

MISSOURI PUBLIC SERVICE COMMISSION

**CONSTRUCTION AUDIT AND PRUDENCE REVIEW
IATAN CONSTRUCTION PROJECT FOR COSTS REPORTED AS OF OCTOBER 31, 2010**

**Missouri Public Service Commission
Staff Report**



THE EMPIRE DISTRICT ELECTRIC COMPANY

FILE NO. ER-2011-0004

*Jefferson City, Missouri
February 24, 2011*

****Denotes Highly Confidential****

NP

CONSTRUCTION AUDIT AND PRUDENCE REVIEW
IATAN CONSTRUCTION PROJECT FOR COSTS REPORTED AS OF OCTOBER 31, 2010

MISSOURI PUBLIC SERVICE COMMISSION
STAFF REPORT

1			
2			
3			
4			
5			
6			
7			
8	I.	Executive Summary.....	1
9	II.	Audit Objective.....	4
10	III.	Risk Assessment.....	5
11	IV.	Audit Scope.....	6
12	V.	Audit Procedures.....	6
13	VI.	Iatan Project Management History.....	10
14	VII.	Summary of Adjustments.....	15
15	VIII.	Disallowances relating to Empire’s imprudence in failing to take action against KCPL’s	
16		inclusion in the Iatan Project of costs that are unreasonable, imprudent, inappropriate, or not of	
17		benefit to ratepayers.....	17
18	1.	Inappropriate Charges.....	17
19	2.	Affiliate Transaction – Great Plains Power.....	22
20	3.	Schiff Hardin Adjustments.....	26
21	4.	Schiff Adjustments.....	43
22	5.	Cushman & Associates.....	54
23	6.	Pullman Power LLC Adjustment.....	58
24	7.	May 23, 2008 Crane Accident Iatan 1.....	61
25	8.	Project Development Costs.....	65
26	9.	Severance Adjustment.....	65
27	10.	Campus Relocation for Unit 2 Turbine Building.....	66
28	11.	Alstom Claim related to JLG Accident of August 25, 2007.....	69
29	12.	Alstom Claim Settlement for Delays Related to KCPL’s Construction	
30		Resurfacing Project (“Resurfacing Settlement”).....	73
31	13.	Employee Mileage Charges.....	76
32	14.	Welding Services Incorporated (WSI) Adjustment.....	79
33	15.	Temporary Auxiliary Boiler.....	82
34	16.	Permanent Auxiliary Electric Boilers Transfer.....	83
35	17.	Adjustments from KCC Staff Iatan 1 Audit.....	84

1	18.	Alstom Unit 1 Settlement and Forgone Liquidated Damages	85
2	19.	KCPL's Iatan 2 Alstom Settlement	98
3	20.	Enerfab Adjustment	103
4	21.	Iatan 2 Executive Bonus	109
5			
6	IX.	Empire's imprudence in failing to engage in activity such that there was not a cost	
7		control system developed and in place that identifies and explains any cost overruns above the	
8		definitive estimate during the construction period of Iatan 2 and the environmental enhancements	
9		at Iatan 1	110
10	1.	Unidentified and Unexplained Cost Overruns	110
11	2.	Ernst & Young's Findings Related to KCPL's Cost Control System	115
12	X.	Iatan Project Common Plant Costs	118
13	XI.	Allowance for Funds used During Construction (AFUDC)	121
14	1.	Definition	121
15	2.	AFUDC Accrued on Staff's Prudency Adjustments	122
16	3.	Additional AFUDC due to Iatan 1 Turbine Start-Up Failure	122
17	XII.	Engineering Reviews and In-Service Criteria.....	124
18	1.	Scope.....	124
19	2.	Activities and Conclusions related to the Staff Engineering Review of Iatan 1.	125
20	3.	Activities and Conclusions related to the Staff Engineering Review of Iatan 2.	126
21	4.	In-Service of Iatan Units 1 and 2.	129
22	a.	Iatan 1 In-Service.....	129
23	b.	Iatan 2 In-Service.....	129

1 **CONSTRUCTION AUDIT AND PRUDENCE REVIEW**
2 **IATAN CONSTRUCTION PROJECT FOR COSTS REPORTED AS OF OCTOBER 31, 2010**

3
4 **MISSOURI PUBLIC SERVICE COMMISSION**
5 **STAFF REPORT**

6 **I. Executive Summary**

7 *Staff Expert/Witness: Charles R. Hyneman*

8 The Staff ("Staff") of the Missouri Public Service Commission ("Commission")
9 conducted a Construction Audit and Prudence Review of the Iatan Construction Project.
10 The Iatan Construction Project consists of the newly-installed Iatan 1 Air Quality Control
11 System ("AQCS"), the newly-constructed Iatan Unit 2, and Iatan Common Plant.
12 ("Iatan Project") This Report describes that audit and review process, the results of the audit and
13 review, and presents Staff's recommended adjustments to the Iatan Project for reflection in the
14 rate base of The Empire District Electric Company ("Empire").

15 The Staff's audit objective was to determine whether the Iatan Project contains costs that
16 are unreasonable, imprudent, inappropriate, or not of benefit to ratepayers, nor whether
17 unnecessary facilities were constructed, and to quantify any such costs. Schedule 1 attached to
18 this Report is a table of Staff's adjustments to the October 31, 2010, actual incurred costs of the
19 Iatan Project.¹

20 The July 31, 1978, Iatan Station Ownership Agreement authorized Kansas City Power &
21 Light Company ("KCPL") to act as an Operating Agent to perform all functions as may be
22 required for the actual operation and maintenance of the site, common facilities, and each unit
23 with the following ownership interests:

¹ The cost balances contained in Schedule 1 were obtained primarily from costs reflected in KCPL's Iatan 1 and Iatan 2 Cost Portfolio Reports also referred to as the "K Reports."

Class of Property	Ownership Interests		
	KCPL	SJLP	Empire
Site (at acquisition cost)	92.50%	4.5%	3.0%
Common Facilities (including site improvements)	70.00%	18.0%	12.0%
Iatan Unit #1	70.00%	18.0%	12.0%

Aquila (formerly UtiliCorp United, Inc.) acquired St. Joseph Light & Power Company in Case No. EM-2000-292.

The May 19, 2006 Iatan Unit 2 And Common Facilities Ownership Agreement authorized KCPL to act as the exclusive Operator to perform all functions as may be required for the actual design, permitting, development, procurement, construction, operation and maintenance of the Iatan Unit 2 Facility, the Common Facilities and the Iatan Station Site, subject to the direction of the Management Committee. The Management Committee consists of two representatives of each Owner. The following are the Owners and their ownership interests:

Class of Property	Ownership Interests				
	KCPL	Aquila	Empire	MJMEUC	KEPCO
Common Facilities	61.45%	18.0%	12.0%	6.58%	1.97%
Iatan Unit #2	54.71%	18.0%	12.0%	11.76%	3.53%
Iatan 2 = 850 MW	465 MW	153 MW	102 MW	100 MW	30 MW

KCPL acquired Aquila through Case No. EM-2007-0374.
 MJMEUC = Missouri Joint Municipal Electric Utility Commission
 KEPCO = Kansas Electric Power Cooperative, Inc.

As of October 31, 2010, Empire's share of total Iatan 1 actual expenditures paid is \$39,986,448. Empire's share of total Iatan 2 is \$189,346,840 and Empire's share of Iatan Common Plant is \$47,392,153. Using October 31, 2010, plant balances, Staff recommends disallowance from Empire's share of \$10,768,500 for Iatan 1, \$21,984,684 for Iatan 2, and \$781,568 for Iatan Common Plant (exclusive of Empire's AFUDC and other Empire only direct costs).

Empire has a Regulatory Plan as a result of Case No. EO-2005-0263, *In the Matter of the Empire District Electric Company's Application for Certificate of Public Convenience and Necessity and Approval of Experimental Regulatory Plan Related to Generation Plant, Order Approving Stipulation And Agreement*, 13 Mo.P.S.C.3d 597 (2005). At the bottom of page 5 and

1 the top of page 6 of the Stipulation and Agreement approved by the Commission appears the
2 following paragraph in the section "Cost Recovery Of Capital Investments In Iatan 1, Iatan 2,
3 Asbury SCR And V84 CT":

4 If any party proposes the disallowance of Iatan 1 or Iatan 2 costs, Empire
5 agrees not to seek to avoid such disallowance on the ground that such
6 expenditures were the responsibility of KCPL and were not within
7 Empire's control. Empire maintains the ability to litigate prudence issues
8 related to these expenditures on any basis.

9 Staff's recommended disallowances (attached as Schedule 1) are based on Empire's
10 failure to take prudent action, where such prudent action would have prevented harm to Empire's
11 ratepayers. These instances of Empire's imprudence can be divided, generally, into two
12 categories:

13 A. Empire's imprudence in failing to engage in activity to prevent
14 from inclusion in the Iatan Project of costs that are unreasonable,
15 imprudent, inappropriate, or not of benefit to ratepayers, and

16 B. Empire's imprudence in failing to engage in activity such that there
17 was not a cost control system developed and in place that identifies and
18 explains any cost overruns above the definitive estimate during the
19 construction period of Iatan 2 and the environmental enhancements at
20 Iatan 1.

21 There are 23 adjustments relating to Type A disallowances, amounting to \$6,131,046 and
22 \$9,788,651 for Iatan 1 and Iatan 2, respectively; and 2 adjustments relating to Type B
23 disallowances, amounting to \$2,659,568, \$12,597,925 and \$2,357,562 for Iatan 1, Iatan 2 and
24 Iatan Common, respectively, exclusive of AFUDC. This represents Empire's 12% share of the
25 Iatan Project.

26 In May 2005, under Case No. EO-2005-0329, *In the Matter of a Proposed Experimental*
27 *Regulatory Plan of Kansas City Power & Light Company* ("KCPL Regulatory Plan"), KCPL, the
28 Staff, the Office of the Public Counsel ("OPC"), Praxair, Inc., Missouri Industrial Energy
29 Consumers, Empire, Aquila, Inc. ("Aquila"), Ford Motor Company, and the Missouri Joint
30 Municipal Electric Utility Commission ("MJMEUC") jointly filed a Stipulation and Agreement
31 for approval by the Commission. The Regulatory Plan Stipulation and Agreement was approved
32 by the Commission on July 28, 2005 ("KCPL Regulatory Plan Stipulation and Agreement").

The Iatan Project was the largest single project in KCPL's Regulatory Plan. As noted, the Iatan Project consists of the Iatan 1 AQCS, Iatan 2, and Common Plant segments. The Common Plant additions and modifications to the Iatan site are contained in the budgets of both the combined \$2,061,803,380 Control Budget Estimates for Iatan 1 AQCS and Iatan 2 segments. The Iatan 1 AQCS segment and the Iatan 2 segment are integrated components of the Iatan Project. The Iatan Project costs were reported in KCPL's Cost Reports as two segments, Iatan 1 AQCS and Iatan 2. The three Iatan Project components are:

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

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

Iatan 2 This segment is related to costs that are solely related to the operation of the Iatan 2 generating unit. This generating unit is now fully operational and used for service at the time of this Report.

The chart below reflects these relative ownership interests in the three segments, respectively:

	Iatan 1	Iatan 2	Common
KCPL	70%	54.71%	61.45%
KCPL-GMO	18%	18%	18%
Empire	12%	12%	12%
MJMEUC	0%	11.76%	6.58%
KEPCO	0%	3.53%	1.97%
Total	100%	100%	100%

II. Audit Objective

Staff Expert: Charles R. Hyneman

Staff's audit objective was to determine whether the Iatan Project contains costs that are unreasonable, imprudent, inappropriate, not of benefit to ratepayers, or associated with unnecessary facilities. If such charges or facilities are found, then adjustments are to be developed to remove these costs from the Iatan Project prior to these costs being included in the costs being charged to Empire's Missouri ratepayers.

1 **III. Risk Assessment**

2 *Staff Expert: Charles R. Hyneman*

3 Staff determined the risk of charges that are imprudent, inappropriate, unreasonable, or
4 not of benefit to Missouri ratepayers being included in the Iatan 1 AQCS Project segment was
5 high based upon Staff's prior audit activities, as discussed in Staff's December 31, 2009,
6 August 6, 2010, and November 3, 2010 Audit Reports filed in File Nos. ER-2009-0089 and
7 ER-2009-0090 or File Nos. ER-2010-0355 and ER-2010-0356, concerning Staff's audit of the
8 Iatan Projects relating to the rate requests of KCPL and KCP&L Greater Missouri
9 Operations Co. ("GMO"), respectively. The same level of risk exists for an audit of Iatan 2 as
10 most of the inappropriate charges initially found were charged partly or entirely to the Iatan 2
11 cost segment. Staff discusses in the Adjustments section of this Report the charges that are
12 imprudent, inappropriate, unreasonable, or not of benefit to Missouri ratepayers.

13 Staff determined that there was a high risk of imprudent management of the Iatan Project
14 by KCPL. This high level of risk is attributable to:

- 15 1. KCPL's inexperience at handling projects of this size especially given the selection of
16 a multi-prime contracting strategy;
- 17 2. KCPL's delay in hiring a Project Manager;
- 18 3. KCPL's inability to produce risk assessment documentation concerning its adoption
19 of a "fast track" approach;
- 20 4. Imprudence in KCPL's management asserted by the Kansas Corporation Commission
21 Staff's consultant, Mr. Walter Drabinski of Vantage Consulting, in KCPL's 2010
22 Kansas rate case, Docket No. 10-KCPE-415-RTS, which included:

23 1. KCPL wasn't prepared for the scope of project or the number of people
24 required to complete the plant.

25 2. Adopting a contracting strategy outside the industry norm for the utility
26 trying to manage the project on its own rather than hire another company to do it.

27 3. The engineering firm assured itself a bigger slice than it might have had if
28 the utility hired a company to oversee the whole project, recommending the
29 Company manage the project itself, including procurement of materials, bids and
30 contractor coordination.

1 4. Not starting construction of Iatan 2 until after KCPL's comprehensive
2 energy plan ("CEP") was finished, despite advice from consultants to start
3 earlier.

4 5. Conflicts between Project managers and contractors that caused poor
5 morale and decreased worker productivity.²

6 **IV. Audit Scope**

7 *Staff Expert: Charles R. Hyneman*

8 The scope of the audit was influenced by prior information, preliminary audit tests,
9 risk assessments, and internal control evaluations in addition to audit parameters
10 specified in Commission Orders in File Nos. ER-2009-0089, ER-2009-0090, EO-2010-0259,
11 ER-2010-0355, and ER-2010-0356. In developing its audit scope, Staff understood that it is
12 impractical to attempt to examine every cost charged to a construction project the size and
13 duration of the Iatan Project.

14 Staff's first step in determining the audit scope for this Report was to select a time period
15 cutoff for the audit. In the Iatan Project construction audits and prudence reviews filed in the
16 KCPL and GMO rate cases, File Nos. ER-2010-0355 and ER-2010-0356, respectively, the
17 Commission ordered that the Staff's true-up audit of Iatan 2 be based on cost data as of
18 October 31, 2010. The sections of this Report related to Iatan 1 is based on updating the Staff's
19 December 31, 2009, and August 6, 2010, Reports to October 31, 2010, actual cost information in
20 the KCPL and GMO rate cases, File Nos. ER-2010-0355 and ER-2010-0356, respectively.
21 The Commission adopted for File No. ER-2011-0004 a recommended test year of the twelve
22 months ending June 30, 2009, with an update through November 30, 2010, for known and
23 measurable changes.

24 **V. Audit Procedures**

25 *Staff Expert: Charles R. Hyneman*

26 The Staff performed the same audit procedures in its audit of Iatan 1 and Iatan 2. For
27 Iatan 2 data, KCPL was not willing to provide the Staff with responses to Staff data requests

² These items were described in an Associated Press news article published on September 9, 2010. The article, entitled "Analyst hired by Kansas utility regulators blames KCP&L management for Iatan 2 plant overruns"

1 until April 3, 2009, objecting to the Staff's data requests on the basis that the Staff should only
2 be auditing Iatan 1 costs. After an extended period of time of Staff explaining why it should not
3 be denied access to the information, KCPL eventually provided access to Iatan 2 data. But
4 KCPL did not provide Iatan 2 data because it believed the Staff should be performing a
5 Construction Audit and Prudence Review of Iatan 2 at that time. KCPL only relented and
6 allowed Staff some Iatan 2 cost data because it realized the Staff needed this data to perform an
7 audit of Iatan 1. It is not known when KCPL believed the Staff should have started its audit of
8 Iatan 2, but it is clear that it was not in KCPL's last rate case, ER-2009-0089 and it was some
9 date after April 3, 2009.

10 During the course of the Iatan 1 and Iatan 2 construction audits, Staff auditors held
11 meetings with KCPL's Iatan Project Management personnel as well as KCPL Accounting
12 personnel to gain an understanding of the key issues involved in the Iatan Project. Staff also held
13 meetings with individuals at or with KCPL, who were responsible for the major Iatan
14 construction contracts, as well as the key Iatan Project individuals responsible for the creation
15 and development of monthly projects' costs reports. Staff participated in quarterly meetings with
16 KCPL representatives responsible for the successful completion of the Iatan Project that were
17 provided for as a result of the KCPL Regulatory Plan. Staff reviewed and analyzed the Cost
18 Portfolio and supporting documentation to track actual costs in relationship to budgets. Staff
19 also attended the KCPL Kansas Corporation Commission 2010 rate case hearings related to Iatan
20 Project issues. In addition, the Staff reviewed tens of thousands of documents received through
21 Staff data requests that were specifically related to the costs charged to the Iatan Project. Staff
22 conducted internet searches of specific matters to gain additional information on various topics.
23 Some examples of the other specific audit activities that were performed during the Iatan Project
24 audit include:

- 25 a. KCPL employee interviews;
- 26 b. Project manager interviews;
- 27 c. Review minutes of periodic CEP Oversight Committee meetings;
- 28 d. Meet with other regulatory bodies charged with reviewing the
29 appropriateness, reasonableness, and prudence of the Iatan Project.
- 30 e. Review Iatan Project related testimony before other regulatory
31 bodies charged with reviewing the appropriateness,
32 reasonableness, and prudence of the Iatan Projects, and KCPL's
33 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 Iatan Project;
- 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 facilities related to costs charged to the Iatan Project as well as
- 13 examine construction activities;
- 14 k. Meet with project management personnel at KCPL's Kansas City
- 15 headquarters building to review project status and costs; and
- 16 l. Reviewed Project contract evaluation respecting relevant
- 17 provisions impacting project costs and schedule;
- 18 m. Issued Staff data requests concerning Empire specific direct
- 19 costs and documents related to actions taken by Empire in
- 20 questioning the level of specific Iatan Project costs charged to
- 21 Empire by KCPL;
- 22 n. Hold discussions with Empire personnel concerning Empire
- 23 specific direct costs charged to the Iatan Project.

24 While KCPL, in response to Staff data requests, provided Staff with a substantial amount
25 of data that the Staff reviewed in conducting its audits, KCPL also withheld a substantial amount
26 of relevant audit information based on claims that the specific data was protected from disclosure
27 by the attorney-client privilege, the attorney work product doctrine and/or other qualified
28 privilege. KCPL's attempt to redact complete descriptions of basic project duties of Schiff
29 Hardin, LLP ("Schiff") employees, was questioned even by KCPL's own internal auditor
30 consultant, Carl Marano.

31 A particularly significant area of inquiry where information material to Staff's audit,
32 information responsive to Staff Data Request No. 418 as shown below, has not been provided.
33 The Staff wants to be very clear that this is an example where , while claiming to be transparent,
34 basic data related to Staff's audit has been denied to the Staff. KCPL paid its consultants Schiff
35 Hardin \$20 million in sole-sourced consulting services to provide advice to KCPL that KCPL
36 believed should not be provided to the Commission's Staff in its audit and review. KCPL and
37 Empire are proposing to charge these consulting fees to Missouri ratepayers, yet the decision was

1 made by KCPL management that this basic relevant audit information required by the Staff to
2 perform its audit would not be provided to the Staff. The information requested relates to project
3 controls and is directly related to Iatan Project budget, cost, and schedule. These are areas where
4 KCPL, acting on advice from Schiff Hardin, failed to meet its goals and objectives, incurred
5 significant cost overruns and did not finish the projects on time.

6 DATA REQUEST- Set MPSC_20090114

7 Case: ER-2009-0089 Date of Response: 02/03/2009

8 Information Provided By: Bill Riggins

9 Requested by: Schallenberg Bob

10 Question No. : 0418 Please provide copies of all recommendations,
11 evaluations, assessments, audits, and advice provided to KCPL from
12 Schiff Hardin regarding Schiff Hardin's independent review and reporting
13 of the project controls for the Iatan 1 and 2 construction projects.

14 Response: KCP&L objects to this Data Request to the extent that it
15 requests documents that are protected by the attorney-client privilege.
16 Additionally, Schiff Hardin is on-site daily and provides advice to
17 KCP&L on a real-time basis. Therefore, much of Schiff Hardin's
18 recommendations, evaluations, assessments and advice are provided to
19 KCP&L verbally. To the extent that KCP&L has copies of unprivileged
20 documents responsive to this Data Request, they will be made available
21 for review in the data room located at KCP&L headquarters located at
22 1201 Walnut Street 64106.

23 Similarly, Staff's Data Request Nos. 342, 353, 363, and 373 in File No. ER-2010-0355 attempted
24 to obtain documentation related to Schiff's review of certain contracts for KCPL. These data
25 requests related to Schiff's review of the following Iatan Project 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.

31 KCPL also failed to provide documentation in response to Staff's requests for copies of all
32 reports and presentations that Schiff provided to KCPL's senior management, the Executive
33 Oversight Committee ("EOC"), and project personnel (Staff Data Request No. 433). Those
34 documents include a copy of all notes, minutes, and presentations, reports that were prepared for

1 the meeting or presented in the weekly internal Schiff Iatan project status meetings held
2 May 2006 through December 2009 (Staff Data Request No. 872). KCPL did disclose in its
3 response to Staff Data Request No. 872 that Schiff Hardin convened weekly meetings to
4 discuss commercial disputes and regulatory strategy for the Unit 1 and/or Unit 2 rate cases.
5 Those aforementioned meetings were held on Mondays, lasting approximately an hour,
6 beginning in 2005.

7 The procedures and activities conducted by Staff auditors were in accordance with and
8 are fully consistent with Generally Accepted Auditing Standards (GAAS). GAAS are broad
9 rules and guidelines promulgated by the AICPA's *Auditing Standards Board*. Certified Public
10 Accountants employ GAAS in preparing for and performing audits of a client's financial
11 statements. While Staff auditors have conducted their audit in accordance with the GAAS
12 General Standards and GAAS Standards of Field Work, they have not reviewed and applied all
13 of the detailed specific interpretations of the individual Statements on Auditing Standards (SAS)
14 to this audit. Such an undertaking would require an extensive investment in training and
15 personnel that has not been viewed as necessary for the work performed in this audit or other
16 Staff audits. Two of the three Staff auditors who performed the audit of the Iatan Project are
17 Certified Public Accountants (CPAs) who are very familiar with GAAS and have significant
18 education and experience in the field of accounting and auditing. The Staff auditors who
19 performed the audit of the Iatan Project did consult with the individual SAS when required. As
20 one example, the Staff reviewed the SAS related to Related Parties when it was auditing the
21 Iatan Project costs charged to KCPL by its affiliate Great Plains Power (GPP).

22 **VI. Iatan Project Management History**

23 *Staff Expert: Charles R. Hyneman*

24 On September 29, 2005, Schiff Hardin advocated that KCPL adopt a Multi-Prime,
25 Design-Bid-Build method. Under this method, KCPL would enter into separate contracts with
26 multiple entities and KCPL would manage and coordinate the execution of these multiple
27 contracts. Schiff Hardin conditioned its recommendation for KCPL to adopt Multi-Prime with
28 one significant caveat. That caveat was that KCPL must employ a strong, capable and
29 experienced Project Management or Construction Manager capable of coordinating and tracking

1 the work on a complex project. Schiff Hardin warned that if KCPL was unable to or was
2 opposed to employing such a team, the Multi-Prime approach was likely to miss important
3 schedule and cost objectives.

4 **

5

6

7

8

9

9 **

10 It was also noted that because engineering was a critical path, and the project was behind
11 schedule, engineering design would have to proceed on a "fast track" basis in order to meet a
12 June 1, 2010, construction completion date. KCPL hired the initial Iatan Project Manager on
13 February 6, 2006. There was only one Project Manager for the whole Iatan Construction Project
14 until November 2007.

15 After February 6, 2006, the relationship between the Senior Director of Construction and
16 the Project Manager (who reported to the Senior Director of Construction) deteriorated. This
17 contentious relationship led to a splintering of the project team and an overall sense that project
18 was unfocused and drifting. KCPL installed a new project leadership organization where the
19 new Project Manager would report directly to the Senior Vice President of Supply. Prior to this
20 change in project leadership, the communication between the Senior Director of Construction
21 and the Project Manager had deteriorated to the point where there was no direct communication
22 between them. Assignments given to the Project Manager were never completed. Project
23 control was stalemated, contributing to the failure to meet several project commitments. In
24 2006, the difficulties for the Iatan Project Team hampered KCPL's development of a new
25 Procurement Department. The relationship difficulties between KCPL's Engineering and
26 Procurement groups on the Iatan Project were well-known internally.

27 With the assistance of GPE's Internal Audit Group, KCPL hired an outside auditing firm,
28 Ernst & Young LLP, to provide a Risk Assessment Report in March 2007 covering the Iatan
29 Project and other projects at November 1, 2006. The Report, at page 5 notes:

30 **

31

1 beating the clock, many times the result is inefficient spending and planning. Specific risks of
2 fast-tracking include:

3 Increased costs due to estimating errors

4 Work not completed as desired

5 Poor quality workmanship

6 Cost overruns

7 Overbillings

8 Unapproved or undesirable changes from plan

9 Problems may be duplicated, making corrections more costly

10 Increased "cascading" of problems³

11 Before March 2007, documentation problems relative to key decisions were occurring on the
12 Iatan Project. Staff requested copies of the documentation evaluating the decision to initiate
13 construction and enter into significant procurement contracts for the Iatan 1 AQCS and Iatan 2
14 before design was substantially completed. Schedule 10 (KCPL's response to Staff Data
15 Request No. 430), attached to this Report, is a copy of Staff's data request with KCPL's
16 response. As noted in the response, KCPL has no documentation to support this decision to
17 initiate construction before the design was substantially completed. By late 2006, the Iatan
18 Project had been committed to a course that made the risk of Iatan Project cost overruns and
19 schedule delays high and KCPL's decision to fast-track the Iatan Project one of the most, if not
20 the most, significant factor causing the cost overruns.

21 VII. Summary of Adjustments

22 Staff's recommended Project Cost adjustments are based on Empire's failure to take
23 prudent action, where such prudent action would have prevented harm to Empire's ratepayers.

24 These instances of Empire's imprudence can be divided, generally, into two categories:

25 A. Empire's imprudence in failing to engage in activity to prevent
26 from inclusion in the Iatan Project costs that are unreasonable, imprudent,
27 inappropriate, or not of benefit to ratepayers, and

³ Construction Audit Guide: Overview, Monitoring, and Auditing by Denise Cicchella

B. Empire's imprudence in failing to engage in activity such that there was not a cost control system developed and in place that identifies and explains any cost overruns above the definitive estimate during the construction period of Iatan 2 and the environmental enhancements at Iatan 1.

There are 23 adjustments relating to Type A disallowances, amounting to \$6,131,046 and \$9,788,651 for Iatan 1 and Iatan 2, respectively; and 2 adjustments relating to Type B disallowances, amounting to \$2,659,568, \$12,597,925 and \$2,357,562 for Iatan 1, Iatan 2 and Iatan Common, respectively, exclusive of AFUDC.

The Type A disallowances are as follows:

	Iatan 1	Iatan 2
Proposed Disallowances - TYPE A	EMPIRE 12% Share	
Enerfab Start-Up Trailer Cleaning Change Order Adjustment (7/09 through 8/10)	\$0	** **
Iatan 2 Bonus Adjustment	\$0	** **
Inappropriate Charges Adjustment	** **	** **
May 23, 2008 Crane Accident Adjustment	** **	\$0
Severance Cost Adjustment	** **	** **
Campus Relocation Cost adjustment (X016 K Rep Oct 2010 D/I Page)	** **	** **
JLG Accident Alstom Settlement Adjustment	** **	** **
Alstom Construction Resurfacing Project Settlement Adjustment	** **	** **
Excess Employee Mileage Charge Adjustment	** **	\$0
Affiliate Transaction – Great Plains Power Adjustment	\$0	** **
Alstom's Iatan 1 Foregone Liquidated Damages Adjustment	** **	\$0
KCPL's July 18, 2008 Iatan 1 Alstom Settlement Adjustment	** **	\$0
Alstom's Iatan 2 Settlement (Downey Rebuttal p. 39)	\$0	** **
Alstom's Iatan 2 Foregone Liquidated Damages	\$0	** **
Temporary Auxiliary Electric Boilers (cost updated by Nielsen)	\$0	** **
Alstom WSI welding services Adjustment	\$0	** **
Schiff Hardin unsupported expenses adjustment	** **	** **
Schiff Hardin project mgt hourly rate adjustment	** **	** **
Schiff Hardin legal services rate adjustment	** **	** **
Cushman Hourly Rate Adjustment	** **	** **
Pullman Adjustment-Performance Bond PL-003	** **	** **

(12/06)		
Pullman Adjustment-Second Shift PL-012 (1/17/08)	**	**
Disallowances Accepted by KCPL in 2009 KCPL KCC case (R&Os 139 and 330)	**	**
Total Proposed Disallowances - TYPE A	**	**

The Type B disallowances are as follows:

	Iatan 1	Iatan 2	Iatan Common
Proposed Disallowances - TYPE B	EMPIRE 12% Share		
Net Unidentified/Unexplained Cost Overrun Adjustment	**	**	\$0
Reduction to Common Plant caused by Inadequate Documentation	\$0	\$0	**
Total Proposed Disallowances - TYPE B	**	**	**

VIII. Disallowances relating to Empire's imprudence in failing to take action against KCPL's inclusion in the Iatan Project of costs that are unreasonable, imprudent, inappropriate, or not of benefit to ratepayers.

1. Inappropriate Charges

Staff Expert: Charles R. Hyneman

During the course of its audit, the Staff found numerous instances of inappropriate charges being charged to the Iatan Project. These charges include some charges that could be categorized as reasonable, prudent, appropriate, and of benefit to ratepayers under some circumstances, but simply because of the excessive amount of cost incurred, are deemed unreasonable, imprudent, inappropriate, and not of benefit to ratepayers.

The audit uncovered events where personal expenses were charged to the Iatan Project by high level KCPL personnel, including the Vice-President of Construction in charge of all the Iatan Project. KCPL failed to provide information the Staff needed to determine the scope of the

1 inappropriate charges. KCPL also did not assist the Staff's efforts to obtain information to
2 evaluate the personal mileage being charged to the Iatan Project.

3 Of the many instances of inappropriate charges that the Staff has pointed out to KCPL
4 through its discussions, through data requests and Staff Construction Audit And Prudence
5 Review Reports, to the Staff's knowledge, KCPL has only removed one charge from recovery in
6 rates. This charge was related to a \$405 lunch charge incurred by Mr. William Downey, KCPL
7 President and Chief Operating Office and Mr. Ken Roberts of Schiff Hardin. Mr. Roberts was
8 a KCPL witness in KCPL's current Missouri rate case, File Nos. ER-2010-0355 and
9 ER-2010-0356. After learning that the Staff was taking issue with this charge, and after
10 weeks of refusing to provide the Staff with a copy of the lunch receipt document supporting this
11 Iatan 2 Project charge (the reason provided by KCPL to support its refusal to provide this
12 supporting cost document was that it was charged to Iatan 2 and at that time KCPL was refusing
13 to allow the Staff to audit Iatan 2 because KCPL was not seeking at that time recovery in rates of
14 Iatan 2 costs). When KCPL finally provided the Staff with the documentation supporting this
15 charge, KCPL included copy of a personal check from Mr. Downey reimbursing KCPL for this
16 \$405 lunch. KCPL subsequently removed the charge from the Iatan Project. However, KCPL
17 did not remove the AFUDC charge that had accrued on this charge while it was in the Iatan 2
18 construction work order. Therefore, while this \$405 charge was removed, the monthly interest
19 expense and profit have continued to accrue and still continue to accrue on the Iatan 2 Project.

20 In its audit, the Staff found a continuation and expansion of the deficiencies as
21 noted in Staff's testimony in KCPL's prior rate cases, Case No. ER-2007-0291 and File No.
22 ER-2009-0089, regarding KCPL's officer expense report process. Problems with officer
23 expense reports were even noted by KCPL's Internal Audit Department prior to KCPL's most
24 recent rate case, File No. ER-2009-0089. The Staff notes that KCPL has proposed in its current
25 rate case, File No. ER-2010-0355, to remove all expense report charges for its executive officers.
26 It is still not clear at this point whether KCPL will make similar adjustments to the costs charged
27 to the Iatan 1 AQCS, Iatan 2 and Common Plant or refund to the other joint owners their portions
28 of the inappropriate costs. The Staff has seen no documentation from KCPL showing that any
29 charge other than the \$405 lunch was removed from either Iatan1, Iatan 2 or Common Plant.

30 In developing the risk assessment of this audit, the Staff was aware of significant
31 problems with KCPL's officer and executive expense reports found by KCPL's internal audit

1 department in previous years. Because of these findings, and to support other Staff audit
2 procedures, the Staff requested and reviewed a significant number of KCPL officer expense
3 reports. The Staff found that the problems identified by KCPL's internal auditors in past years
4 have not only been completely ignored by KCPL management, but the problems have not been
5 resolved and have possible gotten worse.

6 The Staff has three major concerns with KCPL's officer expenses. The first is that KCPL
7 charges unreasonable, imprudent, inappropriate, and costs not of benefit to ratepayers to the Iatan
8 Construction Project. The second factor is that the behavior of KCPL's officers gives the
9 appearance that they lack a serious concern about the appropriateness and reasonableness of
10 costs charged to the Iatan Project. The third factor is that the behavior of the senior management
11 may be adopted by KCPL's lower-level and mid-level management, especially those on the Iatan
12 Project team and who worked day-to day at the Iatan Project site. Staff believes it is critical for
13 KCPL's senior management to set an appropriate "tone at the top" for other KCPL employees to
14 respect and follow. This tone at the top requires KCPL's management to act prudently in the
15 incurrence of costs charged to the Iatan Construction Project. KCPL management has failed to
16 do this. In addition to failing to set an appropriate tone at the top, KCPL management has failed
17 to create and enforce an effective set of internal controls that would prevent inappropriate and
18 imprudent expenses from being charged to the Iatan Project.

19 The \$405 Iatan 2 segment lunch illustrates Staff's concern related to KCPL's
20 enforcement of its own policies and internal controls. One concern is whether KCPL is recording
21 costs for inappropriate items for the Iatan Project. A second concern is whether KCPL's internal
22 control system is failing to prevent the inappropriate charges to the Iatan Project. The third
23 concern is whether KCPL is conducting an examination of the issue internally to determine the
24 nature and extent of the activity. The fourth concern is whether KCPL is properly responding to
25 Staff data requests and information that Staff brings to the attention of KCPL.

26 Staff is also apprehensive about KCPL's senior management's compliance with its
27 existing internal control system. KCPL policies and procedures related to expense accounting
28 are adequate to prevent the inappropriate charges to the Iatan Project provided the procedures are
29 followed. Under KCPL's internal control system, at least two employees must fail in their
30 responsibilities for the Iatan Project to be charged for an inappropriate item. Schedule 2 attached

1 to this Report is a list of the inappropriate or questionable costs. The following are some
2 examples of the types of inappropriate and excessive costs charged to the Iatan Project:

- 3 1. At the request of Ken Roberts of Schiff Hardin, KCPL VP for
4 Construction Carl Churchman traveled to Chicago Illinois on June 24
5 through June 28, 2009 to play in an exclusive member golf tournament
6 at Medinah Country Club in Chicago. Mr. Roberts is a member of
7 Medinah. Mr. Churchman charged the Iatan 2 Construction Project
8 \$1,002 in travel expenses for this golf trip. Approved by KCPL Chief
9 Operating Officer 9/1/09. Both Mr. Churchman and Mr. Roberts
10 charged time to the Iatan Project while at the golf course. Mr. Roberts'
11 charge was at ** ___** per hour.
- 12 2. KCPL VP for Construction Carl Churchman, \$348.12 expense report
13 dinner on January 8, 2009 with J. Westhoven, Alstom executive at
14 Capital Grille in Kansas City, MO to discuss strategy (meal \$151.56 X
15 2 = \$303.12 + \$45 tip). Approved by KCPL Chief Operating Officer
16 3/10/09
- 17 3. KCPL VP for Construction Carl Churchman, \$2,830 expense report
18 charge for breakfast, lunch and dinner on January 20, 2009 for Iatan 2
19 Project Schedule Team. Approved by KCPL Chief Operating Officer
20 3/10/09
- 21 4. KCPL VP for Construction Carl Churchman, \$2,032 expense report
22 charge for cancellation fee for hotel meeting room. Approved by KCPL
23 Chief Operating Officer 3/10/09.
- 24 5. KCPL VP for Construction Carl Churchman, \$558 expense report
25 dinner on May 21, 2009, with LightSource Co (semiannual face-to-face
26 meeting with Churchman, Brent Davis of KCPL and John Hart and
27 Hector Luevano) at Capital Grille in Kansas City, MO. (meal \$124.55
28 X 4 = \$498.22 + \$60 tip). Approved by KCPL Chief Operating Officer
29 6/18/09
- 30 6. KCPL VP for Construction Carl Churchman, \$173 expense report
31 dinner on May 26, 2009, with Bill Downey, Iatan Project at Pierpont's
32 Union Station in Kansas City MO. Approved by KCPL Chief
33 Operating Officer 6/18/09.
- 34 7. KCPL VP for Construction Carl Churchman, \$280 expense report
35 dinner on November 1, 2008, with J. Westhoven, Alstom executive at
36 Capital Grille in Kansas City, MO (meal and wine \$112.02 X 2 =
37 \$224.03 + \$56 tip).
- 38 8. KCPL VP for Construction Carl Churchman, \$579 expense report
39 dinner on June 9, 2008, with 2 Schiff Hardin consultants and 2

1 Strategic Talent Solutions consultants to discuss Construction
2 Management Organization at Pierpont's Union Station in Kansas City
3 MO. (meal \$100.83 X 5 = \$504.18 + \$75 tip).

4 9. KCPL VP for Construction Carl Churchman, \$379 expense report
5 dinner on September 15, 2009, with a consultant from Strategic Talent
6 Solutions consultants to discuss Iatan 2 Manager's 360 Evaluations at
7 801 Chop House in Kansas City MO. (meal \$167.05 X 2 = \$334.10 +
8 \$45 tip).

9 10. KCPL VP for Construction Carl Churchman, \$988 expense report
10 dinner on June 15, 2009, with two KCPL and five Alstom employees at
11 801 Chop House in Kansas City MO. (meal \$141.14 X 7 = \$987.98).
12 Approved by KCPL Chief Operating Officer 9/1/09

13 11. KCPL VP for Construction Carl Churchman, \$377 expense report
14 dinner on June 6, 2009, with two Alstom employees at 801 Chop
15 House in Kansas City MO. (meal \$166.14 X 2 = \$332.28 plus \$45 tip).
16 Approved by KCPL Chief Operating Officer 9/1/09.

17 12. KCPL VP for Construction Carl Churchman, \$596 expense report
18 dinner on December 11, 2009, with Churchman, Brent Davis and two
19 Alstom employees at 801 Chop House in Kansas City MO. (meal
20 \$130.30 X 4 = \$521.18 plus \$75 tip).

21 13. KCPL VP for Construction Carl Churchman, \$739 expense report
22 dinner on January 20, 2010, with Churchman, Brent Davis and three
23 FTI contractors at 801 Chop House in Kansas City MO. (meal \$132.80
24 X 5 = \$664.01 plus \$75 tip).

25 Recognizing that the attempt to identify each and every inappropriate charge on the Iatan Project
26 during the period 2005 through 2010 is beyond Staff's resources, the Staff is proposing an
27 adjustment to attempt to mitigate the risk that these types of charges are passed on to Missouri
28 ratepayers. Based on the data reviewed in the Staff's audit and the Staff's previous audit
29 experience, knowledge and understanding of KCPL's employee expense report charges, it
30 believes an adjustment to remove \$25,000 from Iatan 1 and \$75,000 from Iatan 2 is appropriate.
31 Based on the cost data that the Staff has reviewed, the Staff believes it is more likely than not
32 that a \$100,000 adjustment to remove inappropriate charges from the Iatan Project still allows
33 for a significant risk that inappropriate costs are still incurred. However, the Staff was unable to
34 devote additional resources to this audit scope and proposes this adjustment as a conservative
35 attempt to remove inappropriate charges from the project.

1 **2. Affiliate Transaction – Great Plains Power**

2 *Staff Expert: Charles R. Hyneman*

3 The Iatan 1 AQCS cost report includes \$105,939 in Project 05-00051 (“KCPL Only”)
4 related to costs originally incurred by former KCPL’s nonregulated affiliate, Great Plains Power
5 (“GPP”) in its nonregulated operations. The Iatan 2 cost report includes similar GPP costs of
6 \$296,021 in work code 0050, Project Development and \$1,459,178 in Project 05-0052
7 KCPL Only. For the Iatan Project, these individual “KCPL Only” projects were created by
8 KCPL to segregate costs that KCPL either cannot charge or has decided not to charge other Iatan
9 joint partners.

10 When asked in DR 0624.2 to explain the reasons why these costs were capitalized to the
11 Iatan Projects, KCPL responded that:

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

15 During the late 1990’s with increasing electric demand and rising gas
16 prices, the need for additional baseload resources was being discussed
17 among regulators and utilities throughout the region and a number of
18 regional utilities had expressed interest in participating in joint ownership
19 of a second coal unit at Iatan.

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

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

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

1 Around the time of early 2003, following the collapse of Enron and
2 concerns that the deregulated model was not in the best interests of serving
3 customers, the deregulation movement in Missouri and Kansas appeared
4 to be stalled.

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

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

12 The development work performed at GPP primarily pertained to
13 environmental permitting and engineering which defined the project scope
14 and plant design.

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

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

24 When asked to explain the reasons why these GPP costs were necessary to construct the
25 Iatan 1 AQCS and the Iatan 2 generating unit, KCPL replied that Iatan 2 project definition report
26 performed by Burns & McDonnell showed significant benefits to sharing common facilities with
27 the current Iatan 1 facility, primarily in the area of the proposed AQCS systems. Since much of
28 this early design and permitting work was performed by GPP for the development of Iatan 2, this
29 work was applicable and beneficial to the development of Iatan 1 AQCS as well.

30 The transfer of costs from GPP to KCPL, then charged by KCPL to Iatan 1 AQCS,
31 occurred on September 29, 2005. On this date KCPL and GPP executed a Bill of Sale and
32 General Release agreement for \$230,646. KCPL acquired from GPP "assets" consisting of
33 support engineering for permitting and site development of an Atchison, Kansas, new coal-fired
34 generation site. This support engineering work was performed by Burns & McDonnell in March,

1 April and September of 2004. Also included in the \$230,646 is \$43,000 in land options on land
2 considered for a new coal-fired generation site.

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

8 Page 6 of GPE's 2005 Annual Report:

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

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

16 In an attempt to gain an understanding of why these GPP costs were a reasonable and
17 necessary Iatan construction cost, Staff arranged for a meeting to discuss this issue. The meeting
18 was held on September 23, 2009. Despite lengthy discussions on this topic at this meeting,
19 KCPL could not explain to Staff's satisfaction why the GPP costs, which were incurred by an
20 unregulated affiliate of KCPL with the intention to construct a non-regulated coal plant near the
21 Iatan 1 plant site, should be recorded as costs that are necessary to construct the environmental
22 upgrades at the existing Iatan 1 plant. In addition, the Staff was not convinced that the costs
23 incurred by GPP in its nonregulated activities were necessary for the construction of Iatan 2.

24 During the Staff's audit work on this issue, the Staff found that KCPL did not comply
25 with the Commission's Affiliate Transactions Rules when it decided to acquire purported assets
26 from its nonregulated affiliate, GPP. In Staff Data Request No. 844, Staff asked KCPL to
27 provide a copy of all reports to the Commission, including affiliate transaction reports or
28 regulatory filings that show the sale of GPP assets to KCPL:

29 Question No. 0844: Please provide a copy of all reports to the MPSC,
30 including affiliate transaction reports or regulatory filings that show the
31 sale of GPP assets to KCPL.

1 RESPONSE: No reports were filed on this transaction. This was in error
2 and should have been reported.

3 By failing to report this purchase from GPP, KCPL has been in violation of the
4 Commission's Affiliate Transaction Rules since at least March 15, 2006, the required date for
5 2005 affiliate transactions to be reported to the Commission Staff and the
6 Office of the Public Counsel. 4 CSR 240-20.015 Affiliate Transactions is a Commission rule
7 intended to prevent regulated utilities from subsidizing non-regulated operations. Paragraph 2
8 *Standards* requires that a regulated electrical corporation shall not provide a financial advantage
9 to an affiliated entity. The rule also describes this financial advantage as if the regulated
10 electrical corporation compensates an affiliated entity for goods or services above the lesser of
11 the fair market price or the cost to the utility to provide the goods or services for itself.
12 Paragraph 2(B) requires a regulated utility to conduct its business in such a way as to not provide
13 any preferential services, information or treatment to an affiliated entity over another party at any
14 time, except as necessary to provide corporate support functions.

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

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

23 The development work performed at GPP primarily pertained to
24 environmental permitting and engineering which defined the project scope
25 and plant design.

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

31 Had this work from GPP not been used, KCP&L would have had to re-
32 perform the work which would have resulted in similar or potentially

1 higher costs to the project and would have extended the project schedule at
2 least 1 year.

3 In Staff Data Request No. 844, Staff asked KCPL to provide a list of all assets sold to
4 KCPL by GPP and the assigned market value and cost to KCPL assigned to each asset by KCPL
5 and the basis for the determination the transaction was made at the lower of cost or market value.

6 KCPL's response was:

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

13 Because KCPL has failed to show that any of the costs of the GPP "assets" acquired provide any
14 benefit to the Iatan Construction Project, these costs should not be included in this work order.
15 In addition, until it can be shown that the actual market value of these "assets" were greater than
16 the "cost" paid to acquire these assets from an affiliate, no GPP acquired-asset cost should be
17 included in any KCPL construction project. Because of the nature of these alleged assets, the
18 Staff has serious doubt whether any of these "assets" had any significant market value at all.

19 3. Schiff Hardin Adjustments

20 *Staff Expert: Charles R. Hyneman*

21 Schiff Hardin is a general practice law firm, with offices located in Chicago, Illinois,
22 among other cities. Although Schiff is a general practice law firm, in addition to providing legal
23 services to the Iatan Construction Project, it has been assisting KCPL in its project controls,
24 project management and providing what Schiff refers to as "project oversight" services. "Project
25 Oversight" is not a typical service provided in the construction industry and it is not clear at this
26 point if any of the Project Oversight services performed by Schiff Hardin were needed and
27 provided benefit to the project. The Staff notes that other construction projects have been
28 successfully completed without such very expensive "Project Oversight" services. Based on its
29 audit, the Staff has reached the conclusion that Schiff was actually hired to protect KCPL
30 management and KCPL's shareholders from project liability. Schiff was also hired by KCPL to

1 report to senior management on the performance of KCPL's Project Team by giving
2 "independent advice."

3 Kenneth M. Roberts, who is an equity partner, co-chair of the Construction Law Group
4 and a member of the executive committee of Schiff, filed testimony on behalf of KCPL in
5 File Nos. ER-2009-0089 and ER-2009-0090, and File Nos. ER-2010-0355 and ER-2010-0356,
6 as did Daniel F. Meyer of Meyer Construction Consulting, who identifies himself in his direct
7 testimony in File Nos. ER-2010-0355 and ER-2010-0356 as having been retained by
8 Schiff Hardin. Mr. Roberts states at page 3, lines 7-22 of his direct testimony in File Nos.
9 ER-2010-0355 and ER-2010-0356, that KCPL "engaged Schiff: (i) to help the Company develop
10 project control procedures to monitor the cost and schedule ("Project Controls") for the
11 infrastructure projects contained in the Company's Comprehensive Energy Plan ("CEP"); (ii) to
12 monitor the CEP's progress and costs, including the review and management of change order
13 requests; (iii) to negotiate contracts with vendors related to the CEP; and (iv) to resolve disputes
14 with vendors that might arise on CEP projects." Mr. Meyer in his direct testimony in File Nos.
15 ER-2010-0355 and ER-2010-0356 at page 1, lines 9-12, identifies the work that he has
16 performed for Schiff Hardin since the early 1990s as "[p]rimarily cost analysis work, and project
17 oversight. I have also provided some scheduling work and litigation support. All of my work
18 with Schiff has been in the construction industry, primarily in the power industry." Mr. Meyer
19 does not have a written contract with Schiff Hardin to work on the Iatan project.

20 Schiff Hardin's total budget (the amount identified in KCPL's Control Budget Estimate
21 for Schiff Hardin) for work on the Iatan 1 is identified in KCPL's Iatan 1 Cost Report at
22 ** _____ ** (October 2010 KCPL Iatan 1 Cost Portfolio, Data Input Page, cell H158). The total
23 Schiff Hardin costs charged to Iatan 1 as of October 2010 was ** _____ ** or over ** _____ ** times the
24 amount budgeted.

25 Sometime during the course of the Iatan 1 Project, KCPL increased its budget for Schiff
26 Hardin. The October 2010 current Schiff Hardin budget is ** _____ ** (October 2010 KCPL
27 Iatan Cost Portfolio, Data Input Page, cell M158). The total December 2006 Control Budget
28 Estimate.

29 In R&O (Risk and Opportunity Analysis Sheet) Item No. 237, dated October 2007,
30 KCPL increased its budget for Schiff Hardin (S-H), Internal Audit Services including Ernst &
31 Young, and KCPL Internal Audit Staff Schedule 3. The only documentation provided by KCPL

1 to explain its increase to the Schiff Hardin budget was included in the Analysis section which
2 stated that:

3 On average S-H has had four (4) full time personnel at the project site and
4 this level of participation is expected to continue for the duration of the
5 project. Additional Schiff-Hardin resources are periodically engaged as
6 necessary.

7 There was no additional supporting documentation for this budget increase, or any other data
8 included in the R&O with the exception of an Excel spreadsheet analysis of the amount spent,
9 estimate at completion, budget and budget increase. This explanatory documentation provided
10 by KCPL does not attempt to explain the reason why Schiff Hardin was providing additional
11 services to the project, only that it "was" providing additional services. The Staff finds this
12 documentation insufficient to explain why such a significant increase in cost to the Iatan Project
13 was required to be incurred.

14 The attached Excel spreadsheets (Schedule 3) in R&O Item No. 237 (Summary Sheet
15 KCP&L Internal Audit, Ernst & Young and Schiff Hardin Recap For The Period Ending
16 December 31, 2007) shows the budget for Schiff Hardin, which KCPL identified as being from
17 the December 2007 Cost Report, reflects an amount of ** _____ **. This budget amount is
18 inconsistent with the December 2006 CBE for Schiff Hardin identified above as ** _____ **. The
19 Staff does not know where this Schiff Hardin Iatan Unit 1 budget amount originated and has
20 reached the conclusion that it is erroneous. If KCPL is tracking costs to its Control Budget
21 Estimate, this is not the budget for Schiff Hardin that is included in the Control Budget Estimate.

22 R&O Item No. 237 was also used to explain the cost increases for Schiff Hardin that was
23 charged to Iatan Unit 2. According to R&O Item No. 237, the budget for Schiff Hardin costs on
24 Iatan 2 was ** _____ **. This budget amount is consistent with the amount included in KCPL's
25 Iatan 2 Cost Portfolio (October 2010 KCPL Iatan 2 Cost Portfolio, Data Input Page, cell I551).
26 However, the Staff has reviewed KCPL documentation indicating that the KCPL Board of
27 Directors was presented with a December 2006 CBE of \$1.685 billion for Iatan 2 which included
28 only ** _____ ** for Schiff Hardin. It is not clear when and if KCPL's Board of Directors
29 approved such a material increase in the budget for Schiff Hardin or, if the Board of Directors
30 did approve such a significant increase, why it did. R&O Item No. 237 shows that the Schiff

1 Hardin cost for Iatan 2 was estimated to be ** _____ ** and this amount was reflected in Iatan's
2 May 2008 budget change.

3 The Iatan Cost Report ("K Report") was received by the Staff in response to Staff Data
4 Request No. 622. As of October 2010, KCPL charged the Iatan 1 construction project with
5 ** _____ ** of Schiff Hardin charges classified as "Audit Services" and the October 2010
6 K Report reflects an additional ** _____ ** to be charged to the Iatan 1 AQCS construction project
7 for a total of ** _____ **.

8 The cost overruns for Schiff Hardin extend to Iatan Unit 2. The first indication of a
9 budget for Schiff Hardin costs was in April 2006. At that time, Schiff Hardin's scope of work
10 was described as "outside management oversight" (email from Joseph Freedman to Lori Wright
11 on January 6, 2007 re: Project List Matrix). In the Iatan 2 Cost Report, the total Schiff Hardin
12 amount in the Control Budget Estimate is ** _____ **. The current budget for Schiff Hardin is
13 ** _____ **. To get to the current budget from the Control Budget Estimate, KCPL had
14 to allocate ** _____ ** of Project Contingency to Schiff Hardin's scope of work. As of
15 October 31, 2010, KCPL has charged Iatan 2 a total of ** _____ ** for project oversight, Iatan
16 contracts and legal services and this amount is expected to increase by an additional ** _____ **
17 by project completion.

18 The Staff is concerned with significant cost overruns attributed to Schiff Hardin's audit
19 services and consulting work. In its review of Schiff Hardin costs, the Staff focused on three
20 main audit procedures:

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

31 Each of the three audit procedures are described below. Based on this analysis, the Staff
32 is proposing two adjustments to the Schiff Hardin costs charged to the Iatan construction project.

1 These adjustments effectively reduce the hourly rate for services charged by Schiff Hardin
2 employees and subcontractors for project management and project controls related duties and
3 reduce the rate charged by Schiff Hardin attorneys who performed legal services for KCPL.

4 In Staff Data Request No. 873, question 4, KCPL was asked to provide a copy of
5 all communications with Schiff which include authorization and direction to Schiff to
6 perform work for the Iatan Projects. KCPL responded that it objected to this data request to the
7 extent it seeks information protected from disclosure by the attorney client privilege and/or work
8 product doctrine.

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

13 In Staff Data Request No. 850, the Staff asked for a copy of the KCPL policy and
14 procedure related to the acquisition of services from a sole source that could be charged to the
15 Iatan 1 AQCS project during the period June 1, 2005, through July 31, 2006. KCPL referred the
16 Staff to a document entitled Great Plains Energy/KCP&L Policies and Procedures Manual,
17 Revised as of October 1, 2009. In this document, KCPL referred to policy E-100 Procurement,
18 page 3 subtitled "Competitive Bidding." This policy has three specific requirements:

- 19 1. ** _____
20 _____
- 21 2. _____
22 _____
23 _____
24 _____
- 25 3. _____
26 _____
27 _____
28 _____ **

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

- 31 1. ** _____
32 2. _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

_____ **

At the KCPL rate case hearings at the Kansas Corporation Commission (KCC) on August 19, 2010, Mr. Downey explained to KCC Commissioner Ward Loyd how Schiff Hardin was selected. In response to Commissioner Loyd's question as to how Mr. Downey became aware of the services of Schiff Hardin, Mr. William Downey, as KCPL's President and Chief Operating Officer, as noted in the hearings transcript on that date, replied:

I had mentioned Tom Maimon who had been am Vice President of Commonwealth Edison, One of the biggest programs if the country, and he used to be my boss, and when we announced that we were doing this, he picked up the phone and called me and said I've got some advice for you, and he said you are gonna need to stay close to this project. You are gonna have to have a lot of transparency because in these projects what can kill you is what you don't know and you need to have independent sources of information and oversight, and here's a group I recommend.

That KCPL hired Schiff Hardin without a formal process raises concerns. The concern is that KCPL entered into a no-bid, sole source contract with no limits on costs based solely on the recommendation of the former superior of its Chief Operating Officer. In response to Staff Data Request No. 672, KCPL stated that Mr. Maiman had previously worked on Schiff Hardin projects, and as part of Schiff Hardin's team, served as a senior advisor on a Canadian nuclear power project as well as being an advisor to Schiff Hardin's other utility clients.

In Staff Data Request No. 411, the Staff asked for copies of all documents related to the selection of Schiff Hardin 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..." KCPL provided no documents.

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



1 advice for Iatan 1 construction activities. The Staff also asked for a list of all vendors who were
2 invited to make a proposal to provide legal and project management advice for Iatan 1.
3 Responding to Staff Data Request No. 410, KCPL advised that Schiff Hardin was the only
4 qualified vendor in the Midwest who could assist KCPL Procurement personnel in the
5 development of request for proposals (RFPs), contract formation and administration and assist
6 KCPL in the mediation of construction disputes.

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

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

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

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

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

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

6 KCP&L was aware that Schiff Hardin had, since the early 1990s worked
7 with other utilities in the local area and nationally with respect to large
8 construction projects. KCP&L is unaware of any other firms that have
9 similar experience, particularly in the project controls arena.

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

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

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

1 interests, KCP&L concluded that this integrated approach was the best
2 way to protect the company's interests.

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

8 However, in response to Staff Data Request No. 677, KCPL stated that in connection
9 with KCPL's Iatan 1 and 2 rate case litigation strategy, William Downey (KCPL's President and
10 Chief Operating Officer), William Riggins (KCPL's former General Counsel), and Gerald
11 Reynolds (former KCPL attorney) met with attorneys from the Chicago, Illinois law firm of
12 Duane Morris. Also included in the response to this data request was a 60-page PowerPoint
13 presentation made to KCPL by the Duane Morris law firm. A review of the credentials of the
14 attorneys in the Duane Morris presentation show that Duane Morris is a very experienced law
15 firm in the construction field, in addition, it has a major office in Chicago, Illinois, the same
16 location as Schiff Hardin. Moreover, since KCPL was meeting with Duane Morris for rate case
17 litigation strategy and eventually hired Duane Morris for this work, KCPL must have believed
18 that Duane Morris must be qualified in rate case litigation strategy.

19 In Staff Data Request No. 410.2 KCPL was asked to clarify the statement it made in
20 response to Staff Data Request No. 410.1 that it "sought out construction law groups that had
21 significant and specialized experience in project controls in the context of building base load
22 generation". In its response to Staff Data Request No. 410.2 KCPL admitted that not only did it
23 not solicit bids for this work, it did not even contact any other firm to determine potential interest
24 in the Iatan construction management and legal work awarded to Schiff Hardin.

25 In response to Staff Data Request No. 410.2 KCPL indicated that Schiff Hardin was
26 selected by William Downey based on information Mr. Downey obtained from other utility
27 executives with experience with Schiff Hardin. According to KCPL, based on the information
28 provided from other utility executives with extensive experience with Schiff Hardin, Mr.
29 Downey identified Schiff Hardin as a firm that had expertise in project controls, construction law
30 and regulatory experience specific to the construction of large base load generation. The

1 resumes of numerous construction law practice groups throughout the country were reviewed.
2 Schiff Hardin was the only law firm that KCPL contacted.

3 When the Staff inquired in Staff Data Request No. 410.2 as to the rationale for limiting
4 its search for qualified vendors to the Midwest, KCPL responded that it believed it would be
5 “beneficial to engage a law firm that was familiar with the major construction contractors
6 working on projects in the Midwest as well as the regulatory environment in the Midwest.” In
7 response to Staff Data Request No. 410.2 KCPL was asked to describe its understanding of the
8 regulatory climate in the Midwest as opposed to the regulator climate in other regions in the
9 country and why an understanding of the regulatory climate in the Midwest is a relevant
10 consideration in the selection of a vendor to perform the role Schiff Hardin performs for the Iatan
11 Projects. KCPL replied that:

- 12 A. A utility that is held to a prudence standard in a regulatory environment needs to
13 put different policies, procedures and rigor around its decision making than a
14 utility responsible for a major construction project that is not subject to regulatory
15 scrutiny.
16
17 B. A state public utility’s policy preferences and the tradeoffs made by a PUC are
18 likely to have significant consequences on a utility and its customers. This is
19 what was meant by the use of the phrase “regulatory climate.”
20
21 C. KCP&L believes that Schiff’s knowledge of policies and procedures utilized by
22 other regulated utilities on large construction projects has provided added value in
23 terms of preparing for and participating in KCP&L’s rate cases.

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

28 Based on its audit the Staff concludes that, regardless of its own procurement policies, the
29 selection of Schiff Hardin was primarily influenced by KCPL management’s desire to be
30 prepared to defend and protect itself from any charges of unreasonable, inappropriate or
31 imprudent decisions and not about conducting the day-to-day project management work required
32 to complete a significant construction project on time and on budget. This focus resulted in
33 Schiff Hardin charging the Iatan construction projects for work not related to construction
34 activities.

1 As noted above, the Staff attempted to understand how KCPL determined that the hourly
2 rates and annual rate increases charged by Schiff Hardin were reasonable and appropriate, given
3 a) the specific type of work performed by each Schiff Hardin employee; and b) the quantity of
4 work performed by Schiff Hardin.

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

13 For the Iatan 1 project, KCPL estimated that it will pay Schiff Hardin approximately
14 ** _____ **. For the Iatan 2 project, KCPL estimated it will pay Schiff Hardin an additional **
15 _____ ** Besides the fact that these estimated costs exceed budgeted amounts by significant
16 amounts, the fact that KCPL will pay ** _____ ** in construction-related work to a vendor
17 without a competitive bid is a major concern to the Staff.

18 A copy of the sole-source contract between Schiff Hardin and KCPL was provided to
19 Staff in response to Staff Data Request No. 409. In the copy of the contract provided to Staff
20 there is no indication that the contract was signed by either KCPL or Schiff Hardin. The Schiff
21 Hardin contract was entered into on January 17, 2007. The contract states that Schiff Hardin is
22 retained by KCPL to perform and render for KCPL's executives and KCPL's legal, procurement,
23 and engineering departments, professional services in accordance with Schiff Hardin LLP Roles
24 and Responsibilities for KCPL Comprehensive Energy Plan Projects. The executive summary of
25 Attachment A to this contract, Schiff Hardin LLP Roles and Responsibilities for KCP&L
26 Comprehensive Energy Plan Projects, states:

27 Schiff's primary functions will be: (1) Providing independent reporting of
28 the CEP's progress to KCPL's Chief Executive Officer and Oversight
29 Team; and (2) Identifying ways in which KCP&L may improve in its
30 execution of the various phases of the CEP Projects' work.

Schiff will prepare reports as to its observations of the CEP's progress. Such reports will identify critical aspects of the CEP Projects' progress on the basis of industry-standard metrics. To that end, Schiff will work with KCP&L to develop appropriate project metrics that will identify the critical aspects of each of the CEP Projects' progress.

Moreover, Schiff will be available to KCP&L as a resource throughout the CEP Projects. Schiff recognizes it is vitally important to identify to KCP&L methods for analyzing, correcting and averting potential errors in Project Controls methodology, planning, scheduling, budgeting and/or field performance Project reporting before such could have an impact on the CEP Projects. As such, Schiff commits to reviewing the data provided by KCP&L on a real-time basis and providing immediate commentary and feedback to KCP&L. In this respect, Schiff is most concerned correcting aspects of the CEP Projects' performance that may be deficient.

Paragraph 2 of the KCPL-Schiff Hardin contract, provided in response to Staff Data Request No. 409, lists the specific authorized hourly rate for each Schiff Hardin employee. This rate is shown in the chart below.

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

Staff DR 409 Schiff Contract

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

**											**
**											**
**											**
**											**
**											**
**											**

As reflected in the chart above, even though the hourly rate increases have moderated somewhat from 2008 to 2009, the Schiff Hardin annual hourly rate increases charged to KCPL



1 over the period 2005 through 2009 are for the most part excessive, especially in this time of a
2 distressed economy with significantly high unemployment rates and a heavy downward pressure
3 on compensation increases. What is clear from this chart is that KCPL made no attempt to take
4 advantage of the depressed economy and negotiate lower than double digit and nearly double
5 digit hourly rate increases in Schiff Hardin hourly rates in 2005 through 2008. In 2009
6 Schiff Hardin's hourly rate increases were still higher than the average market increases.
7 If KCPL did any analysis or market research to justify the excessive annual hourly rate increases
8 for Schiff Hardin attorneys and paralegals it did not provide this data to Staff, despite the Staff
9 specifically seeking this data.

10 One indication that shows that the annual Schiff Hardin rate increases are excessive is to
11 look at a readily-available, free document used by the legal profession to determine fair and
12 reasonable attorney fees. As will be described below, the Laffey Matrix, which is available on
13 the United States Attorney's Office for the District of Columbia website lists annual cost of
14 living increases in the Washington, DC area. This rate is used as a benchmark for reasonable
15 attorney fees. As reflected in the Laffey Matrix below for the relevant period, Schiff Hardin
16 worked on the Iatan Construction Project, reasonable attorney fee increases ranged from 3 to
17 6 percent. Well below the annual increases charged by Schiff Hardin to KCPL. The Staff
18 believes that KCPL was imprudent, unreasonable, and inappropriate in approving these annual
19 Schiff Hardin increases without doing any analysis to justify these increases. KCPL's failure to
20 hold Schiff Hardin to prudent, reasonable, and appropriate hourly rate increases significantly
21 increases the charges to the Iatan Project. In the Staff's adjustments proposed below, the Staff
22 attempts to mitigate the impact of these KCPL management actions.

23 In its attempt to determine how KCPL found the Schiff Hardin annual rate increases to be
24 reasonable, the Staff first reviewed the KCPL-Schiff Hardin contract. ** _____
25 _____
26 _____

27 _____ **. In Staff Data Request No. 852, question 2, the Staff asked KCPL to provide
28 all supporting documentation and approval documentation from KCPL's General Counsel's
29 office concerning the Schiff Hardin hourly rate increases. KCPL replied that "generally, KCPL
30 approved proposed annual rate increases proposed by Schiff Hardin verbally. To the extent that
31 documentation is available, the documentation is attached."

1 KCPL attached three documents to this data request response. These documents include
2 a January 5, 2009 memo from Schiff Hardin to KCPL advising KCPL of the 2009 Schiff Hardin
3 billing rates, one document listing the names and hourly rates of the Schiff Hardin employees
4 and consultants from 2005 through 2009, and a March 15, 2007 email from Schiff Hardin to
5 KCPL providing the Schiff Hardin billing rates since Schiff Hardin started working at KCPL.
6 No documentation was provided that indicated KCPL approved any Schiff Hardin hourly rate
7 increases. Because KCPL was unable to produce any documentation over a period of five years
8 that it ever required Schiff Hardin to comply with its contract and seek and obtain KCPL
9 approval of annual hourly rate increases – in advance of charging these increases – the Staff
10 concludes that KCPL made an intentional decision not to enforce the terms of its contract with
11 Schiff Hardin. The Staff believes this action was imprudent and resulted in higher costs charged
12 to the Iatan Project than reasonably necessary.

13 KCPL and Mr. Steven Jones entered into an Independent Contractor
14 Agreement (Agreement) to provide procurement services for the Iatan Projects for the period
15 March 16, 2006 through March 16, 2008. Under the Agreement, Mr. Jones was required to be
16 available to provide procurement services as reasonably requested by KCPL and its affiliates.

17 **
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____ **

25 Mr. Jones filed rebuttal testimony on behalf of KCPL in File No. ER-2009-0089 on
26 March 10, 2009 (Mr. Jones was also a witness for KCPL in its current Missouri rate increase
27 cases, File Nos. ER-2010-0355 and ER-2010-0356). In his rebuttal testimony in File No.
28 ER-2009-0089 he explains that he was an independent contractor working for KCPL as Senior
29 Procurement Director and he was at that time responsible for all procurement activities for
30 KCPL's Comprehensive Energy Plan. He also states that he was responsible for the commercial



1 management of all contracts and contract administration as well as material management and
2 distribution.

3 While the Staff does not know the exact date KCPL and Mr. Jones ended their
4 Agreement, Mr. Jones started to work for Schiff Hardin in the exact same capacity as he did for
5 KCPL. The only difference is that as an independent contractor Mr. Jones charged KCPL
6 ** __** per hour. As a Schiff Hardin subcontractor, Mr. Jones currently charges KCPL ** __** per
7 hour. The Staff learned through a deposition of Mr. Ken Roberts of Schiff Hardin on January 14,
8 2011 that Mr. Roberts was contacted by Ms Lora Cheatum, while KCPL Vice President of
9 Procurement, and Ms. Cheatum asked Mr. Roberts to hire Steven Jones at the Schiff Hardin firm.
10 Mr. Roberts testified in his deposition the only reason Schiff hired Mr. Jones was because KCPL
11 asked Schiff to hire Mr. Jones. It is not clear why KCPL decided not to retain Mr. Jones under
12 contract when it asked Schiff to hire Mr. Jones to perform the exact same services for KCPL and
13 continue to report to Ms. Cheatum. Mr. Jones reported to Ms Cheatum when he was a contractor
14 for KCPL and continued in this role after he was a contractor for Schiff Hardin.

15 Based on Staff's audit activities it has learned that there were serious concerns about
16 Mr. Jones' performance at the Iatan construction site and ** _____

17 _____
18 **_. The Staff noted these concerns in a OHS Survey Response and an OHS
19 Survey Improvement Suggestions for 2009 document. The OHS Survey included comments
20 from KCPL's employees who work at the Iatan site on the Iatan Project. ** _____

21 _____
22 **_. In a deposition with KCPL's current Director of Procurement
23 David McDonald, the Staff learned that although Mr. McDonald has been working on the Iatan
24 Project since September 2009, he has never worked professionally with Mr. Jones and he had
25 only met Mr. Jones one time in a social setting. This raises the concern that Mr. Jones, who is a
26 procurement specialist, has never worked with KCPL's Director of Procurement.

27 Based on the very limited documentation that the Staff has been able to obtain concerning
28 Mr. Jones' services, his work has primarily been related to review of Staff data requests and
29 other rate case type work. It does not appear that the services provided by Mr. Jones after he was
30 transferred from KCPL to Schiff Hardin have been or are needed for the construction of the
31 Iatan Project.

1 There would be nothing imprudent for Mr. Jones to terminate his contract with KCPL
 2 and sign a contract with Schiff Hardin for the same work if there was no increase in cost to the
 3 Iatan Construction Project as a result of this employment switch. However, there was a
 4 significant increase to the Iatan Project Costs as a result of KCPL asking Schiff to take Mr. Jones
 5 from KCPL to Schiff and have Schiff charge ** _____ ** the rate to KCPL for Jones'
 6 services than KCPL was paying. This is an example of a transaction where KCPL initiated the
 7 imprudent cost increase with absolutely no increase in benefit to the project being clear on its
 8 face or shown to the Staff.

9 The contract between Schiff Hardin and KCPL lists the ** _____
 10 _____
 11 _____ **. The contract also includes the ** _____
 12 _____ **. Staff has not been provided with any
 13 updates, change orders or other modifications to the contract between Schiff Hardin and KCPL
 14 to authorize the work of Mr. Jones and his ** _____ ** per hour compensation.

15 In a supplemental response to Staff Data Request No. 415, KCPL provided three invoices
 16 for Mr. Jones' work submitted by Schiff Hardin. As shown below, Schiff Hardin charged KCPL
 17 ** _____ ** in excess of what KCPL would have been billed by Mr. Jones (if he had remained
 18 working as an independent contractor for KCPL at ** _____ ** per hour) in only a four month period of
 19 April 2009 through July 2009. The Staff included in its Schiff Hardin adjustment a reduction to
 20 Mr. Jones' compensation to a more reasonable level.

Months	Hours	Schiff Rate	KCPL Rate	Diff	Excess charge
April and May 2009	** _____ **	** _____ **	** _____ **	** _____ **	** _____ **
June 2009	** _____ **	** _____ **	** _____ **	** _____ **	** _____ **
July 2009	** _____ **	** _____ **	** _____ **	** _____ **	** _____ **

22
 23 Missouri ratepayers potentially would suffer harm from this transaction if KCPL is
 24 successful in passing on these unreasonable, imprudent, inappropriate, and not of benefit to the
 25 ratepayers cost increases to Missouri ratepayers. Conversely, Schiff Hardin and Mr. Jones were
 26 the beneficiaries of this transaction. Under the new arrangement between KCPL and
 27 Schiff Hardin where Schiff Hardin would charge to the Iatan Project ** _____ ** for each hour of
 28 Jones' services, Schiff Hardin profits by ** _____ ** for each hour billed as some type of "overhead"

1 charge. Therefore, if Steven Jones works an 8-hour day on the Iatan Project, Schiff Hardin
2 receives ** ____** in overhead charges.

3 **4. Schiff Adjustments**

4 As noted above, to reduce the likelihood that imprudent, inappropriate and unreasonable
5 costs are charged to the Iatan Construction Project, the Staff found it necessary to make
6 adjustments to remove imprudent, inappropriate, and not of benefit to the ratepayer Schiff
7 Hardin costs from the Iatan Project. A portion of such costs were excessive and unsupported.
8 KCPL, in violation of its own procurement policies, issued a sole source contract to Schiff
9 Hardin which resulted in additional costs of approximately for ** _____** for Iatan 1 and
10 ** _____** for Iatan 2. KCPL provided no basis to the Staff that the costs charged by Schiff
11 Hardin were fair and reasonable as KCPL issued no request for proposals for this work,
12 contacted no other vendors about this work, and did not do any formal study or analysis about
13 the costs proposed to be charged by Schiff Hardin. Finally, KCPL did not justify its failure to
14 enforce the terms and conditions of its contract with Schiff Hardin.

15 Other items of concern to the Staff are the fact that KCPL apparently did not attempt to
16 obtain a volume pricing discount for offering thousands of billable hours over a six-year period.
17 KCPL received a volume discounts from another legal firm who performed legal services for the
18 Iatan Project. However, KCPL apparently did not even attempt to negotiate a volume discount
19 with Schiff Hardin, despite the fact that KCPL pays Schiff Hardin for thousands of hours of
20 work. While ostensibly one of the reasons that KCPL hired Schiff was to ensure the terms and
21 conditions of other Iatan construction contracts were enforced, KCPL did not enforce the terms
22 and conditions of its contract with Schiff Hardin. KCPL did not pre-approve annual rate
23 increases (KCPL was not able to provide any documentation that it approved Schiff Hardin
24 annual rate increases in advance of Schiff Hardin billing these new hourly rates) and KCPL did
25 not require Schiff Hardin to submit monthly receipts for travel and other expenses charged to the
26 project, as required by the KCPL-Schiff Hardin contract.

27 In its review of Schiff Hardin invoices, the Staff found that Schiff Hardin has charged the
28 construction project hundreds of thousands of dollars in travel expenses, with virtually no
29 document support. In October 2007 alone, Schiff Hardin charged KCPL ** _____** in travel
30 expenses. ** _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

_____**

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

Staff made a specific inquiry to KCPL about the lack of receipts for expenses included in the Schiff Hardin invoices, and KCPL indicated that no additional documentation was available. Because of KCPL's failure to require Schiff Hardin to comply with the terms of its contract ** _____

_____** Staff was unable to audit and assess the reasonableness of the expenses Schiff Hardin charged to KCPL over the period 2006 through 2010. KCPL explained in response to Staff Data Request No. 881 that despite the requirement in its contract with Schiff Hardin for Schiff Hardin to provide monthly invoices for expenses, KCPL determined that a simple list of charges for travel and other expenses would be sufficient for its purposes:

Question No. 0881

1. Reference Schiff Hardin Invoice No. 1366223 dated 3/31/09. Please provide a copy of all receipts received by KCPL in support for Schiff's request for payment of ** _____** in travel, meals and other expenses excluding the ** _____** charge for professional services. Please provide the date the receipts were received. If no receipts were received to support these expenses please explain how KCPL determined the expenses were reasonable and prudent.
2. Reference Schiff Hardin Invoice No. 1357268 page 70 dated 2/28/09. Please provide a copy of all receipts received by KCPL in support for Schiff's request for payment of travel, meals and other expenses. Please provide the date the receipts were received. If no receipts were received to support these expenses please explain how KCPL determined the expenses were reasonable and prudent.



1 RESPONSE:

- 2 1. KCP&L does not have the receipts in its possession. Schiff Hardin
3 provides KCP&L with a printout of expenses incurred by Schiff Hardin on
4 a monthly basis. As detailed in our response to DR#0857, the Law
5 Department reviews these expenses to ensure they are reasonable.
- 6 2. KCP&L does not have the receipts in its possession. Schiff Hardin
7 provides KCP&L with a printout of expenses incurred by Schiff Hardin on
8 a monthly basis. As detailed in our response to DR#0857, the Law
9 Department reviews these expenses to ensure they are reasonable.

10 On March 29, 2010, KCPL provided supplemental information to Staff Data Request
11 No. 881. KCPL stated that, "Schiff Hardin is in the process of gathering the requested receipts.
12 Once it receives the receipts, KCP&L will confirm the reasonableness of the expenditures, then
13 forward the receipts to Staff." As of October 31, 2010, the Staff has not received any
14 notification that KCPL has received the documentation from Schiff Hardin.

15 Based on a review of Schiff Hardin invoices, the Staff determined that a 6 percent
16 expense to labor ratio is a reasonable approximation of the actual expenses charged to KCPL by
17 Schiff Hardin. The Staff's adjustment removes 6 percent of the monthly Schiff Hardin charges
18 to the Iatan 1 AQCS and Iatan 2 work order.

19 Staff reviewed invoices submitted by Schiff Hardin for services performed on the Iatan
20 construction projects as well as other consultants hired by KCPL to provide construction project
21 management and procurement services. From this review Staff has concluded that the hourly
22 rates charged to KCPL by Schiff Hardin are at times significantly in excess of the hourly rates
23 charged by other consultants with equal or greater experience in the construction management
24 field than Schiff Hardin. To address the issue of excess hourly rates charged by Schiff Hardin,
25 the Staff first determined the specific roles and responsibilities that KCPL hired Schiff Hardin to
26 perform for Iatan construction projects.

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

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

- 4 1. Use its industry experience to review and validate the essential
5 milestone dates and critical path activity durations needed to
6 achieve the critical in-service dates for the Iatan Projects and other
7 KCPL CEP projects.
- 8 2. Provide procurement advice regarding potential contracting
9 methods for each of the CEP Projects based on Schiff's
10 considerable experience with major procurements in the utility
11 construction industry.
- 12 3. Provide project oversight and reporting to Senior Management.
- 13 4. Assist the CEP Projects teams with developing appropriate and
14 industry-standard project controls and standards and metrics; and
- 15 5. Provide legal assistance regarding disputes with contractors.

16 Mr. Downey's rebuttal testimony indicates that the EOC hired Schiff Hardin to provide
17 primarily construction project management services and procurement services. Schiff Hardin's
18 contracted legal responsibilities were to provide assistance to KCPL's legal department with
19 regard to disputes with contractors. The hourly rates charged to KCPL, however, instead of
20 reflecting prevailing construction project management hourly rates, reflect the rates that would
21 be charged by very senior and very experienced attorneys.

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

27 Q: Please describe Schiff's oversight role.

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

- 30 (1) utilize their industry expertise to review and validate the
31 essential milestone dates and critical path activity durations needed
32 to achieve the critical in-service dates for Iatan Units 1 and 2, the

1 LaCygne 1 SCR, and the Spearville 1 wind project in accordance
2 with the Stipulation;

3
4 (2) provide procurement advice regarding potential contracting
5 methods for each of the CEP Projects based on Schiff's
6 considerable experience with major procurements in the utility
7 construction industry;

8
9 (3) assist KCP&L in the development of and procurement of the
10 goods and services needed for the CEP Projects,

11
12 (4) provide project oversight and reporting to the Senior
13 Management of KCP&L,

14
15 (5) assist the CEP Projects teams with developing appropriate and
16 industry standard project controls standards and metrics, and

17
18 (6) assist KCP&L in the development of policies and procedures
19 for the cost and schedule management of the CEP Projects.

20 From the description of the Schiff Hardin roles and responsibilities provided by Mr. Downey,
21 and the description of the work performed by Schiff Hardin in its monthly invoices, the Staff
22 made a determination that 80 percent of the work performed by Schiff Hardin employees was
23 related to construction project management, including project controls. The remaining
24 20 percent was related to legal and paralegal services.

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

28 In response to Staff Data Request No. 652, KCPL described how it hired LogOn
29 shortly after KCPL hired Carl Churchman to serve as KCPL Vice President of Construction in
30 May 2008:

31 When Carl Churchman joined KCP&L in May, 2008 Mr. Churchman
32 contracted with LogOn Consulting to conduct an assessment of the status
33 of the project regarding procedures, human and technological resources,
34 organization of staff and management, policy and administrative controls,
35 and contract management. This portion of the engagement with LogOn
36 was intended to serve two purposes. One was to identify opportunities for
37 improvement and take appropriate actions. For instance, KCP&L moved
38 from a largely manual cost tracking system to a more automated system.
39 Second, was to create a template or a manual of how to execute major

1 capital construction projects based on the information available from the
2 Iatan projects. This manual would then be available and applicable for
3 future use in any large capital construction projects. The manual is not
4 complete; however, drafts of the various documents are provided in the
5 attachment. Any final documents (1000-5000) are also attached.
6 Completion of the manual is dependent on time to meet with other
7 impacted groups within the Company prior to issuance of a final manual.
8 Any actions required pursuant to the assessments in the attached
9 documents have been accomplished throughout the past 12 months.

10 LogOn was also contracted to augment the construction management staff
11 in advisory roles or as support (Staff augmentation) to cost analysis,
12 engineering, performance issues, and contract management. For instance
13 LogOn assisted KCP&L in the reforecast process, spare parts analysis,
14 common plant analysis, contractor materials issues, and start-up analysis.
15 Initially, about the first six months, of the contract period, only 25% of the
16 dollar value of invoices relate to assessment and large capital project
17 initiatives, with the remaining 75% of the value of invoices related to staff
18 augmentation. Subsequently, approximately 90% of invoices have been
19 and are currently related to staff augmentation.

20 Mr. Churchman also oversaw the non-legal services provided by Schiff Hardin to KCPL.
21 KCPL advised Staff in response to Staff Data Request No. 652 that most of the individuals
22 employed by LogOn have in excess of 25 years of experience working on various aspects of
23 power plant construction projects and that LogOn's expertise is well known within the industry.
24 KCPL noted that based on LogOn's reputation within the industry, Mr. Churchman's experience
25 working with LogOn, and his need to consult with industry veterans as to the status of the
26 construction projects, KCPL hired LogOn to perform construction management services at Iatan
27 for both the Iatan 1 and Iatan 2 projects.

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

32 The following is a description of the services provided by Logon from its website:

33 Project Assurance Program: LogOn will work with a client to design,
34 develop and deploy a program aligned with the specific functions and
35 conditions. The following services would be performed as part of the
36 Project Assurance Program. The content of the program can include
37 overall project strategies, project planning and development, engineering

1 and design, site selection, licensing, construction, litigation/claims, rates
2 and regulatory (including prudence verification) and on-going operations.

3 Risk Assessments/Management: LogOn offers complete set of risk
4 assessment and management services needed for large complex projects.
5 Our services reflect specific electric utility experience tuned to the
6 evolving functions on various assets configuration as well as the accepted
7 risk profile of an individual utility. Further, our approach incorporates the
8 latest governance and internal controls demanded by all stakeholders.

9 Project Development: LogOn provides services in all aspects attendant to
10 the development of a project. Our services are usually provided in an
11 advisory format for such functions as contracting strategy, procurement
12 processes, organizational capabilities, legal issues, project controls,
13 construction accounting systems and related business processes. The
14 services are provided as part of workbook of necessary actions to
15 implement a solid project infrastructure.

16 Organizational Assessment and Development: LogOn offers services to
17 determine the readiness of a particular organization and personnel to
18 perform assigned duties. The capabilities of electric utility personnel to
19 manage large, complex projects have diminished reflecting the modest or
20 nearly non-existent capital asset additions of the last 5-12 years. Typically,
21 a utility expecting to build a new power plant (for example) will need to
22 know what capabilities exist for the required functions, current technology
23 and controls, personnel count and experience and the best organizational
24 structure.

25 Monitoring and Reporting: LogOn provides comprehensive services to
26 support the on-going monitoring and reporting crucial to project
27 management and oversight. These services are designed to support the
28 entire lifecycle of a project whether measured in weeks, months or years.
29 The monitoring and reporting regime is tailored to the particular
30 requirement of the project and its stakeholders and management. Our
31 services include the development of a project assurance manual to capture
32 processes and related actions to monitor and report.

33 Project Close Out: LogOn provides services to support the complex
34 closure process for projects. Our services include claims management,
35 litigation support, project transitions and operational readiness. These
36 services are designed to be integrated into the project's evolution through
37 to completion. All services are aligned to a particular client's needs.

38 Prudence Support/Rate Recovery: LogOn provides services to support the
39 management and execution of the steps to justify project expenditures and
40 recover costs through the regulatory process. LogOn provides advisory
41 services to support strategies consistent with regulatory requirements to

1 demonstrate the prudence of project expenditures and actions. Our
2 experienced personnel can establish the framework necessary to define
3 and explain the actions of key project participants and the
4 contemporaneous actions of management.

5 Operations Support: LogOn offers unique services to support the on-going
6 operation of the installed asset or upgrade. The capital and operations and
7 maintenance costs over the asset's lifetime can be many multiples of the
8 original installation costs. LogOn has comprehensive services to support
9 the life cycle of any particular asset. The services are derived from proven
10 features scaled to operational setting. These services recognize the need to
11 continue the oversight and need to recover all operational costs over the
12 assets operating life.

13 Also in response to Staff Data Request No. 652, KCPL provided a copy of the invoices
14 submitted by LogOn for May 2009 and other months. The hourly rate charged by the most
15 senior Project Management consultants for May 2009 was ** __ ** per hour. Mid-level personnel
16 billed at ** __ ** per hour. The lowest rate charged was ** __ ** per hour. Taking a weighting of
17 40 percent to ** __ **, 40 percent to ** __ ** and 20 percent to ** __ ** resulted in a weighted average
18 rate for LogOn of ** __ ** per hour. The Staff used this ** __ ** per hour as a reasonable rate for
19 experienced project management services. As reasonableness check on this rate the Staff
20 calculated the average hour rate charged by LogOn to KCPL for work on Iatan 2 in April 2010.
21 The average rate for this month was ** __ ** per hour. LogOn worked on the Iatan 2 project from
22 May 2008 (when hired by Mr. Churchman to do Audit/Assessments of the Project) through the
23 end of the Project. According to the October 2010 K Cost Report, KCPL paid LogOn
24 approximately ** _____ ** for its construction management services over this time period. In
25 October 2010 KCPL charged ** _____ ** to the Iatan 2 project for services provided by LogOn
26 Consulting.

27

LogOn Invoice April 2010		
Hours	Rate	Dollars
** **	** **	** **
** **	** **	** **
** **	** **	** **
** **	** **	** **
** **	** **	** **
** **	** **	** **

28

1 In calculating its hourly adjustment for project management duties, the Staff substituted
2 the ** ___** per hour rate it determined to be reasonable for the actual hourly rate charged by the
3 Schiff Hardin employees who perform primary project management duties for the Iatan Project.
4 This rate was applied to 80 percent of the Schiff Hardin costs classified by the Staff as related to
5 project management duties. The remaining 20 percent of the project management-related duties
6 were performed by Schiff Hardin paralegal employees with varying levels of experience. The
7 Staff used an hourly rate of ** ___** per hour for the Schiff Hardin paralegal employee with 1.5 years
8 of experience (as opposed to the actual ** ___** per hour charged by Schiff Hardin). The Staff also
9 used a rate of ** ___** per hour for the paralegal employee with greater than 20 years of experience in
10 lieu of the ** ___** per hour paralegal fee charged by Schiff Hardin to KCPL.

11 One of the services included in the KCPL-Schiff Hardin contract called for Schiff Hardin
12 to assist KCPL's General Counsel and advise KCPL ** _____

13 _____**

14 Because Schiff Hardin was hired to assist KCPL's in-house attorneys, Staff attempted to
15 determine the reasonableness of Schiff Hardin's hourly rates for legal services.

16 Staff first looked at the legal fees and paralegal fees charged by two Kansas City area law
17 firms hired by KCPL to perform legal work related to the Iatan construction projects. In a
18 review of invoices for legal fees charged to Iatan, Staff estimates that the average hourly rate for
19 legal services ranges from ** _____** an hour for attorneys and from ** _____** for paralegal
20 services.

21 Another resource used by Staff to assess the reasonableness of the legal fees charged by
22 Schiff Hardin was the Laffey Matrix. The Laffey Matrix is a listing of hourly rates for attorneys
23 of varying experience levels and paralegals/law clerks that have been prepared by the
24 Civil Division of the United States Attorney's Office for the District of Columbia
25 (http://www.justice.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html). Explanatory
26 notes state, in part as follows:

27 **Explanatory Notes**

- 28 1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law
29 clerks has been prepared by the Civil Division of the United States Attorney's Office for
30 the District of Columbia. The matrix is intended to be used in cases in which a "fee-
31 shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See,*

1 e.g., 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. §
2 552(a)(4)(E) (Freedom of Information Act); 28 U.S.C. § 2412 (b) (Equal Access to
3 Justice Act). The matrix does not apply in cases in which the hourly rate is limited by
4 statute. See 28 U.S.C. § 2412(d).

5 2. This matrix is based on the hourly rates allowed by the District Court in *Laffey v.*
6 *Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on*
7 *other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is
8 commonly referred to by attorneys and federal judges in the District of Columbia as the
9 "Laffey Matrix" or the "United States Attorney's Office Matrix." The column headed
10 "Experience" refers to the years following the attorney's graduation from law school. The
11 various "brackets" are intended to correspond to "junior associates" (1-3 years after law
12 school graduation), "senior associates" (4-7 years), "experienced federal court litigators"
13 (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or
14 more). See *Laffey*, 572 F. Supp. at 371.

15 3. The hourly rates approved by the District Court in *Laffey* were for work done principally
16 in 1981-82. The Matrix begins with those rates. See *Laffey*, 572 F. Supp. at 371 (attorney
17 rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods
18 were determined by adding the change in the cost of living for the Washington, D.C. area
19 to the applicable rate for the prior year, and then rounding to the nearest multiple of \$5
20 (up if within \$3 of the next multiple of \$5). The result is subject to adjustment if
21 appropriate to ensure that the relationship between the highest rate and the lower rates
22 remains reasonably constant. Changes in the cost of living are measured by the Consumer
23 Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-
24 WV, as announced by the Bureau of Labor Statistics for May of each year.

25 4. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save*
26 *Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc).
27 The Court of Appeals subsequently stated that parties may rely on the updated *Laffey*
28 Matrix prepared by the United States Attorney's Office as evidence of prevailing market
29 rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of*
30 *Columbia*, 57 F.3d 1101, 1105 & n. 14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S.
31 1115 (1996). Lower federal courts in the District of Columbia have used this updated
32 *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are
33 reasonable. See, e.g., *Blackman v. District of Columbia*, 59 F. Supp. 2d 37, 43 (D.D.C.
34 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997);
35 *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1,
36 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2
37 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).

38 Because the Laffey Matrix provides an indication of reasonable hourly rates for attorneys in the
39 Washington, D.C. area, where it is reasonable to conclude the cost of living is higher than the
40 Kansas City, Missouri area and the Midwest United States in general, these rates should provide
41 a ceiling or upper limit on what should be considered a reasonable attorney hourly rate for KCPL

1 and the Iatan construction projects. The Laffey Matrix for the period 2003 through 2010 is
2 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

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

8 For example, in 2010 Mr. Roberts billed KCPL ** __** for each hour he worked on Iatan.
9 According to the Laffey Matrix and his experience level, a reasonable rate for this type of service
10 in the Washington, D.C. area is \$465 per hour. The Staff estimated that 40 percent of the Schiff
11 Hardin Iatan construction project legal services were performed by Mr. Roberts. Based on this
12 estimate the Staff calculated a legal rate weighted 40 percent at \$465 per hour less a 10 percent
13 volume discount. The Staff also included in its calculation of a prudent legal rate a weighting of
14 20 percent for two other Schiff Hardin attorneys who spent many hours on Iatan construction
15 legal issues and a 20 percent weighting of a Schiff Hardin paralegal employee using Laffey rates
16 and a volume discount.

17 Mr. Roberts has several years experience as an attorney, other Schiff Hardin attorneys
18 who were the primary Schiff Hardin attorneys working on the Iatan Project did not have
19 significant experience. One attorney graduated from law school in May 2005 and began working
20 on the Iatan Project in April 2008 (Response to Staff Data Request No. 614). Prior to working
21 on Iatan, this attorney had no prior utility construction project experience and no experience
22 working on the construction of a new coal generation plant. While the Staff is confident that this

1 attorney is competent given the relative experience gained in this field, it is not clear why KCPL
 2 would require the services of such an inexperienced attorney from Schiff Hardin. It would
 3 appear that there are plenty of more experienced attorneys available to KCPL in the Kansas City,
 4 Missouri area.

5 The chart below shows how the Staff calculated its adjusted legal services rate. Based on
 6 the Laffey Index (which is a very conservative estimate of a reasonable legal rate in the
 7 Kansas City, Missouri area). The index is based on current legal rates in the Washington DC
 8 area. The Staff used pre-discount rates of ** __** per hour for Mr. Roberts and ** __** per hour for
 9 Mr. Montgomery. For Ms Schermer, an hourly rate of ** __** reflects her three years experience
 10 as an attorney. The paralegal rates in the Kansas City area are considerably less than the
 11 ** __** per hour rate included by Staff. Staff made every attempt to make this Schiff Hardin
 12 weighted legal rate as conservative as possible.

13

Staff Schiff Hardin Legal Adjustment								
Name	Years	Actual	Prudent	Vol Disc	Adj Rate	Weight	Weight	
** **	** **	** **	** **	** **	** **	** **	** **	** **
** **	** **	** **	** **	** **	** **	** **	** **	** **
** **	** **	** **	** **	** **	** **	** **	** **	** **
** **	** **	** **	** **	** **	** **	** **	** **	** **
					**	**	**	**

14

15 5. Cushman & Associates

16 *Staff Expert: Charles R. Hyneman*

17 As it failed to do with Schiff Hardin, KCPL did not issue a request for proposal or seek
 18 any competitive bids on a less formal basis for the project management consulting services
 19 provided to KCPL in 2007 by Cushman & Associates. As a result, KCPL paid imprudent,
 20 unreasonable, inappropriate, and not of benefit to the ratepayer costs for the services provided by
 21 this contractor. KCPL failed to solicit or make any effort whatsoever to determine a competitive
 22 market price for this construction management consultant. The Staff, however, was able to do a
 23 detailed analysis of significant relevant documentation and was able to determine a fair and
 24 reasonable market rate for project management and construction management consulting
 25 services.

1 In Staff Data Request No. 943, KCPL was asked to describe how the awarding of a
2 purchase order or other awards to Cushman & Associates (“Cushman”) was made in accordance
3 with KCPL/GPES Procurement Policy GPES-E100 Competitive Bidding requirements. KCPL
4 responded that it would not be appropriate to apply KCPL’s rule for competitive bidding to
5 Cushman because Cushman has previous knowledge of KCPL and had in the past worked with
6 some of its employees:

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

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

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

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

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

- 34 1. ** _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

- 2. _____
 - 3. _____
 - 4. _____
 - 5. _____
 - 6. _____
 - 7. _____
 - 8. _____
 - 9. _____
- **

Because Cushman was awarded this work on a sole source basis the Staff attempted to determine how KCPL made the decision 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 ** ___** per day for any day he worked on the Iatan Project. KCPL also paid Mr. Brennan (Mr. Cushman's associate) ** ___** per day. These charges equate to ** ___** per hour and ** ___** per hour respectively based on an 8 hour work-day. To justify these hourly rates KCPL used only its "business judgment" and had no documentation to support this cost. Staff discovered that regardless of the number of hours worked per day, Mr. Cushman would charge KCPL ** ___** for that day. This is another example where KCPL gives the appearance that it was not concerned about level of costs charged to the Iatan Project.

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. ** _____

**

1 Cushman primarily assisted KCPL in the creation of the Iatan Construction Project
2 Execution Plan (PEP). The PEP defines the way a project is to be managed and the roles and
3 responsibilities of the team members. The project procedures define the processes that are used
4 to implement the project plan. The PEP is also used to communicate with executive
5 management how the project will be run so that they can have the confidence necessary to
6 authorize its execution. ** _____
7 _____
8 _____
9 _____
10 _____

11 _____**. Cushman was apparently hired because KCPL had difficulty
12 completing the PEP due to a lack of experienced project management personnel.

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

22 In response to Staff Data Request No. 652, KCPL provided a copy of the invoices
23 submitted by LogOn for May 2009 among other months. The hourly rate charged by the most
24 senior LogOn project management consultants was ** ___** per hour. Mid-level personnel billed at
25 ** ___** per hour and the lowest rate charged was ** ___** per hour. Taking a weighting of 40 percent
26 to ** ___**, 40 percent to ** ___** and 20 percent to ** ___** resulted in a weighted average rate for
27 LogOn of ** ___** per hour.

28 The Staff used this ** ___** per hour as a reasonable rate for experienced project
29 management and construction management services and used this rate as a basis for its
30 adjustment to the charges to the project from Cushman. The Staff reviewed the following as a
31 basis of this adjustment:

- 1 1. The relevant resumes of LogOn and Cushman;
- 2 2. KCPL's description of LogOn's previous experience in the construction industry;
- 3 3. The fact that Mr. Churchman, KCPL's senior executive on the Iatan Project brought
- 4 in LogOn to make an assessment of the Iatan Project and its problems in May 2008;
- 5 4. The actual work product of both Cushman and LogOn Consulting

6 Based on this review the Staff finds that LogOn Consulting is far more experienced and
7 capable in project management and construction management work than Cushman. The Staff
8 also believes that LogOn added significantly more value to the Iatan Project than Cushman.
9 Cushman was primarily hired to help KCPL complete a Project Execution Plan (PEP), a project
10 that KCPL's Iatan Project Team did not have the experience to complete. The task of
11 completing the Project Execution Plan was assigned to Mr. Brent Davis. Mr. Davis, at that time,
12 had never worked on a construction project prior to Iatan and had no experience in creating a
13 Project Execution Plan. In proposing this adjustment, however, the Staff conservatively used a
14 LogOn consulting rate as the prudent and reasonable project management consulting rate and
15 adjusted the rate charged by Cushman to the Iatan Project accordingly.

16 **6. Pullman Power LLC Adjustment**

17 *Staff Expert: Charles R. Hyneman*

18 In September 2006, Pullman Power LLC (Pullman) was awarded an engineering,
19 procurement, and construction (EPC) contract for the pollution control stack/chimney that will
20 attach to both Iatan 1 and Iatan 2. This contract has also been described by KCPL as a fixed-
21 price, furnish and erect contract. Pullman hired Mid-Atlantic Boiler and Chimney (MAB&C) as
22 a major subcontractor for this work. According to KCPL, Pullman experienced significant
23 performance issues on the Iatan Construction Project, including safety. As noted in the Iatan 2
24 and Common Joint Owner Meeting Minutes of February 14, 2008, received in response to Staff
25 Data Request No. 437, Pullman was approximately 6 months behind schedule at that time.

26 The following description of KCPL's problems with Pullman is included in the direct
27 testimony of Mr. Steven Jones, KCPL's Iatan procurement witness in File Nos. ER-2010-0355
28 and ER-2010-0356 on his Highly Confidential Schedule SJ2010-3, pages 8 and 14:

1
2 _____ **

3 There were events Pullman asserts caused increased costs that the Staff found were
4 beyond the control of either KCPL or Pullman, such as extreme weather. Although it is normal
5 for extreme weather considerations to be built in to a construction contract's budget and
6 schedule, for the purpose of this adjustment the Staff is willing to give additional recognition that
7 Pullman's efforts were hampered by the effects of worse than normal weather conditions.

8 Of the ten Pullman changes orders over \$50,000 each, the Staff is proposing adjustments
9 to eliminate the costs included in two of the change orders. These change orders are PL-003 for
10 ** _____ **, and PL-012 for ** _____ **.

11 Change Order PL-003 increased total project costs in the amount of ** _____ ** and
12 ** _____ ** for Iatan 1 and ** _____ ** for Iatan 2. The stated reason for this change order was to
13 "provide Performance Bond per Article 12 of the contract." ** _____ **
14 _____
15 _____
16 _____

17 _____ ** This response is confusing since this was a firm-fixed price contract and if the
18 contract required a performance bond, Pullman would have included the cost of the bond in its
19 bid. There should be no need to increase the cost of the contract for a performance bond when
20 the cost of the performance bond is included in the contract price. While there may be special
21 circumstances surrounding this contract which allows for this type of contract modification, the
22 Staff is not aware of this at this time. For example, if the costs of Pullman's performance bond
23 were not included in its fixed-price contract and were billed separately, then a change order for
24 this cost may be reasonable. However, the Staff's understanding is that Pullman included the
25 cost of the bond in the contract and KCPL awarded a change order because the cost of the bond
26 to Pullman had gone up. Because of the nature of a fixed-price contract, that the contractor takes
27 all of the risk of price increases, it is normal for a contractor's bid on a fixed-price contract to
28 include a contingency amount for such potential increases. Also because of the risk to the
29 contractor, fixed-price contracts usually have a high risk premium included in the contract price.
30 It is the Staff's position that because Pullman is responsible for price increases in its fixed-price

1 EPC contract, it should bear the responsibility for the price increase for the performance bond,
2 not KCPL.

3 As noted above by KCPL procurement witness Steven Jones in his direct testimony in
4 File Nos. ER-2010-0355 and ER-2010-0356, ** _____
5 _____
6 _____

7 ** However, on January 17, 2008, KCPL and Pullman entered into a
8 settlement agreement where KCPL agreed to pay Pullman ** _____
9 _____

10 ** It is unreasonable / inappropriate to
11 pay Pullman for performance problems that Pullman created. Such unreasonable / inappropriate
12 action by KCPL would not serve to induce from Pullman and other contractors on the Iatan
13 Project the appropriate performance. ** _____
14 _____

15 KCPL should backcharge Burns & McDonnell for this increased cost or decide to retain this cost
16 and not charge it to the Iatan Project. ** _____
17 _____

18 ** then KCPL should retain the costs related to this
19 performance issue and it should not be recovered from Missouri retail ratepayers.

20 Because the delay settlement could reasonably be based on weather conditions outside
21 the control of KCPL or Pullman, the Staff is not proposing an adjustment for this cost. However,
22 there is no explanation why KCPL would pay Pullman for catching up to schedule when KCPL
23 attributed Pullman's poor performance as the reason Pullman got behind schedule.

24 7. May 23, 2008 Crane Accident Iatan 1

25 *Staff Expert: Charles R. Hyneman*

26 On May 23, 2008 a Manitowoc 18000 crane being used by a subcontractor of
27 Alstom Inc., collapsed while working on the Iatan 1 Project. As a result of the collapse, one
28 person was killed and others were injured. After the accident, all work on the site was
29 suspended, resuming four days later on May 27, 2008. Below is a picture of the collapsed crane.

As of October 31, 2010, the Iatan 1 AQCS project had recorded ** _____ ** (Code X021)
related to the May 23, 2008 crane accident. Until recently it has been KCPL's position that

1 KCPL has no liability related to this accident and is accumulating its costs with AFUDC for
2 reimbursement. **

3
4
5
6
7
8
9
10
11
12 ** The Staff was unaware that KCPL would be seeking to have Missouri ratepayers pay
13 for the costs of the crane accident until December 8, 2010 when KCPL's Chief Operating
14 Officer, Mr. William Downey, filed his rebuttal testimony in File No. ER-2010-0355, KCPL's
15 current Missouri rate case.

16 According to Mr. Downey, KCPL was not cited by OSHA and KCPL was dismissed
17 from the litigation (page 3). Mr. Downey also stated at page 14 of his rebuttal testimony that
18 KCPL agrees with the Staff that it was Alstom who was responsible for the crane accident.
19 Mr. Downey confirms that KCPL incurred the costs of the crane accident "through no fault of
20 its own." Mr. Downey also testified that KCPL has attempted to recoup these costs from
21 Alstom, but so far, has been unsuccessful.

22 The Staff does not believe it is appropriate for KCPL to place the burden of the risk of
23 these costs on Missouri ratepayers. Not only is this position unfair to ratepayers it also actually
24 creates a disincentive for KCPL to seek recovery of these costs. By including these costs in the
25 Iatan Project and subsequently in rate base, KCPL is not only guaranteed a 100 percent recovery
26 of these costs over the life of Iatan 1, but also a profit on each and every dollar of crane accident
27 costs charged to the project. Under that scenario KCPL would not have any incentive to recover
28 these costs from the responsible parties, whether that be Alstom or an insurance company.
29 If KCPL is allowed to recover from ratepayers, these costs will increase KCPL's rate base and
30 thus its profit. Placing the risk of recovery of these costs on KCPL and away from Missouri

1 ratepayers has the potential of reducing KCPL's profits. Voluntarily assuming the risk of
2 recovery would not be the position the Company would likely undertake.

3 KCPL's position on the responsibility for these cost has changed over time. On June 11,
4 2008, approximately two weeks after this accident occurred, in testimony before the Commission
5 in Case No. EM-2007-0374, KCPL personnel made statements that indicated KCPL would not
6 have any financial responsibility as a result of the May 23, 2008 Crane Incident. The statements
7 made by KCPL witnesses and legal counsel are shown below:

8 STATE OF MISSOURI PUBLIC SERVICE COMMISSION
9 TRANSCRIPT OF PROCEEDINGS

10 Evidentiary Hearing June 11, 2008 Jefferson City, Missouri, Volume 25,
11 EM-2007-0374

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

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

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

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

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

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

26 Q. No responsibility for whom?

27 A. For Kansas City Power & Light.

28 Q. You mean financial responsibility?

29 A. Yes.

30 Statement of KCPL counsel Karl Zobrist, page 3216: