, Docket No. 09-KCPE-246-RTS. On August 2, 2010, the KCC Staff filed Staff's List of  
18 Contested Issues which includes Iatan 1 prudency disallowances.

#### 19 Iatan Unit 1 AQCS and Iatan Common Plant in-service costs.

20 ...Staff disallowed certain Iatan Unit 1 AQCS and Iatan Common Plant in service  
21 costs proposed by Staff in Docket No. 09-KCPE-246-RTS (GDR-6) totaling  
22 \$4,780,782 (total plant amount is \$13,938,795, excluding AFUDC).

23 The list of proposed Iatan 1 disallowances is included in the KCC  
24 Docket No. 09-KCPE-246-RTS Supplemental/Surrebuttal testimony of Walter P. Drabinski filed  
25 on March 3, 2009. The Staff at this time has not reconciled the difference between the  
26 \$14,463,401 noted in Mr. Drabinski's testimony to the more current \$13,938,795 proposed Iatan  
27 disallowances included in the KCC Staff's August 2, 2010 List of Contested Issues filing.

Item	Description	KCPL Position	Amount
R&O 125	Location of Unit 1 SCR Air Compressor	KCPL Challenge	** [REDACTED] **
R&O 367	Alstom Settlement	KCPL Challenge	** [REDACTED] **
R&O 360	JLG Incident	KCPL not challenge	** [REDACTED] **
R&O 330	Accelerating Delivery of Steel for Ash Pipe Rack	KCPL not challenge	** [REDACTED] **
R&O 139	Accelerating Building and Tank Pilings	KCPL not challenge	** [REDACTED] **
	Total		\$14,463,401

1  
2 The KCPL position accepting the Iatan 1 disallowances referred to as R&O 139, R&O 330,  
3 and R&O 360 above was articulated by KCPL witness Chris Giles in his rebuttal testimony in  
4 the KCC Docket No.09-KCPE-246-RTS:

5 Q: What is your view of Vantage's disallowances of KCP&L's Iatan  
6 Unit 1 costs?

7 A: Although KCP&L maintains that it has prudently managed the  
8 Iatan project, it acknowledges that some of Vantage's observations have a  
9 degree of validity. KCP&L thus chooses not to challenge  
10 the disallowances Vantage proposes related to R&O 139, R&O 330 and  
11 R&O 360....

12 The Kansas Corporation Commission's Staff construction audit of Iatan 1 costs was initially  
13 scheduled to be completed in KCPL's 2009 rate case, KCC Docket No. 09-KCPE-246-RTS.  
14 However, the decision was made by the parties to that case to defer the Iatan 1 prudence issues  
15 until KCPL's 2010 rate case, which is in process currently. The KCC approved the  
16 Joint Stipulation and Agreement in its July 24, 2009 Order: 1) Approving Stipulation &  
17 Agreement; and 2) Addressing Scope of Final Rate Case Under the Approved 2005 Regulatory  
18 Plan. KCPL witness Chris Giles describes the decision to defer the Iatan 1 prudence issue in his  
19 testimony in Support of Joint Stipulation and Agreement filed on June 22, 2009:

20 Q: Please continue with your discussion of the Joint Stipulation.

21 A: The Signatory Parties agree that the Joint Stipulation resolves all  
22 issues in this case concerning disallowances related to costs for Iatan  
23 Unit 1 AQCS and Iatan common costs that are included in rate base. There  
24 will be no write-off of costs included in rate base in this case for  
25 plant-in-service as of July 4, 2009. The disallowance review related to  
26 Iatan Unit 1 AQCS and Iatan common costs paid or approved for payment  
27 as of April 30, 2009 and in-service as of July 4, 2009, is deferred to the  
28 next rate case and capped at \$4.7 million (Kansas jurisdictional, including

1 Allowance for Funds Used During Construction ("AFUDC")), as set forth  
2 in the testimony of Staff witness Walter Drabinski.

3 It is important to note that KCP&L is not agreeing to any disallowance,  
4 but the Signatory Parties are limited to recommending this amount as it  
5 relates to these Iatan Unit 1 AQCS and Iatan common costs in KCPL's  
6 next rate case. In the next rate case there will be no additional testimony  
7 by any Signatory Party and no modifications to the existing testimony  
8 related to the Iatan Unit 1 AQCS and Iatan common costs included in rate  
9 base in this case (\$178,017,515 Kansas jurisdictional), or concerning the  
10 \$4.7 million disallowance recommended by Staff in this case.

11 The remaining \$56 million (Kansas jurisdictional, excluding AFUDC) of  
12 potential costs for Iatan Unit 1 AQCS and Iatan common not paid or  
13 approved for payment as of April 30, 2009 and not included in rate base in  
14 this case, will be subject to a prudence review and the Signatory Parties  
15 may recommend an associated disallowance of no more than \$2.8 million  
16 (Kansas jurisdictional) in the next case. Additionally, any costs in this  
17 category in excess of the noted \$56 million will not be capped as to the  
18 level of disallowance that may be recommended by Staff.

19 Q: Why is it reasonable to include a cap of potential recommended  
20 disallowance in this case?

21 A: Investors and creditors react negatively to uncertainty. It is always  
22 better from the Company's perspective to resolve uncertainty within a  
23 settlement or as a result of hearing and order of the Commission.  
24 However, in this case, the Company did not believe a disallowance was  
25 justified and the Staff could not accept the Company's position.

26 When issues cannot be resolved and must be heard by the Commission at  
27 a later date (the next rate case), it is best to summarize and cap exposure to  
28 the Company of any potential disallowance so that any risk to investors  
29 and creditors related to the postponed issues are known.

30 In this case, the Staffs proposed disallowance for the plant included in rate  
31 base in this case is known -- \$4.7 million -- on a Kansas jurisdictional  
32 basis. Any potential disallowance related to the \$56 million  
33 (Kansas jurisdictional) in potential invoices not paid or approved for  
34 payment as of April 30, 2009 is related to verification of invoices, not  
35 necessarily prudence, and any additional dollars spent against the Risk &  
36 Opportunity Packages ("R/Os") previously identified by Staff witness  
37 Drabinski. The Company and the other parties agreed that a cap of  
38 \$2.8 million, Kansas jurisdictional basis was adequate to cover any  
39 potential disallowance proposed by Staff in the next case related to these  
40 additional invoices.

1 Q: Since some of the parties have already filed testimony on the issue of  
2 prudence regarding Iatan Unit 1 AQCS and Iatan common plant  
3 investment, why did the parties choose to defer this issue to the next case?

4 A: There are two primary reasons. First, if a settlement could be reached  
5 in this case, it was the Company's intent to settle the total revenue  
6 increase. An important component of this settlement is for rates to become  
7 effective on August 1, 2009. Although the parties could have conceivably  
8 agreed to carve out the proposed disallowance of \$4.7 million and gone to  
9 hearing on that issue alone, it would have resulted in rates going into  
10 effect later than August 1.

11 In addition, the Company would have gone to hearing on all issues before  
12 it would have gone to hearing on just the Staffs proposed disallowance,  
13 thus no settlement would have been possible. By the terms of the  
14 agreement, the parties are not allowed to revise or otherwise supplement  
15 their testimony on the Iatan Unit 1 and common costs of Iatan unit 1 and 2  
16 related to the proposed \$4.7 million disallowance.

17 That issue will be presented to the Commission based only upon the  
18 testimony already in the record in this case, just as if there had been no  
19 settlement and the matter had been taken before the Commission at the  
20 hearing scheduled to begin June 22, 2009. In other words, in the next case,  
21 the parties are not allowed a "second bite at the apple" as regards prudence  
22 on Iatan Unit 1 AQCS and Iatan common costs paid or approved for  
23 payment as of April 30, 2009. The intent is to take a "snapshot" of the  
24 record on this plant investment review in this case and impose it into the  
25 record of the next case.

26 Second, the dollars associated with invoices not paid or approved for  
27 payment as of April 30, 2009 and/or not in service as of July 4th 2009 --  
28 \$56 million -- could not have been audited in this case because some of  
29 these invoices may not be paid until the end of the year. Thus, since a  
30 portion of the Iatan Unit 1 AQCS and Iatan common costs must be  
31 reviewed in the next case, the Company believed it would be more  
32 efficient to defer both the current proposed disallowance along with any  
33 other potential disallowance proposals to the next case so that all proposed  
34 disallowances associated with Iatan Unit 1 AQCS and Iatan common costs  
35 may be heard at one time.

36 In KCPL's 2010 current rate case, the KCC Staff is proposing a disallowance of \$13,938,795  
37 (total company) in Iatan 1 costs, excluding AFUDC.

1 **III. Detailed Findings**

2 **A. Iatan 1 AQCS Indirect Costs related to Common Plant**

3 *Staff Expert: Robert E. Schallenberg*

4 Staff proposes two adjustments related to Common Plant. The Commission's July 7, 2010  
5 Order specifies that the Iatan Project Common Plant will be audited within the same time frames  
6 as Iatan 2. Thus, Common Plant is outside the scope of this Audit and Report. The first  
7 adjustment is to transfer <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> from the April 30, 2010 Iatan 1 AQCS cost segment to  
8 the Iatan Project Common Plant segment. The second adjustment is to transfer Iatan 1 AQCS  
9 indirect costs to the Iatan Project Common Plant for the direct common plant costs charged to the  
10 Iatan 1 AQCS.

11 In rate File No. ER-2009-0089 KCPL filed a binder attached to the Rebuttal Testimony of  
12 Steve Jones. The binder represented that the Iatan Project had <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of common plant  
13 related to the operation of Iatan 1 and Iatan 2. The assets identified in this binder were assigned  
14 an estimated value of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>.

15 These common costs are contained either in the project budgets of Iatan 1 AQCS or Iatan 2  
16 segments. The Iatan 1 AQCS and Iatan 2 budgets contained <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> and <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of  
17 these common costs, respectively. The Commission July 7, 2010 Order specified that that this  
18 audit was to address the Iatan 1 AQCS costs with the Iatan Project common costs to be addressed  
19 in conjunction with Iatan 2 costs. Thus Staff needed to remove the Common Plant costs from the  
20 Iatan 1 AQCS costs to determine the actual costs for the Iatan 1 AQCS segment. The  
21 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> adjustment removes the April 30, 2010 level of Common Plant costs that KCPL  
22 has charged against the Iatan 1 AQCS budget.

23 There is one component of the Iatan Project Common Plant Estimate that impacts the  
24 Iatan 1 AQCS actual costs. The assignment of indirect costs to the Iatan Project Common Plant  
25 Estimate is traceable to actual costs as KCPL assigned <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of Iatan 2  
26 Project Indirect Committed Costs at December 31, 2008. The Iatan 2 indirect costs assignment  
27 excluded Burns & McDonnell engineering costs because these costs were already considered in  
28 the Iatan Project Common Plant Estimate.

29 While KCPL represented that its position to transfer its Iatan Project Common Plant Estimate  
30 from the Iatan 1 AQCS and Iatan 2 budgets creates no increase to the Iatan Project overall costs,<sup>v</sup>



1 the Staff's risk assessment for this area indicates that KCPL's share of the Iatan Project costs is  
 2 influenced by the amounts transferred between Iatan 1 AQCS; Iatan 2, and the Iatan Project  
 3 Common Plant segments. KCPL is charged seventy percent (70%) of the dollars assigned to  
 4 Iatan 1, approximately fifty-five percent (54.71%)<sup>vi</sup> for Iatan 2, and approximately sixty-one  
 5 percent (61.45%) for Iatan Project Common Plant. The transfer of Iatan Project Common Plant  
 6 Estimate from the Iatan 1 AQCS and Iatan 2 budgets increases KCPL's costs from the Iatan  
 7 Project by <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>. The following table shows the impact of the Iatan Common Plant  
 8 Estimate transfer on KCPL's Iatan Project costs:

A	B	C	D
Description	Dollars Transferred to Iatan Project Common Plant	Percent Increase or <Decrease> assigned to KCPL	Dollar Impact on KCPL (B x C)
Iatan 1 AQCS <sup>**</sup> Dollars Transferred	[REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
Iatan 2 <sup>**</sup> Dollars Transferred	[REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
Total <sup>**</sup>	[REDACTED]		[REDACTED] <sup>**</sup>

9 Since KCPL's percentage ownership in Iatan 2 differs from its percentage ownership in  
 10 Iatan 1, KCPL's share of the total Iatan Project cost is impacted by the amount of funds  
 11 transferred to Common Plant from Iatan 2. This matter will be addressed in Staff's subsequent  
 12 audits and reports on Iatan 2 and Common Plant. However, the amount of Iatan 1 AQCS costs  
 13 transferred the Iatan Project Common costs impacts the costs attributed to the Iatan 1 AQCS  
 14 segment which is within the scope of this audit.

15 Only Iatan 2 Indirect Costs are assigned to the Iatan Project Common Plant Estimate.  
 16 No Iatan 1 AQCS Indirect Costs are included in the Iatan Project Common Plant Estimate. This  
 17 appears to be unreasonable because the Iatan 1 AQCS direct costs being transferred represent  
 18 approximately 32%<sup>vii</sup> of all the common plant direct costs being transferred from the combined  
 19 Iatan 1 AQCS and Iatan 2 budgets. This issue overstates the Iatan 1 AQCS costs and thus  
 20 increased the Iatan Project costs charged to KCPL.

21 KCPL stated that the reason Iatan 1 AQCS indirect costs were excluded from the cost  
 22 assignment of indirect costs to the Iatan Project Common Plant was that all indirect costs for the  
 23 Common Plant were charged to Iatan 2. Staff could not verify this proposition. If this proposition  
 24 were true, then there would be no need to use an allocation methodology to transfer indirect costs

1 from Iatan 2 to the Iatan Project Common Plant. If all the Iatan Common Plant indirect costs  
2 were charged against the Iatan 2 budget, then the amount of those costs charged to Iatan 2 should  
3 be transferred to the Iatan Project Common Plant, and no allocation process would be necessary.  
4 Allocation methodologies are used when the amount of costs in question (i.e. indirect costs) is  
5 not known and is commingled with other costs that cannot be separately identified. Staff found  
6 no general accounting instruction that all Iatan Project Common Plant indirect costs was to be  
7 assigned only against the Iatan 2 budget.

8 Schedule 3 is Staff's calculation of the Iatan 1 AQCS Indirect Costs that should be assigned  
9 to the Iatan Project Common Plant Estimate. This schedule shows that Staff recommends that  
10 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of Iatan 1 AQCS Indirect Costs should be transferred from the Iatan 1 AQCS  
11 April 30, 2010 costs to the Iatan Project Common Plant Estimate for the Common Plant direct  
12 costs contained in the Iatan 1 AQCS project.

13 Documents Reviewed:

- 14 1. Steve Jones – Iatan Construction Project- 3-6-09 Common  
15 Systems Asset Valuation binder
- 16 2. KCPL 2 page worksheet “Estimated Percentage  
17 Completion of Common Assets Included in Common Asset  
18 Valuation as of April 30, 2009”

19 **B. KCPL and GMO Adjustment 1: May 23, 2008 Crane Accident**

20 *Staff Expert: Charles R. Hyneman*

21 As of April 30, 2010, the Iatan 1 AQCS project had recorded <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> related to the  
22 May 23, 2008 Crane accident at the Iatan Project. It has been KCPL's position that KCPL has no  
23 liability related to this event and is accumulating its costs with AFUDC for reimbursement. <sup>\*\*</sup> [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED] <sup>\*\*</sup>

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

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

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

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

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

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

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

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

18 Q. No responsibility for whom?

19 A. For Kansas City Power & Light.

20 Q. You mean financial responsibility?

21 A. Yes.

22 Statement of KCPL counsel Karl Zobrist, page 3216:

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

29 Thus, KCPL representatives indicated that they believed KCPL would have no financial  
30 responsibility for the costs of the Crane Incident, yet KCPL has charged several million dollars  
31 of costs incurred as a result of the Crane Incident to the construction project.

32 \*\*

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]\*\*

4 **C. KCPL and GMO Adjustment 17: Project Development Costs**

5 *Staff Expert: Charles R. Hyneman*

6 Included in the Iatan 1 work order is [REDACTED]\*\* charged to WBS code 5071, Project  
7 Development. These costs consist mainly of consulting fees, internal KCPL labor, and legal fees  
8 incurred from September 2004 through March 2006. Instead of trying to match these costs into  
9 the specific detailed WBS codes in the Cost Portfolio, KCPL grouped all these costs into a single  
10 line item and labeled them "Project Development." Monthly costs are not tracked in the cost  
11 portfolio until November 2006. In a review of the costs charged to WBS 5071, Project  
12 Development, Staff noted [REDACTED]\*\* in costs that are related to Iatan 2 instead of Iatan 1, which  
13 should be charged to the Iatan 2 work order, along with the associated AFUDC accrued on this  
14 amount. The charges are reflected below

15

Adaptive Ecosystem	Iatan 2 Section 404 Compliance	**	[REDACTED]	**
Spencer, Fane, Britt & Browne	Legal - Iatan 2 Permit	**	[REDACTED]	**
Total		**	[REDACTED]	**

16

17 **D. KCPL and GMO Adjustment 13: Severance Adjustment**

18 *Staff Expert: Charles R. Hyneman*

19 KCPL charged [REDACTED]\*\* in employment severance charges to the Iatan 1 work order in  
20 June 2008. In Staff Data Request No. 837, the Staff asked for a copy of the severance  
21 agreements associated with the severance charges to the Iatan work orders. The severance  
22 agreements involve three former employees. The Staff reviewed these documents on  
23 December 22, 2009, at KCPL's headquarters. The severance agreements reviewed by the Staff  
24 contained the same clauses of typical KCPL severance agreements. The severance agreements  
25 contain language designed to protect KCPL officers and shareholders from potential litigation  
26 and embarrassment in reciprocation for the payment of additional benefits, cash compensation,  
27 medical coverage costs and outplacement services. KCPL requires the employee to waive and

1 release any legal claims the employee may have against KCPL for any reason and prohibits the  
2 employee from making any disparaging or critical statements of any nature whatsoever  
3 about KCPL.

4 The Staff Data Request asked in part for the rationale why the cost was charged to the Iatan  
5 construction projects as opposed to an operating expense. KCPL responded that “given that these  
6 employees were fully assigned to the Iatan construction project at the time of the severance, the  
7 decision was made that the severance cost should follow the labor cost and be charged to the  
8 construction project.”

9 The Staff is proposing an adjustment to remove the severance charges from the Iatan work  
10 orders for two reasons. First, the Commission has ruled in a recent KCPL rate case,  
11 Case No. ER-2006-0314, that severance costs should not be recovered from KCPL's ratepayers.  
12 In addition, the severance payments charged to the Iatan work order are not capital costs that are  
13 necessary to the construction of the Iatan 1 AQCS system and will not provide benefits over  
14 future years. These charges are period costs which are charged to expense in the period incurred.  
15 The Staff is proposing an adjustment to remove the <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> in severance payments and the  
16 associated AFUDC from the Iatan 1 work order to be recovered from KCPL ratepayers.

17 **E. KCPL and GMO Adjustment 9: Campus Relocation for Unit 2 Turbine**  
18 **Building**

19 *Staff Expert: Charles R. Hyneman*

20 The Staff submitted Staff Data Request No. 730 and supplemental requests regarding the  
21 costs incurred in relocating the Iatan construction projects trailer campus from its initial/original  
22 location at the Iatan site. The original campus design and location was developed in the summer  
23 and fall of 2006. Facility construction began in the summer of 2006. The initial trailers on site  
24 were for KCPL, and the major Iatan construction contractors, Kissick, Pullman and Alstom, each  
25 of whom mobilized to the site in late-summer and fall of 2006.

26 In the summer of 2007, the balance-of-plant contractor, Kiewit, developed a revised plan for  
27 laydown space needed for access to the turbine generator building. This plan included providing  
28 a new path for unloading the turbine generator into the turbine bay.

29 Kiewit's plan necessitated moving the existing campus trailers to provide the area for  
30 laydown space. Additionally, Kiewit's new plan of where it wanted to locate erection cranes

1 caused concerns because Kiewit would be lifting loads near or over the campus. Each of the  
2 trailers was moved approximately 100 feet east in the spring and summer of 2008.

3 Total cost incurred for the campus relocation through April 2010 is [REDACTED]\*\*. Of this  
4 amount, KCPL charged [REDACTED]\*\* to Iatan 1 and [REDACTED]\*\* to Iatan 2.

5 The only justifiable reasons why KCPL would agree to incur over \$1.6 million in costs to  
6 relocate construction trailers at the Iatan site is

7 1) KCPL realized the original design and location of the Iatan campus was  
8 faulty and did not provide sufficient room and laydown space for the  
9 transporting the turbine generator into the Iatan 2 turbine bay. In this case  
10 KCPL would incur the cost and seek backcharges from the contractor who  
11 was responsible for the campus design and trailer locations. The back  
12 charged costs would be credited against the project when collected.

13 2) The cost savings or other benefits to the Iatan 1 construction project  
14 resulting from the relocation would exceed the cost of the relocation  
15 charged to the project. In other words, the design and location of the  
16 campus was sufficient for the successful completion of the project but a  
17 change in the trailer locations would result in project savings and/or other  
18 benefits that exceed the cost of the relocation.

19 The Staff requested a meeting with KCPL on this issue and the meeting was held  
20 on December 7, 2009. In attendance at this meeting was Mr. Eric Gould, a Schiff Hardin  
21 LLP ("Schiff") Project Controls Analyst. Mr. Gould advised that the relocation resulted in cost  
22 savings. He advised Staff that he was going to look for documentation of cost savings on the  
23 Balance of Plant contract as a result of the [REDACTED]\*\* campus relocation. Subsequent to this  
24 meeting Staff has been advised that Mr. Gould was unable to locate any documentation  
25 supporting a cost savings associated with the campus relocation.

26 The issue of why KCPL decided to pay for [REDACTED]\*\* for the campus relocation and the  
27 prudence of this decision or the appropriateness of the original location of the trailers are not  
28 Iatan 1 issues which Staff should address in this Report. The reason why the campus relocation  
29 project was undertaken was solely the result of the construction of Iatan 2.

30 If Iatan 2 were not constructed, the campus relocation costs would not have been incurred.  
31 This is confirmed in KCPL's response to Staff DR 730 in response to the Staff asking for the  
32 reasons why the trailers were moved where KCPL explained the newly selected balance of plant

1 contractor, Kiewit, found it necessary to revise the existing campus trailer locations in order to  
2 make room for unloading the turbine generator into the Iatan 2 turbine bay:

3 The original campus design and location was developed in the summer of  
4 and fall of 2006. Facility construction began in the summer of 2006. The  
5 initial trailers on site were for KCP&L, Kissick, Pullman and ALSTOM,  
6 each of whom mobilized to the site in late-summer and fall of 2006.

7 In the summer of 2007, the Balance of Plant contractor, Kiewit, developed  
8 a revised plan for laydown space needed for access to the turbine  
9 generator building. This plan included providing a new path for unloading  
10 the turbine generator into the turbine bay. Kiewit's plan necessitated the  
11 moving of the existing campus' trailers to provide the area for laydown  
12 space. Additionally, Kiewit's plan of where it wanted to locate erection  
13 cranes caused safety concerns because Kiewit would be lifting loads near  
14 or over the campus.

15 KCPL decided to allocate the relocation costs to Iatan 1 because it believes that the  
16 Iatan 1 AQCS project benefits from the relocation. KCPL has not identified any such benefits  
17 and has not quantified any such benefits to Iatan 1. Staff finds that the allocation of any costs of  
18 the campus relocation to Iatan 1 is inappropriate and recommends that the costs of the  
19 Campus Relocation allocated to Iatan 1 be charged back to Iatan 2. These costs will be  
20 addressed in the Staff's construction audit of Iatan 2.

#### 21 **F. KCPL and GMO Adjustment 7: JLG Accident August 25, 2007**

22 *Staff Expert: Charles R. Hyneman*

23 On August 25, 2007 a JLG 1200 boom lift belonging to one of Alstom's subcontractors  
24 tipped over and crashed to the ground at the project site (JLG accident). Alstom submitted a  
25 claim to KCPL for costs associated with the JLG Accident. Staff reviewed 48 documents related  
26 to this accident and its associated costs that were provided by KCPL in response to Staff Data  
27 Request No. 408 in Case No. ER-2009-0090. Staff's review of these documents formed the basis  
28 of its proposal to exclude the costs of the JLG accident from the Iatan 1 work order.

29 In a September 27, 2007 letter from KCPL Iatan 2 Project Director Brent Davis to Gary Lexa  
30 of Alstom, KCPL noted that it had completed an investigation of the JLG accident. The  
31 investigation included conducting 12 soil compaction tests and the results of those tests  
32 confirmed that the soil compaction was within specified tolerances. KCPL stated in this letter

1 that it therefore ruled out abnormal, unusual or unknown soil conditions as the cause of the JLG  
2 accident. In this letter KCPL also advised Alstom it did not believe the JLG accident was a  
3 compensable event.

4 In a report prepared by KCPL entitled Response to Alstom JLG and Construction  
5 Resurfacing Claim, dated January 9, 2009, at pages 63-64 KCPL listed the following "Summary  
6 of the Facts:"

- 7 1. Alstom had been operating the JLG in the area for several days and was  
8 apparently satisfied with the soil conditions as no objections were  
9 raised.
- 10 2. Following an August 24 rain storm & prior to operation of the JLG the  
11 next day, Alstom should have checked the soil conditions as Alstom is  
12 responsible for its construction means, manner and methods.
- 13 3. Alstom failed to notify KCPL of any soil issues
- 14 4. The JLG was mis-operated, which caused it to tip over.
- 15 5. KCPL promptly took action (at its own cost) to:
  - 16 1. Re-Check the Soil compaction in all applicable areas-  
17 compaction found to either meet or exceed the specifications  
18 requirements
  - 19 2. Install up to 2 feet of bottom/fly ash mixture to additionally  
20 harden the surface.
- 21 6. The Balance of Plant contractor at the site uses steel plates for a level  
22 working surface for its JLG's and it is unclear why Alstom did not  
23 have the same policy if it was concerned about soil surface stability.
- 24 7. KCPL spent over <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> on the resurfacing and to date has never  
25 asked Alstom for reimbursement, but now reserves its right to make a  
26 claim against Alstom to recover this cost.
- 27 8. Based on the aforementioned, KCPL is not liable for any of the repair  
28 cost of the damaged JLG.

29 At page 66 of this report, KCPL noted again that the JLG fell over due to operator error.

30 In KCPL's December 2007 Iatan 2 & Common Status Report it was noted that on  
31 December 10, 2007 Alstom was willing to split the cost of the JLG accident (which it estimated



1 to be approximately <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> with KCPL on a 50-50 basis. However, on December 11, 2007,  
2 Alstom rescinded this offer.

3 <sup>\*\*</sup> [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 [REDACTED] <sup>\*\*</sup> These two amounts add up to <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> and the  
8 change order effecting this March 19, 2009 settlement agreement was in the amount of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>  
9 Of this <sup>\*\*</sup> [REDACTED] <sup>\*\*\*\*</sup> [REDACTED] <sup>\*\*</sup> was charged to the Iatan 1 work order. This change order, number  
10 AP00834X16072100834, was signed for KCPL on April 14, 2008 by Steve Jones, an  
11 independent contractor hired by KCPL to work on the Iatan construction projects, and  
12 Steve Easley, then KCPL Vice-President of Supply.

13 In a Change Order Supplemental Documentation Form attached to this change order by  
14 KCPL on October 13, 2008, seven months after the JLG accident settlement agreement with  
15 Alstom, KCPL reiterated its belief that operator error was the cause of the JLG accident, not soil  
16 conditions. This supplemental change order documentation signed by Steve Jones and  
17 Carl Churchman, former KCPL Vice-President of Construction, provided the rationale behind  
18 KCPL's decision to pay Alstom <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> for costs for which KCPL believed it bore no  
19 responsibility. The rationale was that KCPL wanted to "resolve these issues and keep the project  
20 moving forward."

21 From Staff's review of the documentation surrounding the JLG accident, Staff concludes that  
22 KCPL developed a strong case of why it bore no responsibility for the cost of this accident. Staff  
23 does not believe it was reasonable and prudent for KCPL to enter into this settlement agreement  
24 and pay any costs for the JLG accident. Staff is also concerned that KCPL agreed to settle this  
25 issue at exactly what Alstom originally sought to recover from KCPL. The Staff is  
26 recommending that no costs associated with the JLG accident "settlement" be charged to the  
27 Iatan 1 or Iatan common work orders.

1 **G. KCPL and GMO Adjustment 8: Construction Resurfacing Project Alstom**  
2 **Settlement**

3 *Staff Expert: Charles R. Hyneman*

4 Staff reviewed 48 documents related to KCPL's Construction Resurfacing Project that were  
5 provided by KCPL in response to Staff Data Request No. 408 in Case No. ER-2009-0090.  
6 Based on its review of these documents, Staff believes that all costs related to the resurfacing  
7 settlement <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> total of which <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> was charged to Iatan 1) should have been  
8 charged to the Iatan 2 work order and no charges should have been made to Iatan 1. While Staff  
9 may have issues regarding the prudence of this settlement, the prudence issues will be addressed  
10 in the Staff's audit of Iatan 2 construction costs. In this Report, Staff is only proposing that the  
11 costs of the settlement be removed from the Iatan 1 work order and be charged to where the costs  
12 should have originally been charged, the Iatan 2 work order.

13 According to KCPL, based on concerns for safety, it conducted a Construction Resurfacing  
14 Project on August 27, 2007 through September 27, 2007. The purpose of the project was to  
15 ensure soil conditions would support heavy equipment resting and traveling on it, and improve  
16 contractors' confidence that the soil would not be an impediment to safe operation. According to  
17 KCPL it spent <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> on the resurfacing project including a change order in the amount of  
18 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> issued to List & Clark Construction Company.

19 Alstom claimed that the Construction Resurfacing Project interfered with and delayed its  
20 construction activities on the Iatan 2 boiler. In a 10-page letter from Alstom Project Director,  
21 Mr. Gary Lexa, to KCPL, dated December 30, 2007 Alstom explained that the net result of the  
22 Soil Stabilization Project was to delay the critical work on Iatan Unit 2 by twenty-five calendar  
23 days. Because the settlement to Alstom was based on the delay in completing work on the  
24 Iatan 2 project, the cost of the settlement should be charged to the Iatan 2 work order.

25 In another letter, dated February 4, 2008, from Thomas Kelly, Site Director, Alstom Power,  
26 Inc. to KCPL, Alstom stated that it had previously informed KCPL of schedule and cost impacts  
27 resulting from the Soil Stabilization Project and "provided details and supporting documents  
28 regarding our analysis of the direct delays to the Unit 2 work as well as the nature of the costs  
29 that we anticipated would be incurred." In this letter Alstom advised KCPL that Alstom's  
30 analysis indicated a direct schedule impact of twenty-five calendar days to the Iatan 2 boiler steel  
31 erection. In this letter to KCPL, Alstom identified a list of all additional cost elements associated

1 with the Soil Stabilization Project. Staff reviewed the costs described in this letter and noted that  
2 all of the costs are related to Iatan 2 and none of the costs are associated with Iatan 1.

3 KCPL's January 22, 2008 CEP Oversight Committee meeting minutes include the following  
4 discussion:

5 At the ALSTOM critical issues meeting, the JLG incident was discusses.  
6 ALSTOM has submitted a claim for 25 calendar days lost days and a cost  
7 of [REDACTED] of which ALSTOM believes KCP&L should pay  
8 [REDACTED] KCP&L's reply was we told ALSTOM we would pay  
9 [REDACTED] and then elevated that amount to [REDACTED] to include costs to remove  
10 the JLG, and responded that they have not managed the situation.  
11 Discussed other ALSTOM claims and KCP&L stances. Work is  
12 progressing on issue resolution but it is slow.

13 In the Iatan 2 and Common Status Report, March 2008 at page 24 it is noted that [REDACTED]  
14 [REDACTED]  
15 [REDACTED] In the change  
16 order AP00761X16072100761 KCPL agreed to pay Alstom [REDACTED] KCPL then made a  
17 determination that [REDACTED] or 33 percent of the settlement would be charged to Iatan 1 and  
18 [REDACTED] would be charged to Iatan 2.

19 As noted above, Staff finds that KCPL incorrectly charged costs of the Construction  
20 Resurfacing Project Alstom Settlement in the amount of [REDACTED] to the Iatan 1 construction  
21 work order. If KCPL believed these costs were reasonable and prudent, it should have charged  
22 these costs to the Iatan 2 construction work order. Staff will address the reasonableness and  
23 prudence of these costs in its Iatan 2 construction audit.

#### 24 H. KCPL and GMO Adjustment 2: Employee Mileage Charges

25 *Staff Expert: Charles R. Hyneman*

26 In Staff Data Request No. 787, Staff asked KCPL for each KCPL employee who charged  
27 mileage to Iatan 1 environmental upgrades or Iatan 2 and to provide copies of all documentation  
28 used by the authorizing employee to verify that the mileage being reimbursed was consistent  
29 with KCPL's policy. Staff also asked for the home and business address for each KCPL  
30 employee at the time he/she requested mileage for travel to the Iatan construction site.

1 In its response to this Staff Data Request, KCPL stated that an authorizing employee checks  
2 to make sure a KCPL employee had business at the site and that the mileage appears reasonable  
3 given KCPL policy, and that no other documentation exists. In response to Staff's request for  
4 home and business addresses of employees who charged mileage, KCPL said that "[i]t is unduly  
5 burdensome and will not result in material information to provide home and business address for  
6 each KCP&L employee at the time they requested mileage for travel to Iatan." Staff requested  
7 this data to test KCPL's cost controls over employee mileage charges to the Iatan work orders.

8 KCPL eventually provided the data requested by Staff. In a supplemental response to Staff  
9 Data Request No. 787, KCPL provided the report "MPSC0787S – HC\_Mileage\_Empl\_Info.xls"  
10 that included a list of all employees who charged mileage to the Iatan Project  
11 (Iatan 1 environmental upgrades and/or Iatan 2), the employee's primary work location, and  
12 his/her home address.

13 Staff compared this data with the data provided by KCPL in response to Staff  
14 Data Request No. 643 in report "Q0643\_Mileage Reimbursement Charged to Iatan Projects.xls"  
15 showing a complete list of employees who received mileage reimbursements that were charged  
16 to Iatan construction projects. A comparison of these two reports showed that KCPL reimbursed  
17 \$51,113 of mileage charges to employees whose primary work location is listed as Iatan. KCPL  
18 employees should not be reimbursed for regular commuting miles to and from their primary  
19 work location. Staff is proposing an adjustment to the Iatan 1 work order to remove this amount  
20 and the associated AFUDC.

21 In addition to these inappropriate employee mileage charges to the Iatan 1 AQCS work order,  
22 a review of a sample of employee expense reports showed that KCPL reimbursed its employees  
23 for excess mileage charges. Staff found that KCPL, beginning in January 2008, did make an  
24 attempt to calculate the correct reimbursable miles for these employees, but there was no  
25 indication that the mileage overcharges made prior to January 2008 were ever reimbursed by the  
26 appropriate employees and credited back to the construction work order.

27 After removing the mileage charges inappropriately provided to employees who were not  
28 eligible for reimbursement because their primary work location was Iatan, the pool of mileage  
29 charges remaining in the Iatan 1 work order as of May 31, 2009 was \$80,234. Staff made an  
30 additional adjustment of ten percent of this amount, or \$8,023, to reflect a reasonable  
31 approximation of actual overcharges that were made to the Iatan work order prior to

1 January 2008 and estimated overcharges made after January 2008. Given the weak internal cost  
2 controls over mileage charges to the Iatan construction projects Staff believes that a 10 percent  
3 adjustment of the remaining mileage charges is reasonable.

4 If KCPL can show that it now has policies and procedures in place that are preventing  
5 employee mileage overcharges and makes a reasonable adjustment to the Iatan 1 work order of  
6 what it believes was an actual amount of overcharges, then the Staff will remove this adjustment.  
7 Any adjustment to the Iatan 1 work order for inappropriate mileage charges that were charged to  
8 the common plant work order needs to be identified as well.

9 **I. KCPL Adjustment 11: Affiliate Transaction – Great Plains Power**

10 *Staff Expert: Charles R. Hyneman*

11 The Iatan 1 AQCS Cost Portfolio at April 2010, 2010 shows <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> of charges and <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>  
12 of AFUDC for a total project cost of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> in Project 05-00051 KCPL. This is a project  
13 number created by KCPL to segregate costs that KCPL either cannot charge or has decided not  
14 to charge the other joint partners.

15 When asked in DR 0624.2 to explain the reasons why these costs were capitalized to the  
16 Iatan projects, KCPL responded that:

17 The early development work for Iatan 2 was first started under the former  
18 KLT Power and succeeded by Great Plain Power, the independent power  
19 producer (IPP) subsidiaries of KCP&L and Great Plains Energy.

20 During the late 1990's with increasing electric demand and rising gas  
21 prices, the need for additional baseload resources was being discussed  
22 among regulators and utilities throughout the region and a number of  
23 regional utilities had expressed interest in participating in joint ownership  
24 of a second coal unit at Iatan.

25 At the time, during the late 1990's and early part of this decade, a national  
26 movement toward restructuring of the electric industry was taking place.  
27 This restructuring or deregulation as it was called, resulted in many states  
28 enacting legislation that required investor owned utilities like KCP&L to  
29 divest of all of their generation assets and the utility maintained control of  
30 the distribution assets and acted as a conduit for other retail electric  
31 suppliers to serve customers.

1 Many utilities like KCP&L in response to the changing regulatory  
2 structure, formed IPP subsidiaries for the purpose of developing and  
3 owning generating assets post restructuring.

4 As it was anticipated that Missouri and Kansas would eventually  
5 restructure their respective electricity markets, the early development of  
6 Iatan 2 (referred to as Weston Bend when under development at GPP) was  
7 performed in the IPP subsidiaries since it was expected that the unit would  
8 be non-regulated at some point in the near future.

9 Around the time of early 2003, following the collapse of Enron and  
10 concerns that the deregulated model was not in the best interests of serving  
11 customers, the deregulation movement in Missouri and Kansas appeared  
12 to be stalled.

13 As KCP&L moved into the development of its Comprehensive Energy  
14 Plan (CEP), the Iatan 2 development moved into the regulated utility.  
15 Work that had been done under the GPP subsidiary was valuable in  
16 reducing the cost for redundant work that would need to be performed at  
17 KCP&L for the development of Iatan 2.

18 The use of the existing GPP development work resulted in a substantial  
19 reduction in schedule and additional costs that would have to be incurred.

20 The development work performed at GPP primarily pertained to  
21 environmental permitting and engineering which defined the project scope  
22 and plant design.

23 Since this work had been done at GPP and was fully applicable to the  
24 current development work for Iatan 2 at KCP&L and because it would not  
25 have made sense to redo the work which would have extended the  
26 schedule, this work was transferred to Iatan 1 and 2 capital accounts as a  
27 prudent expenditure for completing the project.

28 Had this work from GPP not been used, KCP&L would have had to re-  
29 perform the work which would have resulted in similar or potentially  
30 higher costs to the project and would have extended the project schedule at  
31 least 1 year.

32 When asked to explain the reasons why these GPP costs were necessary to construct the  
33 Iatan 1 AQCS system and the Iatan 2 generating unit, KCPL replied that Iatan 2 project  
34 definition report performed by Burns & McDonnell showed significant benefits to sharing  
35 common facilities with the current Iatan 1 facility, primarily in the area of the proposed AQCS  
36 systems. Since much of this early design and permitting work was performed by GPP for the

1 development of Iatan 2, this work was applicable and beneficial to the development of  
2 Iatan 1 AQCS as well.

3 The transfer of costs from GPP to KCPL, then charged by KCPL to Iatan 1 AQCS, occurred  
4 on September 29, 2005. On this date KCPL and GPP executed a Bill of Sale and General  
5 Release agreement for \$230,646. KCPL acquired from GPP "assets" consisting of support  
6 engineering for permitting and site development of an Atchison, Kansas, new coal-fired  
7 generation site. This support engineering work was performed by Burns & McDonnell in March,  
8 April and September of 2004. Also included in the \$230,646 is \$43,000 in land options on land  
9 considered for a new coal-fired generation site.

10 This purchase transaction was recorded on KCPL's books and records on  
11 September 30, 2005. The description of the journal entry to record this transaction was "to  
12 record payment to GPP for sale of CWIP assets and land options for Iatan II." The Bill of Sale  
13 and General Release was signed by KCPL by Stephen T. Easley as Vice President of Supply, and  
14 former Vice President of GPP, and for GPP by John J. Destefano, as President of GPP.

15 Page 6 of GPE's 2005 Annual Report:

16 Great Plains Energy's wholly owned subsidiary, Great Plains Power  
17 Incorporated (GPP), focused on the development of wholesale generation.  
18 GPP sold all of its capital assets related to the siting and permitting  
19 process for construction of Iatan No. 2, a coal-fired generating plant, to  
20 KCP&L, at cost, during 2005. GPP was dissolved in 2005.

21 In addition to transferring costs from GPP to the Iatan 1 construction work order, KCPL also  
22 transferred costs to the Iatan 2 work order.

23 In an attempt to gain an understanding of why these GPP costs were a reasonable and  
24 necessary Iatan 1 construction cost Staff arranged for a meeting to discuss this issue. The  
25 meeting was held on September 23, 2009. Despite lengthy discussions on this topic, KCPL  
26 could not explain to Staff's satisfaction why the GPP costs which were incurred by an  
27 unregulated affiliate of KCPL with the intention to construct a non-regulated coal plant near the  
28 Iatan 1 plant site should be recorded as costs that are necessary to construct the environmental  
29 upgrades at the existing Iatan 1 plant.

1 In Staff Data Request No. 844, Staff asked KCPL to provide a copy of all reports to the  
2 Commission, including affiliate transaction reports or regulatory filings that show the sale of  
3 GPP assets to KCPL:

4 Question No.: 0844

5 Please provide a copy of all reports to the MPSC, including affiliate transaction  
6 reports or regulatory filings that show the sale of GPP assets to KCPL.

7 RESPONSE:

8 No reports were filed on this transaction. This was in error and should have been  
9 reported.

10 By failing to report this purchase from GPP, KCPL has been in violation of the  
11 Commission's Affiliate Transaction Rules since at least March 15, 2006, the required date for  
12 2005 affiliate transactions to be reported to the Commission Staff and the  
13 Office of the Public Counsel. 4 CSR 240-20.015 Affiliate Transactions is a Commission rule  
14 intended to prevent regulated utilities from subsidizing non-regulated operations. Paragraph 2  
15 *Standards* requires that a regulated electrical corporation shall not provide a financial advantage  
16 to an affiliated entity. The rule also describes this financial advantage as if the regulated  
17 electrical corporation compensates an affiliated entity for goods or services above the lesser of  
18 the fair market price or the cost to the utility to provide the goods or services for itself.  
19 Paragraph 2(B) requires a regulated utility to conduct its business in such a way as to not provide  
20 any preferential services, information or treatment to an affiliated entity over another party at any  
21 time, except as necessary to provide corporate support functions.

22 When asked in Staff data request No. 624.2 to provide copies of any documentation related  
23 to the evaluation of the market value of the GPP assets at the time of this transaction, KCPL  
24 admitted they did no evaluation of the market value of the assets purchased from GPP and had  
25 no such documentation. KCPL's simple response was that "GPP assets were purchased at cost."  
26 It also said to "See Item 3 for purchase price discussion." The following is the purchase price  
27 discussion provided by KCPL in response to this Staff request:

28 The use of the existing GPP development work resulted in a substantial  
29 reduction in schedule and additional costs that would have to be incurred.



1 The development work performed at GPP primarily pertained to  
2 environmental permitting and engineering which defined the project scope  
3 and plant design.

4 Since this work had been done at GPP and was fully applicable to the  
5 current development work for Iatan 2 at KCP&L and because it would not  
6 have made sense to redo the work which would have extended the  
7 schedule, this work was transferred to Iatan 1 and 2 capital accounts as a  
8 prudent expenditure for completing the project.

9 Had this work from GPP not been used, KCP&L would have had to re-  
10 perform the work which would have resulted in similar or potentially  
11 higher costs to the project and would have extended the project schedule at  
12 least 1 year.

13 In Staff Data Request No. 844 it asked KCPL to provide a list of all assets sold to KCPL and  
14 the assigned market value and cost to KCPL assigned to each asset by KCPL and the basis for  
15 the determination the transaction was made at the lower of cost or market value.

16 KCPL's response was:

17 Data request 624.2 item 6 states that the GPP assets were purchased at  
18 cost. As indicated in item 3 of that response, "Had this work from GPP  
19 not been used, KCP&L would have had to re-perform the work which  
20 would have resulted in similar or potentially higher costs to the project and  
21 would have extended the project schedule by at least 1 year." KCP&L  
22 believed that cost was the lower of cost or market.

23 Because KCPL has failed to show that any of the costs of the GPP "assets" acquired provide  
24 any benefit to the Iatan 1 construction project these costs should not be included in this work  
25 order. In addition, until KCPL can show that the actual market value of these "assets" were  
26 greater than the cost it paid to acquire these assets from an affiliate, no GPP acquired asset costs  
27 should be included in any KCPL construction project.

#### 28 **J. KCPL and GMO Adjustment 6: KCPL's July 18, 2008 Alstom Settlement**

29 *Staff Expert: Charles R. Hyneman*

30 In response to Staff Data Request No. 633 Staff reviewed Risk and Opportunity (R&O)  
31 Analysis Sheets item numbers 367a, 367b and 367c prepared by KCPL on April 23, 2008. In  
32 these R&Os, KCPL noted that it had evaluated Alstom claims against KCPL in the amount of

1 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> resulting from what Alstom asserted were delays to Alstom's work on the  
2 Iatan AQCS due to contract performance delays caused by KCPL and force majeure events.  
3 KCPL's Iatan Project Team evaluated a potential cost exposure in the range of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> to  
4 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>. For the purposes of its Iatan 1 cost projection, KCPL decided to carry these  
5 claims at an amount of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> and move this amount into the current budget.

6 In R&O number 367b, KCPL also noted that it believes it would be entitled to receive  
7 liquidated damages from Alstom in the amount of <sup>\*\*</sup> [REDACTED] <sup>\*\*\*\*</sup> to <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> if Alstom  
8 continued to fall behind schedule.

9 Because of the existing KCPL claims against Alstom and Alstom's claims against KCPL,  
10 KCPL created a budget contingency amount for the Iatan 1 AQCS project for these claims.  
11 KCPL calculated the budget contingency amount by including the <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> Alstom claim  
12 reduced by KCPL's claim of liquidated damages against Alstom in a range of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> to  
13 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>. This amount was further reduced by the amount that KCPL moved into the  
14 current budget of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> for a net contingency range of <sup>\*\*</sup> [REDACTED] <sup>\*\*\*\*</sup> to <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>.

15 In a settlement agreement between KCPL and Alstom executed on July 18, 2008, KCPL and  
16 Alstom agreed to settle all existing claims by KCPL paying Alstom <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> an amount that  
17 exceeded the high end of KCPL's contingency range.

18 To the extent that Alstom's claims were caused by improper KCPL project management  
19 actions or inactions, these costs should not be charged to the Iatan 1 project. Staff recognizes  
20 that force majeure claims and other potential claims by contractors may occur on this project  
21 through no fault of KCPL. Staff also recognizes that these costs may be unavoidable and it may  
22 be necessary that they be a part of the costs of the project. However, Staff is not convinced that  
23 Alstom's claims against KCPL were not the fault of KCPL's project management, raising the  
24 question of KCPL's prudence and whether KCPL's ratepayers should be responsible for these  
25 costs. In addition, there is the matter of the liquidated damages clause in KCPL's contract with  
26 Alstom, which KCPL calculated offset the potential financial exposure to Alstom's claims.

27 In accounting for the cost of the <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> settlement, KCPL made no attempt to  
28 quantify the costs that may have been caused by its own project management team or the  
29 owner-engineering firm it hired, Burns & McDonnell ("B&McD"), or any other Iatan 1  
30 contractor or subcontractor. In reviewing the documents surrounding this settlement Staff noted  
31 that a portion of Alstom's claims have resulted from delays that were caused by late document

1 submittals by Burns & McDonnell. In such a case it would be expected of KCPL to pursue this  
2 claim for validity. If the claim was valid it would also be expected that KCPL pay this claim and  
3 then seek recovery of the claim from Burns & McDonnell, the responsible party, for the claim  
4 amount. Staff saw no documentation that indicated KCPL investigated Alstom's claim against  
5 Burns & McDonnell and found it without merit. KCPL simply paid Alstom <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> and  
6 charged all <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> to the Iatan 1 project.

7 <sup>\*\*</sup> [REDACTED]  
8 <sup>\*\*</sup> [REDACTED] Staff has found no support  
9 for this change in KCPL's view to the total loss of value in KCPL's liquidated damages claim  
10 against Alstom. The Staff is taking the position in this case to remove the <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> settlement  
11 payment by KCPL to Alstom. <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
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[REDACTED]

[REDACTED]

After reviewing the documents surrounding this transaction, Staff sees no evidence that any of the [REDACTED] paid by KCPL should be charged to the Iatan 1 project to be recovered from ratepayers. By paying off Alstom and charging the settlement to the Project, KCPL is absolving itself of any mismanagement on its part or on the part of other potentially responsible parties.

An additional concern is that if the Alstom settlement is allowed to stand, KCPL's customers will suffer the harm of KCPL management's decision [REDACTED]

[REDACTED] Staff is recommending that none of the [REDACTED] Alstom settlement costs be included in the Iatan 1 work order and the staff is adjusting the Iatan 1 work order to include the [REDACTED]

1 Kenneth M. Roberts, an attorney for Schiff Hardin LLP, filed testimony on behalf of KCPL  
2 in Kansas Corporation Commission Case No. 09-KCPE-246-RTS, In supporting the  
3 Alstom Settlement before the KCC, Mr. Roberts states at page 3 of his rebuttal testimony in  
4 that case:

5 I would also like to emphasize that I agree with Dr. Nielsen's testimony  
6 that potential or actual construction claims by contractors are not an  
7 appropriate measure of prudence. It is not uncommon for contractors to  
8 submit claims for no other reason than to attempt to extract more money  
9 from an owner, particularly with a fixed-price contract. Decisions whether  
10 to settle such claims are made in the best interests of the project, and  
11 therefore, a settlement can be a prudent decision.

12 Mr. Roberts' comments were in response to a proposed KCC Staff adjustment, similar to the  
13 MPSC Staff adjustment in this case to remove costs of the Alstom settlement from the Iatan 1  
14 AQCS construction work order.

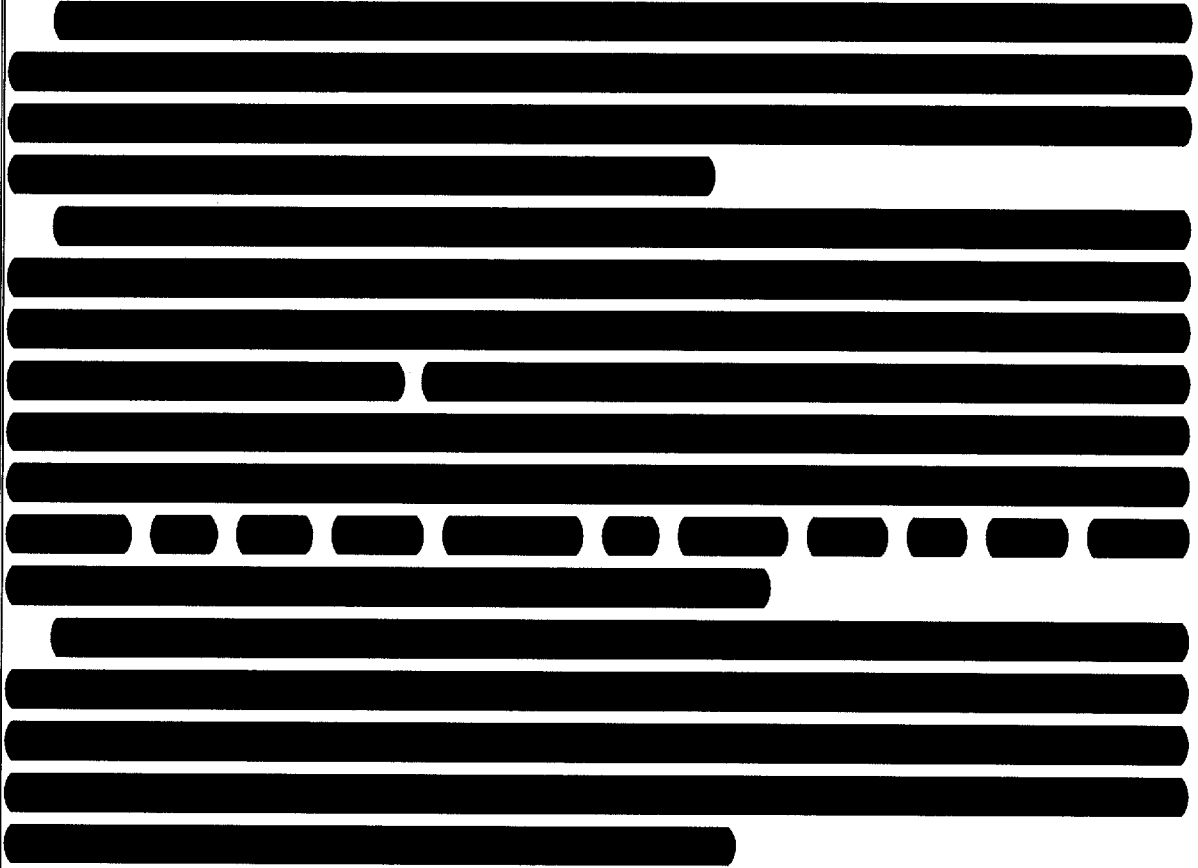
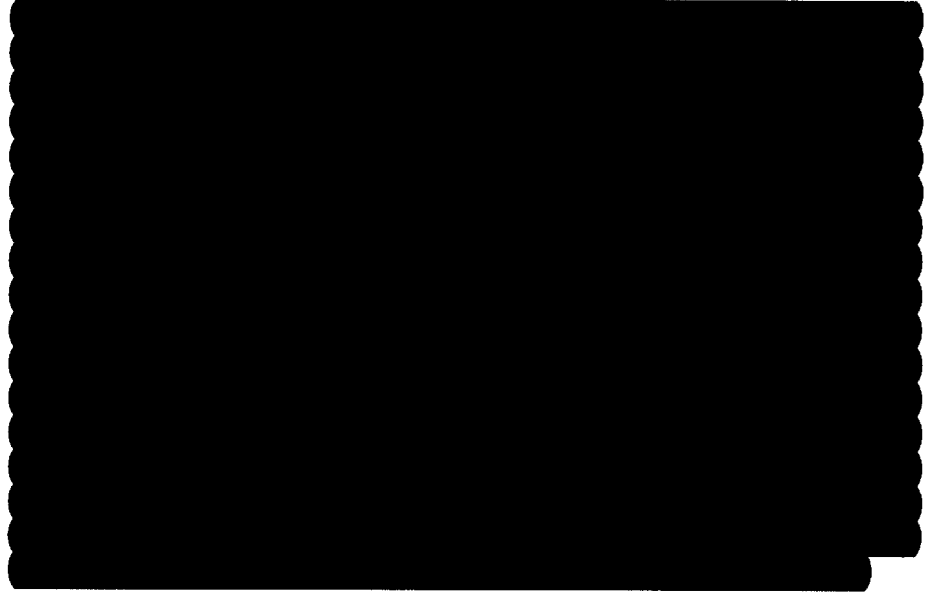
15 The Staff does agree, however, with Mr. Roberts that it is not unusual for a contractor to file  
16 a claim on a construction project. It may not even be unusual for a contractor to submit a claim  
17 for no other reason but to attempt to extract more money from an owner. In fact, that is what the  
18 Staff believed did partially occur in the Alstom Settlement.

19 The Staff believes that it was very likely that Alstom had legitimate claims against KCPL for  
20 KCPL's failure to adequately manage its engineering contractor. In addition, because of KCPL's  
21 inexperienced Project Management team, Alstom was able to take advantage of this situation to  
22 the detriment of KCPL and potentially to KCPL's ratepayers. To the extent Alstom did delay the  
23 completion of the Iatan Project, KCPL failed to hold Alstom accountable.

24 \*\* [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
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29 The Staff agrees that the fact that a contractor submits a claim is not by itself an indication of  
30 imprudence. The imprudence occurs when the owner decides to make a settlement with a  
31 contractor by paying millions of dollars when it truly believes that it is owed millions of dollars



1 from that contractor. That fact alone is a strong “indication” of potential imprudence which, in  
2 the Staff’s opinion requires a significant amount of convincing evidence to overcome. The Staff  
3 has yet to see any evidence from KCPL which would lead to the conclusion that paying  
4 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> to Alstom to settle the outstanding issues was a prudent decision for KCPL  
5 management from the interests of KCPL customers.

6 <sup>\*\*</sup> [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED] [REDACTED]  
14 [REDACTED] <sup>\*\*</sup>

15 **K. KCPL and GMO Adjustments 3, 4, and 5: Schiff Hardin, LLP (Schiff)**

16 *Staff Expert: Charles R. Hyneman*

17 Schiff Hardin, LLP, (“Schiff”) represents that it is a limited liability partnership, general  
18 practice law firm, with offices located in Chicago, Illinois, among other cities. Although Schiff  
19 is a general practice law firm, it has been assisting KCPL in KCPL’s project management duties  
20 at Iatan 1 in addition to legal services.

21 Kenneth M. Roberts, who is an equity partner, co-chair of the Construction Law Group and a  
22 member of the executive committee of Schiff, filed testimony on behalf of KCPL in Case  
23 No. ER-2009-0089, and File Nos. ER-2010-0355, and ER-2010-0356, as did Daniel F. Meyer of  
24 Meyer Construction Consulting, who identifies himself as having been retained by Schiff.  
25 Mr. Roberts states at page 3, lines 7-22 of his direct testimony in File Nos. ER-2010-0355 and  
26 ER-2010-0356 that KCPL “engaged Schiff: (i) to help the Company develop project control  
27 procedures to monitor the cost and schedule (‘Project Controls’) for the infrastructure projects  
28 contained in the Company’s Comprehensive Energy Plan (‘CEP’); (ii) to monitor the CEP’s  
29 progress and costs, including the review and management of change order requests; (iii) to  
30 negotiate contracts with vendors related to the CEP; and (iv) to resolve disputes with vendors

1 that might arise on CEP projects.” Mr. Meyer in his rebuttal testimony in File Nos.  
2 ER-2010-0355 and ER-2010-0356 at page 1, lines 9-12, identifies the work that he has  
3 performed for Schiff since the early 1990s as “[p]rimarily cost analysis work and, project  
4 oversight to have also provided some scheduling work and litigation support. All of my work  
5 with Schiff has been in the construction industry, primarily in the power industry.”

6 Schiff’s total budget (Control Budget) for work on the Iatan 1 construction project is  
7 identified in KCPL’s Iatan 1 Cost Portfolio at [REDACTED] This document was received by the  
8 Staff in response to Staff Data Request No. 622. As of April 2010, KCPL charged the Iatan 1  
9 construction project with [REDACTED] of Schiff charges classified as “Audit Services” and is  
10 budgeted to charge an additional [REDACTED] for the period July 2010 through November 2010.

11 The cost overruns for Schiff extend to Iatan Unit 2. In its control budget for Unit 2, KCPL  
12 budgeted [REDACTED] for Schiff Hardin and according to KCPL’s April 2010 Unit 2 Cost  
13 Portfolio it is expected to charge the Iatan 2 work order, an amount of [REDACTED] for Schiff’s  
14 services, or approximately [REDACTED] the original budget.

15 A major concern of the Staff in its audit of the audit of Iatan 1 construction costs is the  
16 significant cost overruns attributed to Schiff’s audit services consulting work. In its review of  
17 Schiff costs the Staff focused on three main audit procedures:

- 18 1. Review the work performed by Schiff for KCPL to understand the  
19 type of work performed and determine if it is relevant to and  
20 beneficial to the Iatan construction projects.
- 21 2. Determine how and why Schiff was selected to perform consulting  
22 work for KCPL on the Iatan construction projects.
- 23 3. Find how KCPL determined that the costs (hourly rates as well as  
24 travel and other expenses) for the services performed by Schiff  
25 were reasonable given a) the specific type of work performed by  
26 Schiff and 2) the quantity of work performed by Schiff.

27 Each of the three audit procedures will be described below. Based on this analysis, the Staff  
28 is proposing three adjustments to the Schiff costs charged to the Iatan 1 work order. These  
29 adjustments effectively reduce the hourly rate for professional services charged by the Schiff  
30 employees, eliminate an estimated amount of unsupported travel and other expenses, and  
31 reduced the number of hours charged to the project.

- 1           • Staff attempted to review the work performed by Schiff that was relevant to  
2           and beneficial to the Iatan construction projects.

3           As will be shown below, KCPL effectively shut down this part of the Staff's audit by  
4 refusing to produce substantially all of the data requested by the Staff in which it needed to  
5 conduct its review of the type of work performed by Schiff. While KCPL initially refused to  
6 provide any unredacted copies of Schiff monthly invoices, KCPL eventually relented and agreed  
7 to provide redacted copies of the invoices. It was from a review of these redacted invoices that  
8 the Staff developed an understanding of the types of work performed by various Schiff  
9 employees from attorneys, paralegals, cost controls specialists and other project  
10 management specialists.

11           In Staff Data Request No. 418, the Staff asked KCPL to provide copies of all  
12 recommendations, evaluations, assessments, audits, and advice provided to KCPL from  
13 Schiff Hardin regarding Schiff Hardin's independent review and reporting of the project controls  
14 for the Iatan 1 and 2 construction projects. KCPL objected to this data request to the extent that  
15 it requests documents that are protected by the attorney-client privilege. KCPL advised the Staff  
16 that to the extent KCPL has copies of unprivileged documents responsive to this data request,  
17 they will be made available for review in the data room located at KCPL headquarters. However,  
18 since no documents were made available for review, the Staff concludes that all  
19 recommendations, evaluations, assessments, audits, and advice provided to KCPL from  
20 Schiff Hardin regarding Schiff's independent review and reporting of the project controls for the  
21 Iatan 1 and 2 construction projects have been classified by KCPL as protected and not subject to  
22 audit and review by the Staff.

23           In Staff Data Request Nos. 342, 353, 363, and 373, the Staff attempted to obtain audit  
24 documentation related work performed by Schiff for KCPL. The Staff attempted to review  
25 documentation related to Schiff's review of the following Iatan 1 contracts:

- 26           a.       Burns & McDonnell Contract for design and engineering services  
27                   for the Iatan 1 environmental upgrades.  
28           b.       Alstom Contract related to the construction of the Iatan 1 AQCS  
29           c.       Kiewit Contract related to the Balance of Plant work at Iatan.  
30           d.       Kissick Contract related to the foundation work at Iatan.

1 KCPL refused to provide the Staff any documentation related to Schiff's review of  
2 these contracts and asserted that the documents requested by Staff were protected by the  
3 attorney-client privilege.

4 In Staff Data Request No. 433 the Staff asked for copies of all reports and presentations  
5 Schiff provided to KCPL's senior management, Executive Oversight Committee (EOC), and  
6 project personnel. KCPL objected to this data request to the extent that it requests documents that  
7 are protected by the attorney-client privilege.

8 In Staff Data Request No. 872, KCPL was asked to provide a copy of all notes, minutes,  
9 presentations, reports that were prepared for the meeting or presented in the weekly internal  
10 Schiff Hardin Iatan project status meetings (May 2006 through December 2009). KCPL  
11 responded that Schiff convenes a weekly meeting to discuss commercial disputes and regulatory  
12 strategy for the Unit 1 and/or Unit 2 rate case. These meetings have been held since 2005,  
13 usually take place on Mondays and last approximately an hour. KCPL asserted that "any  
14 document produced during these meetings contains legal advice provided to KCPL, requests by  
15 KCP&L for legal advice, and/or contains the mental impressions and strategy of Schiff's  
16 attorneys. Accordingly, the information sought is protected from disclosure by the attorney  
17 client privilege and/or work product doctrine."

18 In Staff Data Request No. 873, question 4, KCPL was asked to provide a copy of all  
19 communications with Schiff Hardin LLP which include authorization and direction to Schiff  
20 Hardin to perform work for the Iatan projects. KCPL responded that it objects to this data request  
21 to the extent it seeks information protected from disclosure by the attorney client privilege and/or  
22 work product doctrine.

23 Because of KCPL's refusal to provide information to the Staff on which the Staff could  
24 evaluate the type, quality and relevance of the work provided to KCPL by Schiff, the Staff was  
25 forced to rely on Schiff invoices and the partially-redacted description of the services provided in  
26 those invoices as a basis of its determination.

- 27 • The Staff attempted to determine how and why Schiff was selected to perform  
28 consulting work for KCPL on the Iatan construction projects.

29 In Staff Data Request No. 850, the Staff asked for a copy of the KCPL policy and procedure  
30 related to the acquisition of services from a sole source that could be charged to the Iatan 1  
31 AQCS project during the period June 1, 2005 through July 31, 2006. KCPL referred the Staff to

1 a document entitled Great Plains Energy/KCP&L Policies and Procedures Manual, Revised as of  
2 October 1, 2009. In this document, KCPL referred to policy E-100 Procurement, page 3 subtitle  
3 "Competitive Bidding." This policy has three specific requirements:

4 \*\* [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] \*\*

13 KCPL Policy E-100 also listed specific circumstances when competitive bids are not  
14 required. These specific circumstances are:

15 \*\* [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
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26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]  
29 [REDACTED] \*\*

30 The Great Plains Energy/KCP&L Policies and Procedures Manual, Revised as of  
31 October 1, 2009 also include the following requirements of KCPL's Purchasing Department:

32 \*\* [REDACTED]  
33 [REDACTED]  
34 [REDACTED]  
35 [REDACTED]  
36 [REDACTED]

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[REDACTED]

The Staff attempted to determine if KCPL's Procurement Policies and Procedures were followed in the selection of Schiff as a vendor on the Iatan construction project.

In response to Staff Data Request No. 873, KCPL advised that:

\*\* [REDACTED]

In Staff Data Request No. 411, the Staff asked for copies of all documents related to the selection of Schiff to provide independent oversight and Project Controls advice for Iatan 1. KCPL refused to provide any documents and advised the Staff that "to the extent that KCP&L has been able to locate copies of unprivileged documents responsive to this Data Request, they will be made available for review in the data room..."

In Staff Data Request No. 410, the Staff asked for KCPL to provide documentation identifying all qualified vendors who could provide independent oversight and project controls advice for Iatan 1 construction activities. The Staff also asked for a list of all vendors who were invited to make a proposal to provide legal and project management advice for Iatan 1. Responding to Staff Data Request No. 410, KCPL advised that Schiff was the only qualified vendor in the Midwest who could assist KCPL Procurement personnel in the development of

1 request for proposals (RFPs), contract formation and administration and assist KCPL in the  
2 mediation of construction disputes.

3 In response to a Staff follow-up question in Staff Data Request No. 410.1, KCPL admitted  
4 that there are many law firms that have construction law practice groups that possess general  
5 construction expertise in areas such as negotiating and drafting contracts, administering  
6 contracts, defending and prosecuting delay and other contract claims, and representing  
7 companies in construction disputes such as mediations, arbitrations or litigation. In Staff  
8 Data Request No. 410.2, KCPL also admitted that there are many law firms that have general  
9 construction expertise, there are a number of entities that can provide high quality project control  
10 and risk expertise and there are a number of law firms that have expertise in regulatory matters.

11 While admitting that many firms have the general experience in construction, KCPL made  
12 the distinction that because it is a regulated utility, there are special issues that arise on regulated  
13 utility projects where specific experience and industry knowledge is required to protect  
14 KCPL's interests.

15 When asked in Staff Data Request No. 410.2 to identify the specific interests of KCPL that  
16 only Schiff could protect over and above what other similar firms could protect or what KCPL  
17 employee(s) could protect, KCPL replied that it "believes the use of a single firm that has  
18 expertise in each of the aforementioned areas enhances the company's ability to demonstrate to  
19 the Commission that KCP&L made prudent decisions at each stage of the construction project."

20 KCPL more fully explained why it sole sourced this work to Schiff Hardin in response to  
21 Staff Data Request No. 410.1, question 1:

22 Kansas City Power & Light Company ("KCP&L) sought out construction  
23 law practice groups that have significant specialized experience  
24 representing regulated electric utilities on projects involving the  
25 construction of base load generation.

26 KCP&L does not have any documents that "show that Schiff is the only  
27 company that can provide these services," but KCP&L did conclude that  
28 Schiff Hardin's industry specific experience, especially its project controls  
29 experience, would provide significant benefits to KCP&L throughout each  
30 phase of the construction and regulatory process.

31 KCP&L was aware that Schiff Hardin had, since the early 1990s worked  
32 with other utilities in the local area and nationally with respect to large

1 construction projects. KCP&L is unaware of any other firms that have  
2 similar experience, particularly in the project controls arena.

3 While there are many law firms that have construction law practice groups  
4 that possess general construction expertise in areas such as negotiating and  
5 drafting contracts, administering contracts, defending and prosecuting  
6 delay and other contract claims, and representing companies in  
7 construction disputes such as mediations, arbitrations or litigation, there  
8 are special issues that arise on regulated utility projects where specific  
9 experience and industry knowledge (even if its institutional) is required to  
10 adequately protect KCP&L's interests. KCP&L also sought out  
11 construction law groups that had significant and specialized experience in  
12 project controls in the context of building base load generation.

13 Following up on KCPL's response to Staff Data Request No. 410.1, Staff asked in  
14 Staff Data Request No. 410.2, for KCPL to explain what it meant "special issues that arise on  
15 regulated utility projects where specific experience and industry knowledge (even if its  
16 institutional) is required to adequately protect KCP&L's interests." Staff asked KCPL to provide  
17 a list of and description of all such special issues that formed the basis of this statement. KCPL  
18 responded to Staff Data Request No. 410.2, question 1 that the special issues in which experience  
19 was required was prudence of expenditures and the concept of used and useful plant in service.  
20 No other required regulated utility experience was provided. KCPL's exact response was:

21 Under traditional ratemaking principles, utilities may only recover prudent  
22 expenditures for items that are used and useful. KCP&L concluded that  
23 hiring a first-rate construction practice group without expertise in most  
24 aspects of ratemaking principles was not in the company's interest.  
25 Accordingly, KCP&L sought out and hired a construction practice group  
26 that has expertise in construction law, project controls and traditional  
27 ratemaking principles. Schiff Hardin will bring to bear the same level of  
28 expertise in the upcoming rate case as it has brought to negotiating  
29 contracts, resolving construction disputes and project controls. While there  
30 are a number of reasonable approaches to protecting the company's  
31 interests, KCP&L concluded that this integrated approach was the best  
32 way to protect the company's interests.

33 When directly asked in Staff Data Request No. 410.1 question 2 for the specific process  
34 KCPL used in its search to show that Schiff is the only company that can provide these services,  
35 KCPL could not identify any process it performed but simply responded that it "has been unable  
36 to identify a law firm in the Midwest that has Schiff Hardin's construction law and in-house  
37 project controls experience as it relates to building base load power plants."



1 In Staff Data Request No. 410.2 KCPL was asked to clarify the statement it made in response  
2 to Staff Data Request No. 410.1 that it “sought out construction law groups that had significant  
3 and specialized experience in project controls in the context of building base load generation”.  
4 In its response to Staff Data Request No. 410.2 KCPL admitted that not only did it not solicit  
5 bids for this work, it did not even contact any other firm to determine potential interest in the  
6 Iatan construction management and legal work awarded to Schiff.

7 In response to Staff Data Request No. 410.2 KCPL indicated that Schiff was selected by  
8 KCPL’s President and Chief Operating Officer, William Downey, based on information  
9 Mr. Downey obtained from other utility executives with experience with Schiff. According to  
10 KCPL, based on the information provided from other utility executives with extensive  
11 experience with Schiff, Mr. Downey identified Schiff as a firm that had expertise in project  
12 controls, construction law and regulatory experience specific to the construction of large base  
13 load generation. The resumes of numerous construction law practice groups throughout the  
14 country were reviewed. Schiff was the only law firm that KCPL contacted.

15 When the Staff inquired as to the rationale for limiting its search for qualified vendors to the  
16 Midwest, KCPL responded that it believed it would be “beneficial to engage a law firm that was  
17 familiar with the major construction contractors working on projects in the Midwest as well as  
18 the regulatory environment in the Midwest.” In response to Staff Data Request No. 410.2 KCPL  
19 was asked to describe its understanding of the regulatory climate in the Midwest as opposed to  
20 the regulator climate in other regions in the country and why an understanding of the regulatory  
21 climate in the Midwest is a relevant consideration in the selection of a vendor to perform the role  
22 Schiff performs for the Iatan projects. KCPL replied that:

- 23 A. A utility that is held to a prudency standard in a regulatory environment needs to put  
24 different policies, procedures and rigor around its decision making than a utility  
25 responsible for a major construction project that is not subject to regulatory scrutiny.  
26  
27 B. A state public utility’s policy preferences and the tradeoffs made by a PUC are likely  
28 to have significant consequences on a utility and its customers. This is what was  
29 meant by the use of the phrase “regulatory climate.”  
30  
31 C. KCP&L believes that Schiff’s knowledge of policies and procedures utilized by other  
32 regulated utilities on large construction projects has provided added value in terms of  
33 preparing for and participating in KCP&L’s rate cases.

1 The Staff determined that KCPL did not follow its own Procurement policies in awarding  
2 millions of dollars in contract work without making reasonable efforts to contact and solicit bids  
3 of other comparable firms. Because of its failure to seek competitive bids for this work, the Staff  
4 found that KCPL paid above market rates for the specific work performed on the Iatan projects.

5 Based on its audit the Staff concludes that the selection of Schiff Hardin was primarily  
6 influenced by KCPL management's desire to be prepared to defend and protect itself from any  
7 charges of unreasonable, inappropriate or imprudent decisions and not about conducting the  
8 day-to-day project management work required to complete a significant construction project on  
9 time and on budget. This focus resulted in Schiff charging the Iatan 1 construction project for  
10 work not related to construction.

11 The Staff also found that KCPL failed to enforce the terms and conditions of its contract with  
12 Schiff by failing to require Schiff to produce documentation and cost support of travel and other  
13 expenses charged in its monthly invoices.

- 14 • Staff attempted to understand how KCPL determined that the hourly rates and  
15 annual rate increases charged by Schiff were reasonable and appropriate,  
16 given a) the specific type of work performed by each Schiff employee; and  
17 b) the quantity of work performed by Schiff.

18 In Staff Data Request No. 410.1, Staff asked KCPL how it determined that the legal rates and  
19 paralegal rates used by Schiff were reasonable. KCPL's response was that "among other things,  
20 KCP&L made these determinations based on data gathered from its own records and its general  
21 knowledge of legal rates for complex legal work." When asked in Staff Data Request No. 410.2  
22 to define "among other things", KCPL responded that "it relied primarily on its records its  
23 general knowledge of legal rates. In addition, KCP&L's attorneys periodically review industry  
24 publications regarding legal rates." When asked to provide a copy of these records, KCPL  
25 responded that it did not maintain a list of the records it reviewed.

26 For the Iatan 1 project, KCPL estimated that it will pay Schiff approximately <sup>\*\*</sup>██████████<sup>\*\*</sup> For  
27 the Iatan 2 project, KCPL estimated it will pay Schiff an additional <sup>\*\*</sup>██████████<sup>\*\*</sup> Besides the fact  
28 that these estimated costs exceed budgeted amounts by significant amounts, the fact that KCPL  
29 will pay <sup>\*\*</sup>██████████<sup>\*\*</sup> in construction-related work to a vendor without a competitive bid is a  
30 major concern to the Staff.

1 A copy of the sole-source contract between Schiff and KCPL was provided to Staff in  
2 response to Staff Data Request No. 409. In the copy of the contract provided to Staff there is no  
3 indication that the contract was signed by either KCPL or Schiff.

4 The Schiff contract was entered into on January 17, 2007. The contract states that Schiff is  
5 retained by KCPL to perform and render for KCPL's executives and KCPL's legal, procurement,  
6 and engineering departments, professional services in accordance with the attached Schiff Hardin  
7 LLP Roles and Responsibilities for KCPL Comprehensive Energy Plan Projects. The executive  
8 summary of Attachment A to this contract, Schiff Hardin LLP Roles and Responsibilities  
9 KCP&L Comprehensive Energy Plan Projects, states:

10 \*\* [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
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21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]\*\*

28 Paragraph 2 of the KCPL-Schiff contract lists the specific authorized hourly rate for each  
29 Schiff employee. This rate is shown in the chart below.

Schiff Hardin Job Title	Contract Jan-07 Rate/Hr
Partner - in charge	** [REDACTED] **
Partner	** [REDACTED] **
Associate	** [REDACTED] **
Project Controls Analyst	** [REDACTED] **

30 Staff DR 409 Schiff Contract

1 The chart below shows the progression of actual hourly rate increases paid to Schiff from its  
2 initial work on the Iatan Project in 2005 through the most current information available to Staff  
3 and was obtained from Schiff invoices received in response to Staff Data Request No. 415 and  
4 supplements to Data Request No. 415.

	2005	2006	Inc	2007	Inc	2008	Inc	2009	Inc	2010
Paralegal	**									**
Paralegal	**									**
Partner	**									**
Partner	**									**
Equity Partner	**									**

6 As of August 6, 2010, the Staff has not yet received any invoice from Schiff describing the  
7 work performed for Iatan 1 or Iatan 2 in any month in 2010. The last invoice received by the  
8 Staff (and to the Staff's knowledge KCPL) has been for work performed in December 2009.

9 As reflected in the chart above, even though the hourly rate increases have moderated  
10 somewhat in 2009, the increases charged to KCPL over the period 2005 through 2009 appear to  
11 be excessive, especially in this time of a distressed economy with significantly high  
12 unemployment rates and a heavy downward pressure on compensation increases.

13 In its attempt to determine how KCPL found the Schiff annual rate increases to be  
14 reasonable, the Staff first reviewed the KCPL-Schiff contract. \*\*

15  
16  
17

18 In Staff Data Request No. 852 question 2 the Staff asked KCPL to provide all supporting  
19 documentation and approval documentation from KCPL's General Counsel's office concerning  
20 the Schiff hourly rate increases. KCPL replied that "generally, KCPL approved proposed annual  
21 rate increases proposed by Schiff Hardin verbally. To the extent that documentation is available,  
22 the documentation is attached."

23 KCPL attached three documents to this data request. These documents include a  
24 January 5, 2009 memo from Schiff to KCPL advising KCPL of the 2009 Schiff billing rates, one  
25 document listing the names and hourly rates of the Schiff employees and consultants from  
26 2005 through 2009, and one March 15, 2007 email from Schiff to KCPL providing the Schiff  
27 billing rates since Schiff started working at KCPL. No documentation was provided that  
28 indicated KCPL approved any Schiff hourly rate increases.



1 While the Staff does not know the exact date KCPL and Mr. Jones ended their Agreement,  
 2 Mr. Jones started to work for Schiff in the exact same capacity as he did for KCPL. The only  
 3 difference is that as an independent contractor Mr. Jones charged KCPL <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour. As a  
 4 Schiff Hardin subcontractor, Mr. Jones currently charges KCPL <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour.

5 The contract between Schiff and KCPL lists <sup>\*\*</sup> [REDACTED]

6 [REDACTED]  
 7 <sup>\*\*</sup> [REDACTED] The contract also includes the <sup>\*\*</sup> [REDACTED]  
 8 <sup>\*\*</sup> [REDACTED] Staff has not been provided with any updates, change orders or  
 9 other modifications to the contract between Schiff and KCPL to authorize the work of Mr. Jones  
 10 and his <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour compensation.

11 In a supplemental response to Staff Data Request No. 415, KCPL provided three invoices for  
 12 Mr. Jones' work submitted by Schiff. As shown below, Schiff charged KCPL <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> in  
 13 excess of what KCPL would have been billed by Mr. Jones in only a four month period of  
 14 April 2009 through July 2009. While the Staff did not make a specific adjustment to reflect  
 15 Mr. Jones' services at the rate charged KCPL before hired by Schiff (<sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour) as opposed  
 16 to the rate charged KCPL by Schiff (<sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour), the Staff will consider this adjustment in its  
 17 audit of the Iatan 2 construction costs.

Months	Hours	Schiff Rate	KCPL Rate	Diff	Excess charge
April and May 2009	360	<sup>**</sup> [REDACTED] <sup>**</sup>	[REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
June 2009	188	<sup>**</sup> [REDACTED] <sup>**</sup>	[REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>
July 2009	198	<sup>**</sup> [REDACTED] <sup>**</sup>	[REDACTED]	[REDACTED]	[REDACTED] <sup>**</sup>

18  
 19 Schiff Adjustments

20 As noted above, to reduce the likelihood that inappropriate costs are charged to the Iatan  
 21 construction project, the Staff found it necessary to make adjustments to remove inappropriate,  
 22 excessive and unsupported Schiff costs from the Iatan 1 project.

23 The only reasons why these adjustments are necessary is that KCPL, in violation of its own  
 24 Procurement policies issued a sole source contract to Schiff Hardin for <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> for Iatan 1 and  
 25 <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> for Iatan 2. In addition, KCPL could provide no basis to the Staff that the costs  
 26 charged by Schiff were fair and reasonable as it issued no request for proposals for this work,  
 27 contacted no other vendors about this work, and did not do any formal study or analysis about

1 the costs proposed to be charged by Schiff. Finally, KCPL could not convincingly justify its  
2 failure to enforce the terms and conditions of its contract with Schiff.

3 Other items of concern to the Staff are the fact that KCPL apparently did not attempt to  
4 obtain a volume pricing discount for offering thousands of billable hours over a six year period.  
5 KCPL apparently paid Schiff whatever rate Schiff decided to bill KCPL and KCPL simply paid  
6 it. Also, while KCPL hired Schiff to ensure the terms and conditions of the Iatan construction  
7 contracts were enforced, KCPL decided that it did not need to enforce the terms and conditions  
8 of its contract with Schiff. KCPL did not pre-approve annual rate increases and KCPL did not  
9 require Schiff to submit monthly receipts for travel and other expenses charged to the project.

10 Finally, as noted above, a further indication of the apparent lack of concern about the costs  
11 charged by Schiff was KCPL acquiescence in Schiff hiring the KCPL Procurement Director,  
12 Steve Jones, and allowing Schiff to charge KCPL <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour for the exact same service  
13 KCPL was paying <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour.

14 1. Travel and other expenses adjustment

15 In its review of Schiff invoices, the Staff has found that Schiff has charged the construction  
16 project hundreds of thousands of dollars in travel expenses, with virtually no document support.  
17 In October 2007 alone, Schiff charged KCPL <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> in travel expenses. <sup>\*\*</sup> [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED] <sup>\*\*</sup>

22 KCPL has provided to Staff copies of Schiff invoices in response to Staff Data Request  
23 No. 415. Included in the Schiff invoices are receipts and other documentation supporting  
24 charges from consultants, who are subcontractors of Schiff and provided services respecting the  
25 Iatan construction projects. However, Staff's review of these invoices revealed no documentation  
26 supporting the travel and other expenses charged to KCPL by Schiff employees.

27 Staff made a specific inquiry to KCPL about the lack of receipts for expenses included in the  
28 Schiff invoices, and KCPL indicated that no additional documentation was available. Because of  
29 KCPL's failure to require Schiff to comply with the terms of its contract <sup>\*\*</sup> [REDACTED]

1 [REDACTED] Staff was unable to audit and assess the  
2 reasonableness of the expenses Schiff charged to KCPL.

3 Question No. 0881

- 4 1. Reference Schiff Hardin Invoice No. 1366223 dated 3/31/09. Please  
5 provide a copy of all receipts received by KCPL in support for Schiff's  
6 request for payment of [REDACTED] in travel, meals and other expenses  
7 excluding the [REDACTED] charge for professional services. Please provide  
8 the date the receipts were received. If no receipts were received to support  
9 these expenses please explain how KCPL determined the expenses were  
10 reasonable and prudent.
- 11 2. Reference Schiff Hardin Invoice No. 1357268 page 70 dated 2/28/09.  
12 Please provide a copy of all receipts received by KCPL in support for  
13 Schiff's request for payment of travel, meals and other expenses. Please  
14 provide the date the receipts were received. If no receipts were received to  
15 support these expenses please explain how KCPL determined the expenses  
16 were reasonable and prudent.

17 RESPONSE:

- 18 1. KCP&L does not have the receipts in its possession. Schiff Hardin  
19 provides KCP&L with a printout of expenses incurred by Schiff Hardin on  
20 a monthly basis. As detailed in our response to DR#0857, the Law  
21 Department reviews these expenses to ensure they are reasonable.
- 22 2. KCP&L does not have the receipts in its possession. Schiff Hardin  
23 provides KCP&L with a printout of expenses incurred by Schiff Hardin on  
24 a monthly basis. As detailed in our response to DR#0857, the Law  
25 Department reviews these expenses to ensure they are reasonable.

26 On March 29, 2010, KCPL provided supplemental information to Data Request No. 881.  
27 KCPL stated that, "Schiff Hardin is in the process of gathering the requested receipts. Once it  
28 receives the receipts, KCP&L will confirm the reasonableness of the expenditures, then forward  
29 the receipts to Staff." As of August 6, 2010, the Staff has not received any notification that  
30 KCPL has received the documentation from Schiff.

31 Based on a review of Schiff invoices, the Staff determined that a 6 percent expense to labor  
32 ratio is a reasonable approximation of the actual expenses charged to KCPL by Schiff. The  
33 Staff's adjustment removes 6 percent of the monthly charges to the Iatan 1 workorder.



1                                   2. Hourly rate adjustment for Project Management duties

2           Staff reviewed invoices submitted by Schiff for services performed on the Iatan construction  
3 projects as well as other consultants hired by KCPL to provide construction project management  
4 and procurement services. From this review Staff has concluded that the hourly rates charged to  
5 KCPL by Schiff are at times significantly in excess of the hourly rates charged by other  
6 consultants with equal or greater experience than Schiff who provided similar services to the  
7 project as Schiff.

8           To address the issue of excess hourly rates charged by Schiff, the Staff first determined the  
9 specific roles and responsibilities that KCPL hired Schiff to perform for Iatan construction  
10 projects.

11           In his rebuttal testimony in Case No. ER-2009-0089, William Downey described how KCPL  
12 created the Executive Oversight Committee (EOC) from its Senior Management ranks to provide  
13 oversight from a management perspective. The EOC also engaged Schiff for external oversight.

14           In his rebuttal testimony at pages 6-7 Mr. Downey states that in August 2005 Schiff was  
15 hired to perform a number of services for the EOC. He states that Schiff's initial focus was to:

- 16                           1.     Use its industry experience to review and validate the essential  
17                                     milestone dates and critical path activity durations needed to  
18                                     achieve the critical in-service dates for the Iatan Projects and other  
19                                     KCPL CEP projects.
- 20                           2.     Provide procurement advice regarding potential contracting  
21                                     methods for each of the CEP Projects based on Schiff's  
22                                     considerable experience with major procurements in the utility  
23                                     construction industry.
- 24                           3.     Provide project oversight and reporting to Senior Management.
- 25                           4.     Assist the CEP Projects teams with developing appropriate and  
26                                     industry-standard project controls and standards and metrics; and
- 27                           5.     Provide legal assistance regarding disputes with contractors.

28           Mr. Downey's rebuttal testimony indicates that the EOC hired Schiff to provide primarily  
29 construction project management services and procurement services. Schiff's contracted legal  
30 responsibilities were to provide assistance to KCPL's legal department with regard to disputes  
31 with contractors. The hourly rates charged to KCPL, however, instead of reflecting prevailing

1 construction project management hourly rates, reflect the rates that would be charged by very  
2 senior and very experienced attorneys.

3 In KCPL's and GMO's current Missouri rate cases, Nos. ER-2010-0355 and ER-2010-0356,  
4 Mr. Downey explains at pages 8 and 9 of his direct testimony the reasons why KCPL hired  
5 Schiff. Mr. Downey's testimony in KCPL's current rate case is consistent with his prior  
6 description of Schiff's roles and responsibilities as it relates to the Iatan construction projects.

7 Q: Please describe Schiff's oversight role.

8 A: In August of 2005, we retained Schiff to perform a number of services  
9 on our behalf. Schiff's initial focus was to:

10 (1) utilize their industry expertise to review and validate the  
11 essential milestone dates and critical path activity durations needed  
12 to achieve the critical in-service dates for Iatan Units 1 and 2, the  
13 LaCygne 1 SCR, and the Spearville 1 wind project in accordance  
14 with the Stipulation;

15  
16 (2) provide procurement advice regarding potential contracting  
17 methods for each of the CEP Projects based on Schiff's  
18 considerable experience with major procurements in the utility  
19 construction industry;

20  
21 (3) assist KCP&L in the development of and procurement of the  
22 goods and services needed for the CEP Projects,

23  
24 (4) provide project oversight and reporting to the Senior  
25 Management of KCP&L,

26  
27 (5) assist the CEP Projects teams with developing appropriate and  
28 industry standard project controls standards and metrics, and

29  
30 (6) assist KCP&L in the development of policies and procedures  
31 for the cost and schedule management of the CEP Projects.

32 From the description of the Schiff roles and responsibilities provided by Mr. Downey, and  
33 the description of the work performed by Schiff in its monthly invoices, the Staff made a  
34 determination that 80 percent of the work performed by Schiff employees were related to  
35 construction project management, including project controls. The remaining 20 percent related  
36 to legal and paralegal services.

1       Once the appropriate ratio of project management and legal work performed by Schiff was  
2 determined, the Staff had to determine what a fair and reasonable rate was for the type of  
3 services performed.

4       In response to Staff Data Request No. 652, KCPL described how it hired LogOn shortly after  
5 KCPL hired Carl Churchman to serve as Vice President of Construction in May 2008.  
6 Mr. Churchman also oversaw the non-legal services provided by Schiff to KCPL. KCPL advised  
7 Staff that most of the individuals employed by LogOn have in excess of 25 years of experience  
8 working on various aspects of power plant construction projects and that LogOn's expertise is  
9 well known within the industry. KCPL noted that based on LogOn's reputation within the  
10 industry, Mr. Churchman's experience working with LogOn, and his need to consult with  
11 industry veterans as to the status of the construction projects, KCPL hired LogOn to perform  
12 construction management services at Iatan for both the Iatan 1 and Iatan 2 projects.

13       LogOn was also contracted with primarily to augment the construction management staff in  
14 advisory roles or as support respecting cost analysis, engineering, performance issues, and  
15 contract management. For instance LogOn assisted KCPL in the reforecast process, spare parts  
16 analysis, common plant analysis, contractor materials issues, and start-up analysis.

17       Also in response to Staff Data Request No. 652, KCPL provided a copy of the invoices  
18 submitted by LogOn for May 2009. The hourly rate charged by the most senior  
19 Project Management consultants was <sup>\*\*</sup>████████<sup>\*\*</sup> per hour. Mid-level personnel billed at <sup>\*\*</sup>████████<sup>\*\*</sup> per hour  
20 and the lowest rate charged was <sup>\*\*</sup>████████<sup>\*\*</sup> per hour. Taking a weighting of 40 percent to <sup>\*\*</sup>████████<sup>\*\*</sup> 40  
21 percent to <sup>\*\*</sup>████████<sup>\*\*</sup> and 20 percent to <sup>\*\*</sup>████████<sup>\*\*</sup> resulted in a weighted average rate for LogOn of \$205  
22 per hour. The Staff used this <sup>\*\*</sup>████████<sup>\*\*</sup> per hour as a reasonable rate for experienced project  
23 management services.

24       As a check on the reasonableness of the fees charged by Schiff for non-legal services was the  
25 hourly rate of a consultant who was actually a subcontractor for Schiff on the Iatan projects,  
26 Mr. Tom Maiman. Mr. Maiman charged KCPL, through Schiff <sup>\*\*</sup>████████<sup>\*\*</sup> per hour for consulting  
27 work in 2006. Increasing this hourly rate by 3 percent per year results in a 2009 rate of <sup>\*\*</sup>████████<sup>\*\*</sup>  
28 This rate is comparable to this top range of the LogOn rate and appears to be a reasonable rate  
29 for Mr. Maiman's level of experience even considering the high overhead rate charged by Schiff  
30 to KCPL for subcontracted services.

1 In response to Staff Data Request No. 672, KCPL described Mr. Maiman's extensive  
2 experience in the utility construction field:

3 Mr. Maiman retired from Commonwealth Edison Company in 1997. He has over  
4 40 years of experience in all aspects of the electrical utility industry, including  
5 operations, maintenance and construction of transmission, distribution and both  
6 nuclear and fossil generating facilities.





7 Mr. Maiman has held a number of senior management positions during his long  
8 career with the Commonwealth Edison Company. Among these are VP of  
9 Corporate Engineering, VP of Fossil Plan Operations, VP and Manager of  
10 Engineering and Construction, for the Bryon and Braidwood nuclear stations,  
11 Senior VP of Commercial Operations and Executive VP and CNO of Nuclear  
12 Operations.

13 Mr. Maiman was responsible for Commonwealth Edison's multibillion-dollar  
14 engineering and construction projects at the Byron, Ill. and Braidwood, Ill.  
15 nuclear stations. As senior vice president of commercial operations, he oversaw  
16 the operation of 10 fossil fuel generating stations and the rehabilitation of  
17 Commonwealth Edison's fleet of existing generation plants.

18 Mr. Maiman holds a B.S. in Electrical Engineering from the University of Illinois  
19 in Urbana, and an M.B.A. in Business Administration from Loyola University in  
20 Chicago.

21 He is a past member of the Central DuPage Hospital Board of Directors, the  
22 DuPage Boy Scouts of America Executive Board, the University of Illinois  
23 Industrial Advisory Council, the Economic Club of Chicago, and the Adler  
24 Planetarium Board of Trustees. He is currently a Director of the Graycor  
25 Corporation and the Raymond Professional Group.

26 Mr. Maiman served as a Senior Advisor to the Senior Vice President of Nuclear  
27 Construction at Ontario Power Generation's return to service of Pickering A,  
28 Unit 1. Mr. Maiman has also advised Schiff's other utility clients, including  
29 projects for Constellation Energy.

30 In calculating its adjustment, the Staff substituted the <sup>\*\*</sup>  <sup>\*\*</sup> per hour rate it determined to be  
31 reasonable for the actual hourly rate charged by the Schiff employees who perform primary  
32 project management duties for the Iatan construction project. This rate was applied to 80 percent  
33 of the Schiff costs classified by the Staff as related to project management duties. The remaining  
34 20 percent of the project management-related duties were performed by Schiff paralegal  
35 employees with varying levels of experience. The Staff used an hourly rate of <sup>\*\*</sup>  <sup>\*\*</sup> per hour for  
36 the Schiff paralegal employee with 1.5 years of experience (as opposed to the actual <sup>\*\*</sup>  <sup>\*\*</sup> per  
37 hour charged by Schiff). The Staff also used a rate of <sup>\*\*</sup>  <sup>\*\*</sup> per hour for the paralegal employee

1 with greater than 20 years of experience in lieu of the <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour paralegal fee charged by  
2 Schiff to KCPL.

3 3. Schiff Hourly rate adjustment for legal services

4 One of the services included in the KCPL-Schiff contract called for Schiff to <sup>\*\*</sup> [REDACTED]  
5 [REDACTED]  
6 [REDACTED] <sup>\*\*</sup> (Contract Paragraph 1f). Because Schiff was hired  
7 to assist KCPL's in-house attorneys, Staff attempted to determine the reasonableness of Schiff's  
8 hourly rates for legal services.

9 Staff first looked at the legal fees and paralegal fees charged by two Kansas City area law  
10 firms hired by KCPL to perform legal work related to the Iatan construction projects. In a review  
11 of invoices for legal fees charged to Iatan, Staff estimates that the average hourly rate for legal  
12 services ranges from <sup>\*\*</sup> [REDACTED] <sup>\*\*\*\*</sup> [REDACTED] <sup>\*\*</sup> an hour for attorneys and from <sup>\*\*</sup> [REDACTED] <sup>\*\*\*\*</sup> [REDACTED] <sup>\*\*</sup> for paralegal  
13 services. One August 13, 2007 invoice reflected services from four attorneys with an average  
14 rate of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour. One invoice dated October 1, 2008 reflected one attorney with an hourly  
15 rate of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> and one paralegal with an hourly rate of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour. One invoice for July 9, 2007  
16 for work at Iatan shows one attorney rate at <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour and another for <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup> per hour for an  
17 average hourly rate of <sup>\*\*</sup> [REDACTED] <sup>\*\*</sup>

18 Another resource used by Staff to assess the reasonableness of the legal fees charged by  
19 Schiff was the Laffey Matrix. The Laffey Matrix is a listing of hourly rates for attorneys of  
20 varying experience levels and paralegals/law clerks that have been prepared by the  
21 Civil Division of the United States Attorney's Office for the District of Columbia. Explanatory  
22 notes state, in part as follows:

23 The matrix is intended to be used in cases in which a "fee-shifting" statute  
24 permits the prevailing party to recover "reasonable" attorney's fees. *See,*  
25 *e.g.,* 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act);  
26 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412  
27 (b) (Equal Access to Justice Act). The matrix does not apply in cases in  
28 which the hourly rate is limited by statute. *See* 28 U.S.C. § 2412(d).

29 \* \* \* \*

30 This matrix is based on the hourly rates allowed by the District Court in  
31 *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in*  
32 *part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert.*

1 *denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and  
 2 federal judges in the District of Columbia as the "Laffey Matrix" or the  
 3 "United States Attorney's Office Matrix." The column headed  
 4 "Experience" refers to the years following the attorney's graduation  
 5 from law school. The various "brackets" are intended to correspond to  
 6 "junior associates" (1-3 years after law school graduation),  
 7 "senior associates" (4-7 years), "experienced federal court litigators" (8-10  
 8 and 11-19 years), and "very experienced federal court litigators" (20 years  
 9 or more). See *Laffey*, 572 F. Supp. at 371.

10 \* \* \* \*

11 Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of  
 12 Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516,  
 13 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently  
 14 stated that parties may rely on the updated *Laffey* Matrix prepared by the  
 15 United States Attorney's Office as evidence of prevailing market rates for  
 16 litigation counsel in the Washington, D.C. area. [Citations omitted].

17 The Laffey Matrix can be found on the United States Attorney's Office for the District of  
 18 Columbia's website: [http://www.justice.gov/usao/dc/Divisions/Civil\\_Division/Laffey\\_Matrix\\_7.html](http://www.justice.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html)

19 Because the Laffey Matrix provides an indication of reasonable hourly rates for attorneys in  
 20 the Washington D.C. area, where it is reasonable to conclude the cost of living is higher than the  
 21 Kansas City, Missouri, area and the Midwest United States in general, these rates should provide  
 22 a ceiling or upper limit on what should be considered a reasonable attorney hourly rate for KCPL  
 23 and the Iatan construction projects. The Laffey Matrix for the period 2003 through 2010 is  
 24 shown below.


**LAFFEY MATRIX 2003-2010**

(2009-10 rates are unchanged from 2008-09 rates)

Years (Rate for June 1 - May 31, based on prior year's CPI-U)

Experience	03-04	04-05	05-06	06-07	07-08	08-09	09-10
20+ years	380	390	405	425	440	465	465
11-19 years	335	345	360	375	390	410	410
8-10 years	270	280	290	305	315	330	330
4-7 years	220	225	235	245	255	270	270
1-3 years	180	185	195	205	215	225	225
Paralegals	105	110	115	120	125	130	130

1 To calculate an hourly rate for Schiff legal services to apply to 20 percent of the total Schiff  
2 project costs (excluding the estimated 6 percent level of travel and other expenses) the Staff  
3 used the Laffey Matrix as the basis for a reasonable rate. From this rate the Staff subtracted  
4 a 10 percent volume discount.

5 For example, in 2009 Mr. Roberts billed KCPL <sup>\*\*</sup>  <sup>\*\*</sup> for each hour he worked on Iatan.  
6 According to the Laffey Matrix and his experience level, a reasonable rate for this type of service  
7 in the Washington DC area is \$465 per hour. The Staff estimated that 40 percent of the Schiff  
8 Iatan construction project legal services were performed by Mr. Roberts, so bundled in a  
9 Staff-calculated fair and reasonable legal rate is 40 percent of a \$465 per hour rate less a  
10 10 percent volume discount. Also included in this weighted legal rate is a 20 percent weighting  
11 of the Staff adjusted rates for two other Schiff attorney who spent a lot of time on Iatan  
12 construction legal issues and a 20 percent weighting of a Schiff paralegal employee using  
13 Laffey rates and a volume discount.

#### 14 **L. Allowance for Funds used During Construction (AFUDC)**

15 *Staff Expert: Keith A. Majors*

#### 16 **Definition**

17 For regulated utility companies the Allowance for Funds used During Construction  
18 (AFUDC) is the non-cash cost of financing particular construction projects. During construction  
19 and prior to the plant providing utility service this finance cost is capitalized to the construction  
20 work order in the same manner as other construction costs of labor and materials. The  
21 Federal Energy Regulatory Commission (FERC) Uniform System of Accounts (USOA)  
22 identifies under Electric Plant Instructions, paragraph 17, that AFUDC:

23 ...includes the net cost for the period of construction of borrowed funds  
24 used for construction purposes and a reasonable rate on other funds when  
25 so used, not to exceed, without prior approval of the Commission,  
26 allowances computed in accordance with the formula prescribed in  
27 paragraph (a) of this subparagraph. No allowance for funds used during  
28 construction charges shall be included in these accounts upon expenditures  
29 for construction projects which have been abandoned.

1 The Commission's rule on the USOA for electric utilities states, in part, as follows:

2 4 CSR 240-20.030 Uniform System of Accounts—Electrical Corporations

3 Purpose: This rule directs electrical corporations within the commission's  
4 jurisdiction to use the uniform system of accounts prescribed by the  
5 Federal Energy Regulatory Commission for major electric utilities and  
6 licensees, as modified herein. . . .

7 \* \* \* \*

8 (4) In prescribing this system of accounts, the commission does not  
9 commit itself to the approval or acceptance of any item set out in any  
10 account for the purpose of fixing rates or in determining other matters  
11 before the commission. This rule shall not be construed as waiving any  
12 recordkeeping requirement in effect prior to 1994.

13 **M. KCPL and GMO Adjustment 10: Additional AFUDC due to Iatan 1**  
14 **Turbine Start-Up Failure**

15 *Staff Expert: Keith A. Majors*

16 On February 4, 2009, the Iatan 1 turbine tripped during start-up activities due to vibration in  
17 the turbine that was beyond its operating parameters. This event occurred following the  
18 replacement of the high pressure turbine by KCPL contractor General Electric. The turbine  
19 replacement and costs associated with the turbine incident were not within the scope of the  
20 Iatan 1 AQCS project and are similar to other period or capital costs not within the scope of this  
21 audit such as fuel, maintenance, etc. The unit was repaired and returned to availability for  
22 in-service testing on March 9, 2009. The 33 day delay of the unit's ability to perform in-service  
23 testing increased the amount of AFUDC accrued on the balance of Iatan 1 plant in construction  
24 as it could not be declared in-service until April 19, 2009. It is Staff's belief that the increase in  
25 AFUDC accrued during the 33 day delay should be removed from the plant balance of the  
26 Iatan 1 AQCS and charged to the work order capturing the costs for the turbine trip. The  
27 prudence of the costs of the turbine trip including this additional AFUDC is out of the scope of  
28 the Iatan 1 AQCS audit and should be examined in the rate proceeding as these costs are not  
29 related to the Iatan 1 AQCS or the Iatan Common Plant needed to operate Iatan 1. Additionally,  
30 these costs are unrelated to the Iatan 2 project and would not be evaluated in an audit of Iatan 2  
31 costs. If the appropriateness for recovery of the costs of the turbine trip is examined and



1 established, then KCPL should include the incremental AFUDC on the Iatan 1 AQCS at that  
2 time net of any adjustments.

3 **N. KCPL Adjustment 18: Additional AFUDC Caused By GPE Acquisition of**  
4 **Aquila**

5 *Staff Expert: Keith A. Majors*

6 Staff examined the effect of the acquisition of Aquila, Inc. (Aquila) on the debt rate used in  
7 the calculation of AFUDC, specifically short-term debt rates. Short-term debt is a component of  
8 the overall monthly rate of AFUDC calculated on the applicable construction balance. KCPL's  
9 primary source of short-term debt is commercial paper. Commercial paper is unsecured  
10 short-term debt that has a maturity of less than nine months.

11 On February 7, 2007, Standard & Poor's issued a report revising and discussing KCPL's and  
12 Great Plains Energy's debt ratings in light of the acquisition announced the same day. KCPL  
13 provided that report in response to Staff Data Request No. 729.1, Case No. ER-2009-0089. The  
14 following statement appears in that report:

15 ...Standard & Poor's lowered KCP&L's short-term rating to 'A-3' from  
16 'A-2'. The rating action follows Great Plains' announcement that it will  
17 acquire 100% of the common stock of Aquila Inc ...

18 On July 14, 2008, Standard & Poor's issued a report revising and discussing KCPL and  
19 Great Plains Energy's debt ratings in response to GPE's completion of its acquisition of Aquila.  
20 KCPL provided that report in response to Staff Data Request No. 729.1, Case No.  
21 ER-2009-0089. The following statement appears in that report:

22 [Standard & Poor's] raised the short-term corporate credit rating on  
23 Kansas City Power and Light Inc. (KCP&L) to 'A-2' from 'A-3'....  
24 The rating actions follow the completion of Great Plains' merger with  
25 Aquila...

26 In the response to Staff Data Request No. 414, Case No. ER-2009-0090, the following  
27 statement appears in reference to the affect of the aforementioned short-term debt downgrade:

28 While the change in [commercial paper] spread cannot with certainty be  
29 attributed entirely to the downgrade, it is a reasonable assumption.

1 The Commission at page 283 in its July 1, 2008 Report And Order in Case  
2 No. EM-2007-0374 ordered as follows:

3 IT IS ORDERED THAT:

4 \* \* \* \*

5 8. In addition to the conditions outlined in Ordered Paragraph Number  
6 Three, the Commission conditions its authorization of the transactions  
7 described in Ordered Paragraph Number One of this Report and Order  
8 upon a requirement that any post-merger financial effect of a credit  
9 downgrade of Great Plains Energy Incorporated, Kansas City Power &  
10 Light Company, and/or Aquila, Inc., that occurs as a result of the merger,  
11 shall be borne by the shareholders of said companies and not the  
12 ratepayers.

13 Staff is proposing an adjustment to the monthly AFUDC rate with an adjustment to the  
14 commercial paper rate used in the calculation. The adjustment is predicated upon the short-term  
15 debt rating downgrade as a result of the announcement of the acquisition of Aquila, Inc.  
16 The adjustment compares the commercial paper rate spread between KCPL's actual rate and  
17 the London Interbank Offered Rate (LIBOR) during the period of KCPL's 'A-2' rating and the  
18 'A-3' rating.

19 **O. KCPL Adjustment 12: Adjustment of the Equity Rate Used in Calculation**  
20 **of AFUDC**

21 *Staff Expert: Keith A. Majors*

22 Staff analyzed the equity rate used in the calculation of AFUDC for the Iatan 1 AQCS. The  
23 FERC USOA identifies under Electric Plant Instructions, paragraph 17, subparagraph (b), that:

24 The cost rate for common equity shall be the rate granted common equity  
25 in that last rate proceeding before the ratemaking body having primary  
26 rate jurisdictions. If such cost rate is not available, the average rate  
27 actually earned during the preceding three years shall be used.

28 Beginning January 1, 2007, the effective date of the rate increase resulting from  
29 Case No. ER-2006-0314, the equity rate for AFUDC was 11.25%, the equity rate awarded in that  
30 proceeding. Prior to that date, KCPL used an equity rate purported to be the result of  
31 Case No. HO-86-139 (In the matter of the investigation of steam service rendered by

1 Kansas City Power & Light Company). Staff examined the Commission Report and Order in  
2 this case, which was not a rate case, but rather a case to determine the future of KCPL's district  
3 steam service. No return on equity determination was made in that case. In response to Staff  
4 Data Request No. 719, Case No. ER-2009-0089, KCPL could not substantiate the equity rate  
5 used during the eight months of 2006 prior to January 1, 2007. The stated equity rate during this  
6 time period was 12.50%.

7 Because KCPL cannot provide support for this rate, Staff is proposing an adjustment to this  
8 rate based upon the aforementioned second clause of FERC Electric Plant Instructions,  
9 paragraph 17, subparagraph (b). This adjustment incorporates the average Missouri jurisdictional  
10 earned return on equity rate of 2003, 2004, and 2005 into the AFUDC formula. Staff obtained  
11 the actual Missouri jurisdictional earned return on equity rate from the Missouri Surveillance  
12 Reports prepared by KCPL pursuant to the November 6, 1987 Joint Recommendation in  
13 Case Nos. EO-85-185 and EO-85-224 as modified in Case No. EO-93-143 using the 2005  
14 corrected version provided by KCPL. The resulting equity rate is 11.37%.

15 **P. KCPL Adjustments 15 and 16: Additional AFUDC due Transfer of Iatan 1**  
16 **Common Plant**

17 *Staff Expert: Keith A. Majors*

18 The common plant transfer from Iatan 1 AQCS discussed in a previous section of this Report  
19 has an effect on the AFUDC that KCPL is allowed to accrue. The amount of plant transferred in  
20 April 2009 from Iatan 1 AQCS to Iatan Common Plant needed to operate Iatan 1 was  
21 [REDACTED] <sup>\*\*</sup> This plant had accrued AFUDC for the duration of the project under the premise  
22 that it was Iatan 1 plant of which KCPL owns 70%. When the plant was transferred to Iatan  
23 Common Plant, KCPL's ownership became 61.45%. Because KCPL owns different  
24 percentages/portions of Iatan 1 AQCS and Iatan Common Plant, it should not be entitled to  
25 accrue AFUDC on the portion of the differential in this instance. Staff also transferred a portion  
26 of Iatan 1 Indirects to Iatan Common Plant in a previous section of this Report. The Staff is  
27 proposing an adjustment based upon the differential, the difference between 70% and 61.45% or  
28 8.55%, of the AFUDC accrued on the Iatan 1 plant and Iatan 1 Indirects transferred to the  
29 Iatan Common Plant.

1       **Q. AFUDC Accrued on Staff's Prudency Adjustments**

2       *Staff Expert: Keith A. Majors*

3       In addition to these adjustments, Staff captured the AFUDC value of the prudence  
4 adjustments proposed in this Report. To calculate the value of AFUDC accrued for these Staff  
5 adjustments, Staff obtained the monthly AFUDC rates for the Iatan 1 AQCS project and applied  
6 the monthly AFUDC rates to each adjustment by the months in which the costs were charged to  
7 the project. The compounded AFUDC resulting from semi-annual capitalization is included in  
8 each adjustment, as is the other AFUDC adjustments. Staff proposes a distinct AFUDC  
9 adjustment for each prudence adjustment proposed in this Report.

10       **R. KCPL Adjustment 14: Excess Property Taxes Transferred from Iatan 1 to**  
11       **Iatan Common**

12       *Staff Expert: Keith A. Majors*

13       The common plant transfer from Iatan 1 AQCS discussed in a previous section of this Report  
14 had an effect on the property taxes that KCPL was charged. KCPL paid property taxes during  
15 construction of the project under the premise that it was Iatan 1 plant of which KCPL owns 70%.  
16 When the plant was transferred to Iatan Common Plant, KCPL's ownership became 61.45%.  
17 Because KCPL owns different portions of Iatan 1 AQCS and Iatan Common Plant, it should not  
18 be responsible for taxes paid on the differential. Staff is proposing an adjustment based upon the  
19 differential, which is 8.55%, of the property taxes paid on the Iatan 1 plant transferred to the  
20 Iatan Common Plant from Iatan 1 AQCS.

21       **S. KCPL and GMO Adjustment 19: Cushman & Associates**

22       *Staff Expert: Charles R. Hyneman*

23       In Staff data request No. 943, KCPL was asked to describe how the awarding of a purchase  
24 order or other awards to Cushman & Associates ("Cushman") was made in accordance with  
25 KCPL/GPES Procurement Policy GPES-E100 Competitive Bidding requirements. KCPL  
26 responded that it would not be appropriate to apply KCPL's rule for competitive bidding to  
27 Cushman because Cushman has previous knowledge of KCPL and had in the past worked with  
28 some of its employees:

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After reviewing the relevant facts, KCP&L exercised its reasonable discretion in concluding that the application of the general competitive bid rule would not be appropriate. Mr. Cushman had previous knowledge of KCP&L and had worked with some of the Iatan team members. Therefore, a decision was made to use Mr. Cushman to assist KCP&L enhance the effectiveness of the Iatan construction team.

Additionally, as previously provided in Case: ER-2009-0089, Question No. 718, Brigadier General Cushman had supplied consulting services during the Hawthorn 5 rebuild. Both Steve Easley and Brent Davis were involved with Mr. Cushman during this time. Both determined that the services Mr. Cushman provided with the Hawthorn 5 rebuild were valuable and would benefit the Iatan 1 and Iatan 2 projects and as a result Cushman & Associates was selected as a sole source vendor to do this work.

Based on KCPL's response to this data request, the Staff determined that the award of this work to Cushman on a sole source basis was a clear violation of KCPL's own Procurement policies. In addition, responsible members of Procurement and the Iatan Project Team made no attempt to justify this sole source award.

The Staff also asked KCPL to provide copy of the original official signed and dated sole source award letter to Cushman. KCPL responded that a Single Source Recommendation Letter does not exist for Cushman & Associates. KCPL also advised that Mr. Steve Jones from KCPL Procurement was involved in the decision to waive KCPL's competitive bid rules and award this Iatan construction work to Cushman on a sole source basis.

In Staff Data Request No. 850, KCPL provided Great Plains Energy/KCP&L Policies and Procedures Manual Revised as of October 1, 2009. This document includes KCPL Policy E-300 which lists the specific circumstances when competitive bids are not required. These specific circumstances are:

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[Redacted text block]

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[REDACTED]

Because Cushman was awarded this work on a sole source basis the Staff attempted to determine how KCPL made the determination that the cost for this work was fair and reasonable. In Staff Data Request No. 943 KCPL was asked to explain how it determined that Mr. Cushman's hourly rate was reasonable. KCPL's response was "through its own general knowledge of the demand for construction management expertise and based on its own data related to the fees charged by construction professionals, KCP&L concluded that Cushman & Associates' consulting fees were reasonable and competitive. This determination was made by Steve Easley and Brent Davis.

The Staff learned from a review of Cushman invoices that KCPL paid Mr. Cushman a flat rate of [REDACTED] per day for any day he worked on the Iatan project. KCPL also paid Mr. Brennan (Mr. Cushman's associate) [REDACTED] per day. These charges equate to [REDACTED] per hour and [REDACTED] per hour respectively based on an 8 hour day. To justify these hourly rates KCPL used only its "business judgment" and had no documentation to support this cost.

To determine the specific type of work Cushman performed for KCPL the Staff reviewed KCPL's response to Staff Data Request No. 673, page 347. [REDACTED]

Cushman primarily assisted KCPL in the creation of the Iatan Construction Project Execution Plan (PEP). The PEP defines the way a project is to be managed and the roles and responsibilities of the team members. The project procedures define the processes that are used to implement the project plan. The PEP is also used to communicate with executive management how the project will be run so that they can have the confidence necessary to authorize its execution. [REDACTED]

[REDACTED]

1 [REDACTED]

2 [REDACTED]\*\*

3 To determine a reasonable cost for the type of work performed by Cushman, the Staff used  
4 the rates paid by KCPL to LogOn & Associates (LogOn). Both entities provide similar  
5 construction project management services. As noted above, KCPL advised Staff that most of the  
6 individuals employed by LogOn have in excess of 25 years of experience working on various  
7 aspects of power plant construction projects and that LogOn's expertise is well known within the  
8 industry. KCPL hired LogOn to perform construction management services at Iatan for both the  
9 Iatan 1 and Iatan 2 projects. LogOn was also contracted with primarily to augment the  
10 construction management staff in advisory roles or as support respecting cost analysis,  
11 engineering, performance issues, and contract management.

12 In response to Staff Data Request No. 652, KCPL provided a copy of the invoices submitted  
13 by LogOn for May 2009. The hourly rate charged by the most senior LogOn project  
14 management consultants was [REDACTED]\*\* per hour. Mid-level personnel billed at [REDACTED]\*\* per hour and the  
15 lowest rate charged was [REDACTED]\*\* per hour. Taking a weighting of 40 percent to [REDACTED]\*\* 40 percent to  
16 [REDACTED]\*\* and 20 percent to [REDACTED]\*\* resulted in a weighted average rate for LogOn of [REDACTED]\*\* per hour.  
17 The Staff used this [REDACTED]\*\* per hour as a reasonable rate for experienced project management  
18 services and used this rate as a basis for its adjustment to the charges to the project  
19 from Cushman.

20 **T. KCPL and GMO Adjustment 22: Permanent Auxiliary Electric Boilers**

21 *Staff Expert: Robert E. Schallenberg*

22 Staff proposes to transfer [REDACTED]\*\* from the Iatan 1 AQCS costs to the Iatan Project  
23 Common Plant costs related to the placement of three (3) additional permanent auxiliary electric  
24 boilers at the Iatan site. Auxiliary boilers are extra boilers used to produce steam when the main  
25 boiler is not producing enough steam for the plant's needs. Prior to the Iatan Project, two (2)  
26 permanent auxiliary boilers existed at the Iatan site to support the operation of the Iatan 1  
27 generating plant.

28 KCPL increased overall auxiliary boiler capacity for the Iatan Generating Station by  
29 installing two temporary auxiliary boilers to support the Iatan 2 start-up activities. The costs

1 associated with the Temporary Auxiliary Boilers are reflected in the Iatan Unit 2 cost report.  
2 These boilers are currently operational.

3 The Iatan Project developed an integrated schedule to expedite the design, procurement and  
4 construction of the three (3) permanent auxiliary electric boilers. Design and procurement  
5 activities are in progress. Currently, the contract for the manufacturing and installation of the  
6 permanent auxiliary electric boilers is under negotiation. Construction is scheduled to meet the  
7 commissioning date for Iatan 2 by the end of 2010. KCPL plans for the three (3) new permanent  
8 electric boilers at Iatan that will be cross-tied to the two existing Iatan Unit 1 auxiliary boilers.  
9 All five (5) permanent auxiliary boilers will be piped to feed steam to both Iatan Units 1 and 2  
10 as needed.

11 The costs associated with the three (3) permanent auxiliary electric boilers are in the  
12 Iatan Unit 1 Cost Report which were provided as attachments to the Kansas City Power & Light  
13 Company's Strategic Infrastructure Investment Status Report for First Quarter 2010. The costs  
14 for the three (3) permanent auxiliary electric boilers are in lines X035  
15 (Mechanical Contracts-Permanent Auxiliary Boilers) and 5038 (Indirect Costs-Burns &  
16 McDonnell engineering) of the Iatan Cost Portfolio. The forecasted costs for these lines at the  
17 end of April 2010 are <sup>\*\*</sup>██████████<sup>\*\*</sup> for X035 and <sup>\*\*</sup>██████████<sup>\*\*</sup> for 5038, for a total of <sup>\*\*</sup>██████████<sup>\*\*</sup>

18 Included in the Iatan 1 AQCS April 30, 2010 costs is <sup>\*\*</sup>██████████<sup>\*\*</sup> related to cost of the three (3)  
19 permanent auxiliary electric boilers. This equipment will serve both Iatan Units 1 and 2 and  
20 therefore the costs for this equipment should be charged to the Iatan Common Plant work order.  
21 KCPL expects the total cost of the three (3) permanent auxiliary electric boilers to be <sup>\*\*</sup>██████████<sup>\*\*</sup>  
22 with costs continuing to be incurred at least through December 2010. These costs are beyond the  
23 scope of this audit Report. The schedule below reflects KCPL's proposed (X035) expenditures  
24 excluding engineering costs for these three (3) permanent auxiliary electric boilers from data  
25 provided in KCPL's April 2010 Iatan 1 Cost Report.



Nov-09	\$	**	██████	**
Dec-09	\$	**	██████	**
Jan-10	\$	**	██████	**
Feb-10	\$	**	██████	**
Mar-10	\$	**	██████	**
Apr-10	\$	**	██████	**
Jul-10	\$	**	██████	**
Aug-10	\$	**	██████	**
Sep-10	\$	**	██████	**
Oct-10	\$	**	██████	**
Nov-10	\$	**	██████	**
Dec-10	\$	**	██████	**
Total	\$	**	██████	**

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Staff information does not identify the amount of the <sup>\*\*</sup>██████<sup>\*\*</sup> of engineering costs that have been charged to the Iatan 1 AQCS budget segment as of April 30, 2010. The full amount has been included in Staff's adjustment. The amount to be included in Common Plant will be re-examined in Staff's Iatan 2 and Common Plant Audit Report.

The existing two (2) Iatan 1 permanent auxiliary boilers need to be transferred to Iatan Project Common Plant segment. This adjustment should be made in conjunction with the current rate case and examined when the Iatan Project Common Plant is the subject of the audit along with Iatan 2.

**Documents Reviewed:**

1. April 2010 Iatan 1 Cost Report
2. IR 29 Response to 1st Qtr 2010 CEP Report Questions
3. 1st Qtr 2010 Report, page 34

**U. KCPL and GMO Adjustment 21: Adjustments from KCC Staff Iatan 1 Audit**

*Staff Expert: Charles R. Hyneman*

As noted above, the KCC Staff is currently addressing Iatan 1 prudence disallowances in KCPL's 2010 rate case, KCC Docket No. 10-KCPE-41S-RTS. The disallowances were initially proposed in KCPL's 2009 rate case, KCC Docket No.09-KCPE-246-RTS. Included in this list of adjustments are costs related to R&Os 139 and 330.



1 Risk and Opportunity Analysis Sheets or "R&Os" are documents created by the Iatan project  
2 team that identify potential risks and opportunities to the project that could impact cost, schedule  
3 or both. According to KCPL, the general purpose of R&Os is to memorialize any potential  
4 impacts to the project's contingency. Each R&O was required to establish a business purpose,  
5 and provide all documentation necessary for support of the item and proper vetting. The project  
6 team identified such items as the project progressed and recorded them in individual R&O  
7 documents. There was one such document for each identified risk or opportunity that would  
8 impact the project's contingency.

9 KCPL, outside the context of a settlement, has agreed that these KCC Staff adjustments have  
10 some merit and has decided not to challenge these adjustments in Kansas. The Missouri Staff is  
11 including these adjustments to ensure that no inappropriate or imprudent charges are included in  
12 the Iatan 1 plant in service and that the total amount of project costs KCPL is seeking to recover  
13 in rates is consistent between Missouri and Kansas.

14 The Staff is including the Kansas KCC Staff Adjustment R&O 139. R&O 139 was the result  
15 of additional concrete piles that were added beneath the pre-engineered buildings and tank  
16 foundations to accelerate the construction schedule. According to the KCC Staff, if the  
17 calculations had been done on a timely basis, this cost would not have been necessary. The cost  
18 was caused due to a late start on engineering and lack of adequate resources by  
19 Burns & McDonnell.

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<sup>i</sup> First Quarter 2010 KCPL Strategic Infrastructure Initiatives-Quarterly Update, pg 40. Sum of May through  
December 2010 expenditures.

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iii

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

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

Emphasis added.

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

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

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

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

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

<sup>v</sup> Rebuttal Testimony of Steven Jones in Case No. ER-2009-0089, p 25. line 19 through p 26 line 2

<sup>vi</sup> Iatan 2 Cost Summary Report April 09 line 67

<sup>vii</sup> Iatan 1 AQCS Common Plant Direct Cost \* [REDACTED] \*\* divided by KCPL Total Common Costs less Iatan 2 Indirects \* [REDACTED] \*\*

**CONSTRUCTION AUDIT AND PRUDENCE REVIEW**

**IATAN 1 ENVIRONMENTAL UPGRADES (AQCS)**

**FOR COSTS REPORTED AS OF  
APRIL 30, 2010**

**MISSOURI PUBLIC SERVICE COMMISSION  
STAFF REPORT SCHEDULES**

**FILE NO. ER-2010-0355  
AND  
FILE NO. ER-2010-0356**

Company Name: KCPL MO  
Case Description: 2010 KCPL Rate Case  
Case: ER-2010-0355

Response to Hyneman Chuck Interrogatories – Set MPSC\_20100719  
Date of Response: 07/30/2010

Question No. :0187

Please arrange for a meeting time and place between the Staff and KCPL to discuss the status of KCPL's position regarding all of the items addressed in the Staff's December 31, 2009 Staff Report concerning the Iatan construction project, including Staff's proposed adjustments to the Iatan 1 workorder. The Staff requests that the meeting be held as soon as possible.

RESPONSE:

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

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

Attachment: Q0187 MO Verification.pdf

***Verification of Response***

**Kansas City Power & Light Company  
AND  
KCP&L Greater Missouri Operations**

**Docket No. ER-2010-0355**

The response to Data Request # \_\_\_\_\_ is true and accurate to the best of my knowledge and belief.

Signed: Tom Rush

Date: \_\_\_\_\_

**SCHEDULES 2 THROUGH 5**

**THESE DOCUMENTS CONTAIN  
HIGHLY CONFIDENTIAL  
INFORMATION NOT AVAILABLE  
TO THE PUBLIC**