

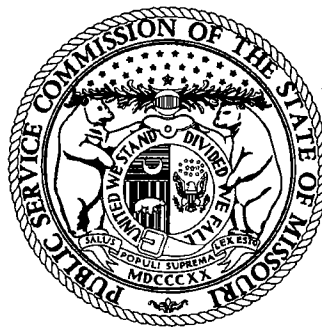
CONSTRUCTION AUDIT AND PRUDENCE REVIEW

IATAN CONSTRUCTION PROJECT

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

**MISSOURI PUBLIC SERVICE COMMISSION
STAFF REPORT**

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



*Jefferson City, Missouri
November 3, 2010*

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1 **CONSTRUCTION AUDIT AND PRUDENCE REVIEW**

2 **IATAN CONSTRUCTION PROJECT**

3 **FOR COSTS REPORTED AS OF**

4 **JUNE 30, 2010**

5 **I. Executive Summary**

6 *Staff Expert: Robert E. Schallenberg*

7 The objective for the audit addressed in this Report was to determine whether the
8 Iatan Construction Project (Iatan 1 AQCS, Iatan 2 and Iatan Common Plant, or “Iatan Project”)
9 contain unreasonable, imprudent, inappropriate, or charges not of benefit to ratepayers and that
10 no unneeded or extravagant facilities were built at the site causing unreasonable costs.
11 Inappropriate costs are costs that are unreasonable or the result of imprudent decisions or actions.

12 Schedule 1 attached to this Report is a table of Staff’s adjustments to the June 30, 2010
13 actual costs of the Iatan Project. The cost balances contained in Schedule 1 are shown on the
14 Iatan Project June 2010 cost reports. Staff is recommending that \$69,676,748 and \$129,953,322
15 of total project (exclusive of KCPL AFUDC, KCPL only costs and GMO AFUDC, these
16 amounts are identified separately on Schedule 1) costs be disallowed from the Iatan 1 AQCS and
17 Iatan 2 segment of the Iatan Project June 30, 2010 balances, respectively. In addition, Staff has
18 proposed adjustments to the Iatan 1 AQCS and Iatan 2 segments to transfer costs to the Common
19 Plant segment of the Iatan site.

20 The Iatan Project was the largest single project in KCPL’s Experimental Alternative
21 Regulatory Plan, Case No. EO-2005-0329. As noted, the Iatan Project consists of the Iatan 1
22 AQCS and Iatan 2 segments. The Common Plant additions and modifications to the Iatan site
23 are contained in the budgets of both the Iatan 1 AQCS and Iatan 2 segments. The Iatan 1 AQCS
24 segment and the Iatan 2 segment are integrated components of the Iatan Project. The Iatan
25 Project costs were reported in KCPL’s reports as two segments, Iatan 1 AQCS and Iatan 2.

1 The three Iatan Project components are:

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

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

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

9 The Iatan site is jointly owned by multiple entities. Each of the Iatan Project's segments
10 have different ownership arrangements. KCPL owns seventy percent (70%) of the Iatan 1
11 investment, approximately fifty-five percent (54.71%)ⁱ of the Iatan 2 investment, and
12 approximately sixty-one percent (61.45%) of the Iatan Common Plant investment.

13 The Iatan 1 generating unit is owned 70% by KCPL, 18% by KCP&L Greater Missouri
14 Operations Company (GMO (formerly Aquila, Inc.)), and 12% by Empire. KCPL will
15 own 465 MW, or 54.71% of the Iatan 2 unit, with the remaining capacity divided as
16 follows: GMO-- 18%, Empire -- 12%, Missouri Joint Municipal Electric Utility Commission
17 (MJMEUC) -- 11.76%, and Kansas Electric Power Cooperative, Inc. (KEPCO) -- 3.53%. The
18 Common Plant ownership is developed through a weighted average of the ownership percentages
19 of Iatan 1 and Iatan 2. Empire and GMO own 12% and 18%, respectively, of the investment in
20 each of the three segments.

21 These three segments are not distinguishable from each other on an actual cost basis
22 under KCPL's cost reporting system. These segments cannot be separated on an actual cost
23 basis because the Iatan Project used a contracting strategy which included work covering Iatan 1,
24 Iatan 2, and Iatan Common Plant facilities for both Iatan units for large contracts.ⁱⁱ In addition,
25 actual costs incurred were not invoiced or recorded in a manner that allowed for the recognition
26 of the Iatan Project's actual expenditures related to each of these three segments. The Common
27 Costs work orders were not separated on KCPL's books until April 2009ⁱⁱⁱ.

28 As a result of the Staff's audit of the Iatan Project, the Staff found it necessary to make
29 several adjustments to the individual construction projects (Iatan 1 AQCS, Iatan 2, and Iatan
30 Common Plant). These adjustments, which are shown on Schedule 1 attached to this Report,

1 include costs that were 1) charged to Iatan 1 AQCS incorrectly and should have been charged to
2 Iatan 2 construction (reclassification), 2) found to be imprudent or inappropriate and not charged
3 to the Iatan 1 AQCS project (disallowance), and 3) found to be imprudent or inappropriate and
4 not charged to items charged to the Iatan 2 segment of the Iatan Project (disallowance). The
5 description of each of the Staff adjustments is included in the Detailed Findings – Adjustments
6 section contained later in this Report.

7 The Iatan Project experienced significant overruns from the Definitive Estimate. A cost
8 overrun is the amount of actual costs incurred that exceed the sum of (1) the budget plus (2) the
9 contingency, plus (3) other cost areas where actual costs incurred were less than the budget.
10 KCPL’s Experimental Alternative Regulatory Plan specifies that a Definitive Estimate is to be
11 used relative to the cost controls for capital projects such as the Iatan Project. The Wideman
12 Comparative Glossary of Project Management defined a definitive estimate as:

13 “(Accuracy -5, +10 Percent) A definitive estimate is prepared from well
14 defined data, specifications, drawings, etc. This category covers all
15 estimate ranges from a minimum to maximum definitive type. These
16 estimates are used for bid proposals, bid evaluations, contract changes,
17 extra work, legal claims, permit and government approvals. Other terms
18 associated with a Definitive Estimate include check, lump sum, tender,
19 post contract changes. etc. [D00496]”

20 The same source defines an estimate as:

21 “An assessment of the likely quantitative result. Usually applied to project
22 costs and durations and should always include some indication of accuracy
23 (e.g., + or - 15%). Usually used with a modifier (e.g., preliminary,
24 conceptual, feasibility). Some application areas have specific modifiers
25 that imply pre-set accuracy ranges (e.g., order of magnitude estimate,
26 budget estimate, and definitive estimate in construction). [D00610]”

27 KCPL’s Experimental Alternative Regulatory Plan specifies that the capital projects,
28 such as the Iatan Project, use an estimate with a high degree of accuracy as a basis to identify and
29 explain any cost overruns in the event that actual costs exceeded the definitive estimate for the
30 project.

31 The Iatan 1 AQCS construction project experienced significant cost overruns from
32 the Definitive Estimate established in accordance with KCPL’s Experimental Alternative
33 Regulatory Plan. At June 30, 2010, the Control Budget Estimate of \$376.8 million is estimated

1 to be exceeded by \$107.3 million at project completion, even after the application of a
 2 7 percent (7%) contingency amount of \$25.7 million contained in the Definitive Estimate. The
 3 amount of overruns will continue to grow until the Iatan 1 AQCS segment is closed and reflects
 4 final costs. Cost overruns subsequent to June 30, 2010 are beyond the scope of this Report. The
 5 continued growth of cost overruns will again be addressed by Staff in its true-up Report. The
 6 true-up Report will address Iatan Project costs through October 31, 2010. The chart below
 7 shows a breakdown by category of the sources of Iatan 1 AQCS \$107 million cost overruns as
 8 currently reported by KCPL:

	Current Estimate At Completion	Control Budget Est (CBE)	Over/(Under) Budget
PROCUREMENT	\$27,825,929	\$25,804,908	\$2,021,021
CONSTRUCTION	\$385,633,814	\$301,149,939	\$84,483,875
INDIRECTS	\$53,590,942	\$24,101,996	\$29,488,946
CONTINGENCY	<u>\$17,073,007</u>	<u>\$25,746,537</u>	(\$8,673,530)
10 TOTAL COSTS	\$484,123,692	\$376,803,380	\$107,320,312

11 Iatan 1 AQCS costs as of June 30, 2010 are not completed and closed even though the
 12 environmental upgrade of facility equipment is completed, such that the project has been in
 13 service for more than 14 months (April 19, 2009 to June 30, 2010). Current estimates are that
 14 \$37.6 million will be beyond the scope of this audit filing (Iatan 1 Cost Report June 30, 2010,
 15 Estimated Cost at Completion of \$484.1 million less June 2010 actual costs of \$446.5 million).
 16 It should be noted that even though KCPL continues to report the \$484 million as current
 17 estimate of completion, the Company has made internal representations of its expectations that
 18 the final cost of the Iatan 1 AQCS segment will be less than the \$484 million reported estimate.

19 Similar to the Iatan 1 AQCS cost segment, the Iatan 2 cost segment is also experiencing
 20 significant cost overruns from the Definitive Estimate basis established for this segment of the
 21 Iatan Project in KCPL's Experimental Alternative Regulatory Plan. These overruns amount to
 22 approximately \$303 million at June 30, 2010. This \$303 million cost overrun is over and above
 23 the consideration of the 15 percent contingency amount of \$220 million contained in the Iatan 2
 24 Definitive Estimate. KCPL did not refer to a Definitive Estimate in either of its regular Iatan 1
 25 AQCS or Iatan 2 cost reports. Instead, KCPL referred to the Definitive Estimate as a Control

1 Budget Estimate (CBE). KCPL did use the Definitive Estimate relative to cost reporting for the
2 LaCyne 1 environmental upgrades.

3 The amount of Iatan 2 cost overruns will continue to grow until the Iatan 2 project is
4 closed and reflects final costs. Cost overruns subsequent to June 30, 2010 are beyond the scope
5 of this Report. The continued growth of costs overruns will be partially addressed by Staff in its
6 true-up Report. The true-up Report will address Iatan Project costs through October 31, 2010.
7 Current estimates are that \$173.3 million will be beyond the scope of this audit Report (Iatan 2
8 Cost Report June 30, 2010, Estimated Cost at Completion of \$1,988,213,128 less June 30 2010
9 total project costs of \$1,814,953,322).^{iv} At this time, Staff does not expect that the final costs of
10 the Iatan 2 segment to be \$1,988 million. Staff expects the final costs will be less than the KCPL
11 reported cost of completion.

12 Staff has monitored the treatment of the Iatan Project costs in KCPL's current rate case
13 filed in Kansas to ensure that matters raised in Kansas are considered in Staff's audit. In press
14 releases and testimony before the Kansas Corporation Commission (KCC), KCPL asserts that its
15 cost overruns on Iatan 2 to be approximately \$303 million or 18 percent (18%) of the Control
16 Budget Estimate. However, this assertion can be misleading if one is not aware of the factors
17 that are in play in the development of this amount and percentage. KCPL's CBE of
18 \$1,685 million includes \$48.9 million for train cars KCPL planned to purchase to serve the Iatan
19 site with the addition of Iatan 2. During the project, KCPL decided to lease the train cars and not
20 purchase them, thus significantly reducing the scope of the Iatan 2 segment planned to be
21 accomplished for the CBE amount. The train cars lease cost was not included in the project, but
22 the \$48.9 million purchase cost has remained in the CBE for calculation of the amount of
23 expected cost overruns. The adjusted CBE, after removing the train cars purchase portion of the
24 budget is currently estimated to be exceeded by 21 percent (21%) rather than 18 percent (18%) of
25 the CBE. Another factor that can be misleading regarding the percent of cost overruns is the fact
26 that KCPL's CBE did not reflect credit for any revenues generated from the sale of Test Power
27 from Iatan 2. KCPL's current budget and total cost forecast at completion at June 30, 2010
28 includes a Test Power sales revenue credit of \$48,808,504. If this Test Power credit were
29 reflected in the KCPL CBE, its forecasted cost overruns for Iatan 2 would actually be 25 percent
30 (25%). By not accounting for the two components of no coal train ownership and no recognition
31 of cost offset from revenues derived from the use of the energy generated by Iatan 2 during its

1 construction phase, KCPL's current budget forecast is omitting explicit consideration of
 2 approximately \$89.5 million in cost overruns.

3 Staff has proposed an adjustment for the Iatan Project cost overruns that have been
 4 incurred and charged to the project but have not been identified and explained by KCPL's cost
 5 control system for the Iatan Project. The following chart identifies the Iatan 2 segment areas
 6 where the Iatan 2 costs overruns have and will continue to occur.

Iatan 2	Current Estimate At Completion	Control Budget Est (CBE)	Over/(Under) Budget
PROCUREMENT	\$185,873,165	\$188,913,508	(\$3,040,343)
CONSTRUCTION	\$1,417,417,382	\$1,018,128,405	\$399,288,977
INDIRECTS	\$358,601,658	\$257,958,087	\$100,643,571
CONTINGENCY (@15%)	<u>\$26,320,923</u>	<u>\$220,000,000</u>	<u>(\$193,679,077)</u>
TOTAL COSTS	\$1,988,213,128	\$1,685,000,000	\$303,213,128
Cost Overruns percent			18%

8
 9 As with the Iatan 1 AQCS segment, cost overruns have occurred and are expected to
 10 continue to occur in the Iatan Project construction and indirect cost areas. In order to better
 11 understand the information contained in above table, Staff requested, by Staff Data Request
 12 No. 819, KCPL's definition for the four (4) areas of costs listed in the above table: Procurement,
 13 Construction, Indirect Costs, and Contingency. KCPL's response provided the following
 14 definitions:

15 Procurement category consists of plant systems or equipment purchased
 16 by KCP&L or by an authorized KCP&L representative to be installed
 17 during the construction phase.

18 Construction category consists of installation of plant systems or
 19 equipment purchased during the procurement phase. This category also
 20 contains furnish and erect contracts.

21 Indirects category consists of costs that are not associated with direct
 22 construction or procurement, but incurred to support the construction or
 23 procurement efforts. i.e., project management, temporary facilities, utility
 24 costs, and etc.

25 Contingency category consists of funds for unforeseeable elements of cost
 26 within the defined project scope.

1 KCPL also responded that “[t]hese four categories are industry standard categories based on
2 project team’s collective experience and knowledge. . . .”

3 **II. Description of the Iatan 1 AQCS and Iatan 2 cost segment of the Iatan Project**

4 *Staff Expert: Robert E. Schallenberg*

5 Iatan Unit 1 Electric Generating Station (Iatan 1) is a 670 megawatt (MW) pulverized
6 coal-fired power generating facility located near Weston, Missouri. As part of the
7 Iatan Construction Project (Iatan Project) and KCPL Comprehensive Energy Plan (CEP), KCPL
8 retrofitted Iatan 1 with Selective Catalytic Reduction (SCR), Fabric Filters (FF), and wet Flue
9 Gas Desulphurization (FGD) systems referred to as Air Quality Control System (AQCS). The
10 AQCS construction was completed on February 2, 2009 and placed in service April 19, 2009.
11 During the overhaul to place AQCS into service, other equipment including new Low NOx
12 Burners and Over-Fire Air System, Bottom Ash Chain Conveyor Systems, new Distributed
13 Control System (DCS) and new economizer were installed. This Report covers Staff’s audit of
14 the actual costs of the Iatan 1 AQCS segment as of June 30, 2010.

15 The Iatan Project also includes the construction of a new 850MW coal-fired steam
16 electric generating facility (Iatan 2) with upgrades to common facilities at the site for the
17 operation of both units. The Iatan Unit 2 is an electric generating facility jointly owned by
18 KCPL, KCP&L – Greater Missouri Operations Company (formerly Aquila, Inc.), The Empire
19 District Electric Company, Kansas Electric Power Cooperative, Inc. (KEPCO), and Missouri
20 Joint Municipal Electric Utility Commission (MJMEUC), with KCPL serving as the party
21 responsible for construction, operation, and maintenance of the new unit.

22 Iatan 2 is a new 850 MW (net) supercritical, pulverized coal-fired steam generating
23 unit that burns Powder River Basin coal. The boiler was designed and built by Alstom Power
24 Inc. It is designed to operate at a pressure of 3690 psig and temperature of 1080°F. The steam
25 turbine-generator was provided by Toshiba Corporation. Located adjacent to the existing Iatan
26 Unit 1, the new unit also includes Air Quality Control Systems (AQCS) equipment that meets
27 current Best Available Control Technology (BACT) standards, including a selective catalytic
28 reduction system (SCR) for Nitrogen Oxide (NOx) control, a wet flue gas desulfurization system
29 (scrubber) designed to use a limestone slurry solution for Sulfur Dioxide (SO₂) control, and a

1 pulse jet fabric filter (baghouse) for particulate control. Additionally, a powdered-activated
2 carbon system is used to remove mercury.

3 **III. Prudence**

4 *Prepared By: Steven Dottheim, Staff Counsel's Office*

5 A definition of prudence is needed for the prudence element of Staff's prudence review
6 since the objective audit/review is to determine whether the Iatan 1 AQCS segment contains any
7 inappropriate charges, including costs related to imprudent actions or decisions. This section
8 reflects the Staff's view of the appropriate approach to this matter and burden of proof.

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

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

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

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

23 With respect to prudence, this Commission assumes utilities act prudently until that assumption
24 is challenged. In its *Report and Order in Re Union Electric Co.*, Case Nos. EO-85-17, et al.,
25 27 Mo.P.S.C.(N.S.) 183, 192-93 (1985), the Commission agreed with the following conclusions
26 of the Washington, D.C. Circuit Court of Appeals in *Anaheim, Riverside, Banning, et al. v.*
27 *FERC*, 669 F.2d 799, 809 (D.C. Cir. 1981):

28 The Federal Power Act imposes on the Company the "burden of proof to
29 show that the increased rate of charge is just and reasonable." 16 U.S.C.
30 s 824d(e). Edison relies on Supreme Court precedent for the proposition
31 that a utility's costs are presumed to be prudently incurred. *See Missouri ex*

1 *rel. Southwestern Bell Telephone Co. v. Missouri Pub. Serv. Comm.*,
2 262 U.S. 276, 289 n.1 (1923). However, the presumption does not survive
3 “a showing of inefficiency or improvidence.” *West Ohio Gas Co. v. Public*
4 *Utilities Comm.*, 294 U.S. 63, 55 S.Ct. 316, 79 L.Ed. 761 (1935); see
5 1 A.L.G. Priest, *Principles of Public Utility Regulation* 50-51 (1969). As
6 the Commission has explained, “utilities seeking a rate increase are not
7 required to demonstrate in their cases-in-chief that all expenditures were
8 prudent.... However, where some other participant in the proceeding
9 creates a serious doubt as to the prudence of an expenditure, then the
10 applicant has the burden of dispelling these doubts and proving the
11 questioned expenditure to have been prudent.” Opinion No. 86, Minnesota
12 Power & Light Co. Opinion and Order on Rate Increase Filing, Docket
13 No. ER76-827, at 14, 20Fed. Power Service 5-874, 5-887 (June 24, 1980)
14 (footnotes omitted). . . .

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

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

35 . . . *Associated Natural Gas* was a ratemaking case initiated by the utility,
36 seeking to pass on costs to its customers. *Id.* at 523. In such cases, the
37 utility receives the benefit of the presumption of prudence with regard to
38 its costs until a serious doubt is created with regard to the prudence of an
39 expenditure. *Id.* at 528. When a serious doubt arises, the burden then
40 shifts to the utility to prove prudence of the expenditure in order to
41 succeed on its request to pass these costs on to its customers. *Id.*

1 116 S.W.3d at 693-94. Ultimately the Court held in *Associated Natural Gas* that “in order to
2 disallow a utility's recovery of costs from its ratepayers, a regulatory agency must find both that
3 (1) the utility acted imprudently (2) such imprudence resulted in harm to the utility's ratepayers.”
4 954 S.W.2d at 529.

5 There is additional law pertinent to the issue of prudence, law addressing
6 the burden of proof. The only reference to burden of proof in Chapter 386
7 is in Section 386.430 RSMo 2000, which states that in all proceedings
8 arising under the provisions of the Public Service Commission Law or
9 growing out of the exercise of the authority and powers granted therein to
10 the Commission, the burden of proof is on any party adverse to the
11 Commission or seeking to set aside any determination, requirement,
12 direction or order of the Commission.

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

20 Black's Law Dictionary 190 (7th ed. 1999) defines “burden of proof” as comprising two
21 different concepts:

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

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

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

31 It may be argued that the party having the burden of proof must initially meet its burden
32 of producing evidence sufficient to establish a prima facie case. *McCloskey v. Kopler*,
33 46 S.W.2d 557, 563 (Mo. banc 1932); *Drysdale v. Estate of Drysdale*, 689 S.W.2d 67,

1 72 (Mo.App. 1985). It further may be argued that once a prima facie case has been established
2 the burden of going forward with the evidence shifts to the adverse party. Nonetheless, even if
3 the burden of going of forward with the evidence shifts, the burden of proof does not shift,
4 absent a statutory provision to the contrary. Also, prima facie evidence does not require a verdict
5 for the party whose contention it supports. *Dehner v. City of St. Louis*, 688 S.W.2d 15, 18
6 (Mo.App. 1985).^v See *State ex rel. Rice v. Public Serv. Comm'n*, 220 S.W.2d 61, 65 (Mo. banc
7 1949).

8 Regardless of any asserted applicability of the above cases to the Commission, case law
9 in Missouri is clear that where the facts relating to an issue are peculiarly within the control or
10 knowledge of one party, the burden of production falls on that party. Possibly, the clearest
11 statement of the law appears in *Robinson v. Benefit Ass'n of Ry. Employees*, 183 S.W.2d 407,
12 412 (Mo.App. 1944):

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

25 *Cf. Kenton v. Massman Construction Co.*, 164 S.W.2d 349, 352 (Mo. 1942)(“A plaintiff
26 asserting a negative generally has the burden of proof as to such matter along with the other
27 issues on which he bases his case. But there appears to be an exception to this rule where the
28 evidence on such a matter is peculiarly within the knowledge and control of the defendant.”);
29 *Dwyer v. Busch Properties, Inc.*, 624 S.W.2d 848, 851 (Mo.banc 1982). This is a particularly
30 appropriate rule in utility cases, since generally all of the facts and documents relevant to the
31 issues are within the utility’s control. See *City of Eldorado v. Public Serv. Comm’n*, 362 S.W.2d
32 680, 683-84 (Ark. 1962).

1 **IV. Audit Objectives, Risk Assessment, Audit Scope and Audit Activities**

2 **A. Audit Objective**

3 *Staff Expert: Robert E. Schallenberg*

4 The objective of Staff's audit has been to determine whether the Iatan Construction
5 Project (Iatan 1, Iatan 2 and Iatan Common Plant) contains inappropriate/unreasonable/not of
6 benefit to Missouri ratepayer charges or unnecessary facilities. If inappropriate/unreasonable/not
7 of benefit to Missouri ratepayer charges or unnecessary facilities are found, then adjustments are
8 to be developed to remove these costs from the Iatan Construction Project prior to these costs
9 being included in the costs being charged to the Missouri ratepayers of KCPL and GMO.

10 **B. Risk Assessment**

11 *Staff Expert: Robert E. Schallenberg*

12 Staff determined the risk of inappropriate/unreasonable/not of benefit to Missouri
13 ratepayer charges being included in the Iatan 1 AQCS Project segment was high based upon
14 Staff's prior audit activities, as discussed in Staff's December 31, 2009 and August 6, 2010
15 Audit Reports. The same level of risks existed for an audit of Iatan 2 as most of the
16 inappropriate charges initially found were charged entirely or in part to the Iatan 2 cost segment.
17 Staff has found in its audit activities inappropriate/unreasonable/not of benefit to Missouri
18 ratepayer charges that are discussed in the detailed findings portion of this Report. Most of the
19 low dollar but highly inappropriate/unreasonable/not of benefit to Missouri ratepayer costs was
20 charged by KCPL to the Iatan 2 and Common Plant segments of the Iatan Project. Staff assessed
21 that the risk that at least some of the cost overruns for both Iatan 1 and Iatan 2 were the result of
22 imprudent management was high after Staff discovered and determined the project schedule was
23 handicapped by KCPL's delay in hiring of a project manager, losing at least six (6) months of
24 time needed to meet the June 1, 2010 CEP in-service date for Iatan 2, and KCPL's allowing a
25 personnel matter to cause further delay placing the Iatan Project behind in both documentation
26 and planning after being notified that delay in the execution of this Project was inadvisable "as
27 delay in project execution increases, the uncertainty of market conditions at the time of execution
28 increases." (Construction Audit Guide: Overview, Monitoring, and Auditing by Denise
29 Cicchella).

1 Another factor indicating a high risk of potential imprudent management was the fact that
2 KCPL could not produce any documentation indicating that KCPL thoroughly assessed the risk
3 and consequences of making the decision to initiate construction and enter into significant
4 procurement contracts for Iatan 1 and Iatan 2 before design was substantially completed.
5 Schedule 2 attached to this Report is Staff's Data Request No. 430, seeking the documentation
6 supporting the decision to enter into significant procurement contracts and begin construction
7 before design was substantially complete and KCPL's response. Schedule 2 describes the risks,
8 benefits, owners' need for base load generation, KCPL's Experimental Alternative Regulatory
9 Plan obligations, pricing trends, experienced craftsmen availability, and equipment lead times
10 that KCPL asserts were considered when it elected to proceed with construction and enter into
11 procurement contracts before design was substantially completed. KCPL's response states:
12 "No documentation exists." The fact that KCPL's consideration of these factors was at a level of
13 activity that did not result in any documentation is an indication of imprudence. The fact that
14 KCPL's consideration of such an important factor impacting the execution of the Iatan Project
15 did not rise to the level to require the use of documentation to complete the evaluation indicates
16 inadequate consideration of a factor that would hinder the Iatan Project throughout its history.

17 Staff determined that the risk of inappropriate charges to the Iatan 2 Project segment was
18 high based upon Staff's prior audit activities for Iatan 1. Staff's assessment also considered the
19 assertion of the incurrence of imprudent costs by KCPL by the KCC Staff's consultant in
20 KCPL's current Kansas rate case, Docket No. 10-KCPE-415-RTS.

21 Further details of the KCC Staff's consultant's concerns about imprudent charges to
22 Iatan 2 are described in an Associated Press news article published September 9, 2010 entitled
23 "Analyst hired by Kansas utility regulators blames KCP&L management for Iatan 2 plant
24 overruns." Some of the KCC Staff's consultant's concerns identified in this Associated Press
25 article were:

- 26 1. An analyst hired by Kansas utility regulators says poor management by Kansas
27 City Power & Light, coupled with an engineering firm's desire to have a bigger role in the
28 project, resulted in a huge cost overrun at Iatan 2 power plant north of Kansas City.
- 29 2. In that testimony, Drabinski said KCP&L wasn't prepared for the scope of project
30 or the number of people required to complete the plant. He faulted the utility for trying to
31 manage the project on its own rather than hire another company to do it, which he said
32 was the industry norm.

1 3. By recommending the company manage the project itself, including procurement
2 of materials, bids and contractor coordination, the engineering firm assured itself a bigger
3 slice than it might have had if the utility hired a company to oversee the whole project,
4 Drabinski said.

5 4. Drabinski criticized the company for not starting construction of Iatan 2 until after
6 KCP&L's comprehensive energy plan was finished, despite advice from consultants to
7 start earlier.

8 5. Drabinski also cited conflicts between project managers and contractors that
9 caused poor morale and decreased worker productivity.

10 The KCC Staff in KCPL's currently pending Kansas rate case, Docket No.10-KCPE-415-RTS
11 has proposed KCC Staff Adjustment No. 7 (RB-7) which decreases KCPL's pro forma test year
12 plant in service by \$13,702,672 (total company (KCPL) amount is \$30,024,896). The KCC
13 Staff's consultant's adjustment is the disallowance of Iatan 1 and Iatan Common Plant, plant in
14 service costs, previously proposed by the KCC Staff's consultant in Docket No. 09-KCPE-246-
15 RTS, KCPL's prior rate case before the KCC. The KCC Staff's consultant has also proposed an
16 adjustment to disallow \$230,955,466 of Iatan 2 costs (total project) as being imprudent. Both the
17 Iatan 1 and Iatan 2 adjustments are based upon the testimony of Walter Drabinski, the KCC Staff
18 consultant. Staff has investigated the KCC situation and discusses its Staff's activities and
19 findings in the Kansas Corporation Commission (KCC) Proceedings section of this Report.

20 Staff's risk assessment indicated that Staff's audit would be conducted on a subject
21 matter that contained a perceived high probability of inappropriate/unreasonable/not of benefit to
22 Missouri ratepayer costs.

23 **C. Audit Scope**

24 *Staff Expert: Robert E. Schallenberg*

25 The scope of the audit was influenced by prior information, preliminary tests,
26 risk assessment, and internal control evaluation in addition to audit parameters specified
27 in Commission Orders in Case Nos. ER-2009-0089, ER-2009-0090, and File Nos. EO-2010-
28 0259, ER-2010-0355, and ER-2010-0356. It is impractical to examine every charge relative to
29 an endeavor as large as the Iatan Project.

30 Staff's first step in determining the audit scope for this Report was to select a time period
31 cutoff for the audit. To comply with the Commission's Order to file the Iatan 2 and Common

1 Plant audit Report no later than November 3, 2010, the latest cost data available for Staff to audit
2 were costs through June 30, 2010. The sections of this Report related to Iatan 1 is based on
3 updating the Staff's December 31, 2009 and August 6, 2010 Reports to June 30, 2010 actual cost
4 information.

5 KCPL's response to Staff Data Request No. 969 provided the identification that
6 \$69 million of cost overruns exist at April 30, 2010 for the Iatan 1 AQCS cost segment. This
7 calculation is based on actual costs incurred through April 30, 2010 compared to the control
8 budget. This cost overrun remained at \$69 million through June 30, 2010. Schedule 3 attached
9 to this Report, is a copy of the Staff Data Request No. 0969 and KCPL's response. Despite a
10 specific request by the Staff in the data request to identify and explain the Iatan 1 AQCS cost
11 overruns, KCPL's response neither identifies the cost overruns nor provides an explanation for
12 the overruns as anticipated by the cost control feature contained in KCPL's Experimental
13 Alternative Regulatory Plan. KCPL's response does provide a general description regarding
14 how a party could attempt to examine budget variances but does not provide KCPL's
15 identification of cost overruns or an explanation of the factors that caused the overruns to occur.
16 This situation will be discussed in further detail in Staff's cost overrun adjustment.

17 Also included in Schedule 3, attached to this Report, is Staff Data Request No. 970. In
18 this data request Staff asked KCPL, for Iatan 2, to provide a list of all cost overruns through
19 April 30, 2010, the amount for each cost overrun, a description of each overrun and an
20 explanation why the overrun was incurred.

21 KCPL did not provide the requested information. KCPL indicated the justification for
22 the overruns is located somewhere in the thousands of documents provided to the Staff in
23 previous data request responses. The cost overrun for Iatan 2 at April 2010 (amount actually
24 incurred at that date less the control budget) was \$97 million. At June 30, 2010, this amount had
25 increased to \$130 million.

26 The Staff's December 31, 2009 Reports stated that while Staff was not at that time
27 proposing a disallowance of the Iatan 1 AQCS cost overruns not identified or explained by the
28 change management system, the Staff could not recommend inclusion of these amounts without
29 identification, explanation, and review. Both December 31, 2009 Staff Reports further stated at
30 page 5 that subsequent Staff audit work on Iatan 2 and the remaining Iatan Common Plant, with
31 additional interaction with KCPL representatives, was expected to result in further refinement of

1 this \$60 million number leading to an opinion by the Staff whether costs are justified or should
2 be disallowed. This matter is more fully discussed in Staff's Detailed Findings regarding Iatan 1
3 AQCSs and Iatan 2 Cost Overruns Adjustments section of this Report.

4 **V. Auditing Procedures**

5 *Staff Expert: Charles R. Hyneman*

6 During the course of the Iatan 1 and Iatan 2 construction audits, the Staff auditors held
7 several meetings with KCPL Iatan Project Management personnel as well as KCPL Accounting
8 personnel to gain an understanding of several of the key issues involved in the Iatan Project.
9 Staff also held meetings with individuals responsible for the major Iatan construction contracts
10 as well as the key Iatan Project individuals responsible for the creation and development of
11 monthly projects costs reports. The Staff participated in quarterly meetings with KCPL
12 representatives responsible for the successful completion of the Iatan Project. The Staff
13 reviewed and analyzed the Cost Portfolio and supporting documentation to track actual costs in
14 relationship to budgets. The Staff attended several days of the KCC hearings related to Iatan
15 Project issues. In addition, the Staff reviewed thousands of documents received through data
16 requests that were specifically related to the costs charged to the Iatan Project. Staff conducted
17 internet searches of specific matters to gain additional information on various topics. Some
18 examples of the other specific audit activities that were performed during the Iatan Project audit
19 are as follows:

- 20 a. KCPL employee interviews
- 21 b. Project manager interviews
- 22 c. Review minutes of periodic CEP Oversight Committee meetings
- 23 d. Meet with other regulatory bodies charged with reviewing the
24 appropriateness, reasonableness, and prudence of the Iatan Project.
- 25 e. Review Iatan Project related testimony of other regulatory bodies
26 charged with reviewing the appropriateness, reasonableness, and
27 prudence of the Iatan Projects, and KCPL's response to such
28 testimony.
- 29 f. Investigate apparent discrepancies in KCPL responses and
30 incomplete KCPL responses to different jurisdictions.
- 31 g. Review KCPL officer expense reports and evaluate the
32 effectiveness of KCPL's officer expense report process internal
33 controls.
- 34 h. Review a significant number of, but not all, construction contractor
35 and vendor invoices. Issue follow-up data requests as needed.

- 1 i. Review KCPL Board of Director Minutes regarding any matters
- 2 relating to the Iatan Project.
- 3 j. Visit the construction work site, among other things, to interview
- 4 appropriate work site personnel to determine the in-service status
- 5 of facilities related to costs charged to the Iatan Project as well as
- 6 examine construction activities.
- 7 k. Meet with project management personnel at KCPL's Kansas City
- 8 headquarters building to review project status and costs.
- 9 l. Project contract evaluation respecting relevant provisions
- 10 impacting project costs and schedule.

11 Further details of Staff audit steps are discussed in the Cost Overruns section of this Report.

12 While KCPL, in response to data requests, provided the Staff with a substantial amount
13 of data that the Staff reviewed in conducting its audits, KCPL also withheld many documents
14 based on claims they were protected from disclosure by the attorney-client privilege, the attorney
15 work product doctrine and/or other qualified privilege. Early in the audit, KCPL, in response to a
16 data request, initially provided completely redacted Schiff Hardin, LLP (Schiff) invoices, a
17 major project management oversight and legal consultant to KCPL on the Iatan construction
18 projects. It was not until after a Commission Regulatory Law Judge independently reviewed the
19 invoices and opined that KCPL had overreached with its objections did KCPL provide new
20 copies of the invoices with significantly less redacted information.

21 In response to Staff data requests for information in important areas of inquiry of its
22 prudence review/construction audit of the Iatan Project KCPL has refused to provide responsive
23 information it has under claims of privilege and/or work product protection. An example of a
24 significant area of inquiry where KCPL has refused to provide information material to Staff's
25 audit is found in its response to Staff Data Request No. 418 where Staff requested information
26 regarding KCPL's Iatan Project controls. In Staff Data Request No. 418, the Staff asked KCPL
27 to provide copies of all recommendations, evaluations, assessments, audits, and advice
28 Schiff Hardin provided to KCPL regarding Schiff Hardin's independent review and reporting of
29 the project controls for the Iatan Project. KCPL responded by objecting to providing responsive
30 documents protected by the attorney-client privilege, but that it would provide any non-
31 privileged responsive documents by making them available for review in the data room KCPL
32 has provided Staff in KCPL's headquarters. However, since KCPL has not made any documents
33 KCPL says are responsive to Staff Data Request No. 418 available for the Staff to review, the
34 Staff concludes that KCPL is asserting attorney-client privilege for all of the recommendations,

1 evaluations, assessments, audits, and advice Schiff Hardin provided to KCPL regarding Schiff's
2 independent review and reporting of the project controls for the Iatan Project.

3 By Staff Data Request Nos. 342, 353, 363, and 373, the Staff attempted to obtain
4 documentation related to Schiff Hardin's review of certain contracts for KCPL. The Staff
5 attempted to review documentation related to Schiff's review of the following Iatan Project
6 contracts:

- 7 a. Burns & McDonnell Contract for design and engineering services
8 for the Iatan 1 environmental upgrades.
- 9 b. Alstom Contract related to the construction of the Iatan 1 AQCS
- 10 c. Kiewit Contract related to the Balance of Plant work at Iatan.
- 11 d. Kissick Contract related to the foundation work at Iatan.

12 Rather than providing the requested documents, KCPL asserted that to the extent the documents
13 were protected by the attorney-client privilege it would not provide them. The Staff's Data
14 Request No. 0342 issued in File No. EO-2010-0259 and KCPL's response is provided below.

15 Question: Please provide copies of any documentation regarding the
16 Schiff Hardin evaluation of the Burns & McDonnell Contract for design
17 and engineering services for the Iatan 1 environmental upgrades and
18 construction of Iatan 2.

19 Response: KCP&L objects to this Data Request to the extent that it
20 requests documents that are protected by the attorney-client privilege. To
21 the extent that KCP&L has copies of unprivileged documents responsive
22 to this Data Request, they will be made available for review in the data
23 room located at KCP&L headquarters located at 1201 Walnut Street
24 64106.

25 KCPL's responses to the other data requests were similar and like KCPL's response to the
26 Staff's data request for Schiff Hardin's review of the Iatan Project controls, KCPL has provided
27 the Staff with no documents to review in response to these data requests.

28 KCPL made similar objections and provided no documentation in response to Staff's
29 requests for copies of all reports and presentations Schiff provided to KCPL's senior
30 management, Executive Oversight Committee (EOC), and project personnel (Staff Data Request
31 No. 433) and for a copy of all notes, minutes, presentations, reports that were prepared for the
32 meeting or presented in the weekly internal Schiff Hardin Iatan project status meetings held
33 May 2006 through December 2009 (Staff Data Request No. 872). KCPL did disclose in its
34 response to Staff Data Request No. 872 that Schiff Hardin convened weekly meetings to discuss

1 commercial disputes and regulatory strategy for the Unit 1 and/or Unit 2 rate case, that these
2 meetings have been held since 2005, usually take place on Mondays and last approximately an
3 hour.

4 The procedures and activities conducted by Staff auditors were in accordance with and
5 are fully consistent with Generally Accepted Auditing Standards (GAAS). In Ordered
6 paragraph 4 of its July 7, 2010 Order Regarding Construction and Prudence Audits in File Nos.
7 ER-2010-0355 and ER-2010-0356, the Commission stated the following:

8 4. All auditing activity shall be conducted in accordance with generally
9 accepted auditing standards issued by the American Institute of Certified
10 Public Accountants Standards. All Commission staff members conducting
11 audit activity of any type in these matters shall attest by affidavit that all of
12 their auditing activity and reports comply with these standards.

13 GAAS are broad rules and guidelines promulgated by the AICPA's *Auditing Standards Board*.
14 Certified Public Accountants employ GAAS in preparing for and performing audits of a client's
15 financial statement.

16 In December 2001, the Auditing Standards Board issued SAS 95, Generally Accepted
17 Auditing Standards. SAS 95 established a GAAS hierarchy consisting of Tier 1 – Auditing
18 Standards (which include the SAS), Tier 2 – Interpretive publications, and Tier 3 – Other
19 auditing publications Tier 1 consists of the ten general, fieldwork, and reporting standards, and
20 the Statement on Auditing Standards. The ten general standards apply to all other services
21 covered by the Statement on Auditing Standards (SAS) unless they are clearly not relevant or the
22 SAS specifies that they do not apply.

23 For example, while GAAS applies primarily to the audit of an entity's financial
24 statement, the substance of the General Standards and Standards of Field Work can be applied to
25 utility construction audits and audits of a utility's rate files, the Standards of Reporting, while
26 they can provide guidance in the preparation of any report, clearly are not relevant to
27 construction audits and prudence review reports types of audits, and, therefore, do not apply to
28 this audit.

29 While the Staff auditors have conducted their audit in accordance with the General
30 Standards and Standards of Field Work listed below, they have not necessarily reviewed and
31 applied all of the detailed specific interpretations of the individual SAS to this audit. Such an

1 undertaking would require an extensive investment in training and personnel that has not been
2 viewed as necessary for the work performed in this audit.

3 The ten GAAS standards are listed below:

4 **GAAS - General Standards**

- 5 1. Training and Proficiency. The audit must be performed by a person or persons having
6 adequate technical training and proficiency as an auditor.
- 7 2. Independence. In all matters relating to the assignment, an independence in mental
8 attitude is to be maintained by the auditor or auditors.
- 9 3. Due Care. Due professional care is to be exercised in the planning and performance of
10 the audit and the preparation of the report.

11 **GAAS - Standards of Field Work**

- 12 1. Planning and Supervising. The auditor must adequately plan the work and must
13 supervise any assistants.
- 14 2. The entity and its environment, including its internal control. The auditor must obtain a
15 sufficient understanding of the entity and its environment, including its internal control,
16 to assess the risk of material misstatement of the financial statements whether due to error
17 or fraud, and to design the nature, timing, and extent of further audit procedures.
- 18 3. Evidential Matter. The auditor must obtain sufficient appropriate audit evidence by
19 performing audit procedures to afford a reasonable basis for an opinion regarding the
20 financial statements under audit.

21 **GAAS - Standards of Reporting**

- 22 1. GAAP. The report shall state whether the financial statements are presented in
23 accordance with generally accepted accounting principles.
- 24 2. Consistency. The report shall identify those circumstances in which such principles have
25 not been consistently observed in the current period in relation to the preceding period.
- 26 3. Disclosure. When the auditor determines that informative disclosures are not reasonably
27 adequate, the auditor must so state in the auditor's report.
- 28 4. Reporting Obligation. The report shall contain either an expression of opinion regarding
29 the financial statements, taken as a whole, or an assertion to the effect that an opinion
30 cannot be expressed. When the auditor cannot express an overall opinion, the auditor
31 should state the reasons therefore in the auditor's report. In all cases where an auditor's
32 name is associated with financial statements, the auditor should clearly indicate the
33 character of the auditor's work, if any, and the degree of responsibility the auditor is
34 taking, in the auditor's report.

1 **VI. Iatan Project Management History**

2 *Staff Expert: Robert E. Schallenberg*

3 On September 29, 2005, Schiff Hardin advocated as a component of the Project
4 Development costs that KCPL adopt a Multi-Prime, Design-Bid-Build method where KCPL
5 would enter into separate contracts with multiple entities and where KCPL would coordinate
6 execution of these multiple contracts. Schiff Hardin conditioned its recommendation with one
7 very significant caveat, KCPL must employ a strong, capable and experienced Project
8 Management or Construction manager capable of coordinating and tracking the work on a
9 complex project. Schiff Hardin warned that if KCPL was unable or adverse to employing such a
10 team, the Multi-Prime approach was likely to miss important schedule and cost objectives.

11 ** [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 [REDACTED] ** KCPL hired the initial Iatan Project Manager
18 on February 6, 2006. There was only one Project Manager for the Iatan Project until November,
19 2007.

20 After February 6, 2006, the relationship between the Senior Director of Construction and
21 the Project Manager (who reported to the Senior Director of Construction) developed into a
22 struggle between them that led to splintering of the project team and an overall sense that project
23 was unfocused and drifting. The result was numerous issues, allegations and, ultimately, the
24 conclusion and decision by KCPL to install new project leadership where the new Project
25 Manager would direct report to the Senior Vice President of Supply. Before this change in
26 project leadership the struggle between the Senior Director of Construction and the Project
27 Manager had deteriorated to the point where there was no direct communication between them.
28 Assignments given to the Project Manager were never completed. Project control was
29 stalemated, causing a degree of paralysis of the Iatan Project Team, which contributed to the
30 failure to meet several project commitments regarding documentation and planning. The
31 difficulties for the Iatan Project Team in 2006 hampered KCPL's development of a new

1 Procurement Department, as well as its efforts in dealing with different parties overseeing KCPL
2 and the Iatan Project. The relationship difficulties between KCPL's Engineering and
3 Procurement groups on the Iatan Project were well known internally. The difficult
4 organizational dynamics that the Iatan Project Team experienced during 2006 was believed by
5 the Team to have strengthened the Group.

6 With GPE's Internal Audit Group Ernst and Young provided a Risk Assessment Report in
7 March 2007 covering the Iatan Project and other projects at November 1, 2006. The Report, at
8 page 5 notes:

9 **
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 Later in the March 2007 Risk Assessment Report at page 6 the Ernst and Young and GPE
26 Internal Audit Group Audit Team stated:

27 **
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]
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[Redacted]

[Redacted]

[Redacted]**

On page 7 of the March 2007 Risk Assessment Report the Audit Team stated:

** [Redacted]**

On page 8 of the March 2007 Risk Assessment Report the Audit Team stated:

** [Redacted]

[Redacted]

[Redacted]**

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** [Redacted]

[Redacted]

On page 12 of the March 2007 Risk Assessment Report the Audit Team stated:

** [Redacted]

[Redacted]

Thus by November 1, 2006, all the conditions were in place for the Iatan Project to experience cost overruns as by this date the Iatan Project was being "fast tracked" to meet KCPL's Experimental Alternative Regulatory Plan Iatan Project completion date of June 1, 2010. KCPL was handicapped in achieving this date by its relative inactivity during the last six months of 2005 and for another five (5) months when progress on the Iatan Project was hampered by a struggle between the Senior Director of Construction and the Project Manager. Fast tracking is when segments of a project are being built simultaneously while other segments are still in engineering design. Generally, with fast tracking the construction project term is shorter, the ultimate goal is to complete to a tight deadline, and budget issues tend to be secondary. The primary benefits of fast tracking are (1) reduced planning lead times and (2) parallel execution of tasks. Fast tracked projects are harder to oversee and plan, and may result in errors when incorrect assumptions about engineering design are made. Since the focus

1 is geared on beating the clock, many times the loss of focus on the project as a whole results in
2 inefficient spending and planning. Specific risks of 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 problems^{vi}

11 Before March 2007 project documentation problems relative to key decisions were
12 occurring on the Iatan Project. Staff requested copies of the documentation evaluating the
13 decision to initiate construction and enter into significant procurement contracts for the Iatan 1
14 AQCS and Iatan Unit 2 before design was substantially completed. Schedule 2, attached to this
15 Report, is a copy of Staff's data request with KCPL's response. As noted in the response KCPL
16 has no documentation to support this decision.

17 By late 2006, the Iatan Project had been committed to a course that made the risk of cost
18 overruns and schedule delays for the Iatan 1 AQCS segment high, and this is one of the, if not
19 the most, significant factor causing the cost overruns and the documentation issues Staff
20 encountered on this audit.

21 **VII. Inappropriate Charges**

22 *Staff Expert: Charles R. Hyneman*

23 Inappropriate charges were found to occur at the highest level of KCPL and the Iatan
24 Project, increasing the concern and probability regarding the level of inappropriate charges
25 contained in the Iatan Project. The audit encountered events where personal expenses were
26 charged to the Iatan Project by high level KCPL personnel. KCPL did not cooperate with the
27 Staff's efforts to obtain from KCPL information the Staff needed to determine the scope of the
28 situation. KCPL also did not assist the Staff's efforts to obtain information to evaluate the
29 magnitude of the situation of personal mileage being charged to the Iatan Project.

30 In this audit the Staff found a continuation and expansion of the deficiencies the
31 Staff noted in Staff testimony in KCPL's prior rate cases, Case Nos. ER-2007-0291 and

1 ER-2009-0089, regarding KCPL's officer expense report process. Problems with officer
2 expense reports were even noted by KCPL's Internal Audit Department prior to KCPL's most
3 recent rate case, Case No. ER-2009-0089. The Staff notes that KCPL has proposed in its current
4 rate case, File No. ER-2010-0355, to remove all expense report charges for its executive officers.
5 It is not clear at this point whether KCPL will make similar adjustments to the costs charged to
6 the Iatan Project or refund to the other joint owners their portions of the inappropriate costs.

7 Staff noted inappropriate and unreasonable expenses charged to the Iatan Project by at
8 least three KCPL officers having authority positions over the Iatan Project. During KCPL's last
9 rate case, Case No. ER-2009-0089, Staff found a \$405 lunch charge to Iatan 2 segment indirect
10 costs. KCPL was charging a portion of Iatan 2 Indirect Costs for Construction Management as of
11 December 2008 to the Iatan Project Common Plant that KCPL was seeking to include in its rate
12 base in Case No. ER-2009-0089.

13 KCPL initially objected in Case No. ER-2009-0089 to providing the Staff with
14 information regarding the Iatan 2 segment on the basis that Iatan 2 segment costs were irrelevant
15 to the costs it was seeking to recover in that case, although it was seeking to recover in rates,
16 Iatan 1 AQCS and Iatan Common Plant costs. Staff received this objection on February 11,
17 2009. By making this objection, KCPL delayed providing the information to Staff until May 12,
18 2009, after all of Staff's testimony filing dates in Case No. ER-2009-0089 passed. The
19 inappropriate charge was removed by KCPL from the Iatan 2 segment on February 11, 2009.
20 However, KCPL did not remove the AFUDC that KCPL had recorded, and thus allowed this cost
21 to continue to compound through the Iatan Project.

22 KCPL's internal control system does not allow the charging of an inappropriate cost to
23 the Iatan Project by the action of only one individual. Recovery of such an inappropriate
24 expense requires the employee or vendor to request payment of the inappropriate charge
25 (e.g., personal expense) or improper coding to the Iatan Project for a non-Iatan Project cost.
26 Such a request needs another KCPL employee to approve the payment or charging request.
27 Therefore, at least two individuals must be involved in the occurrence of an inappropriate cost
28 being charged to the Iatan Project.

29 The \$405 Iatan 2 segment lunch charge matter illustrates four levels of Staff concern.
30 One, whether KCPL is recording costs for inappropriate items for the Iatan Project. Two,
31 whether KCPL's internal control system is failing to prevent the inappropriate charges to the

1 Iatan Project. Third, whether KCPL is not itself adequately concerned, such that it conducts an
2 examination of the issue internally to determine the nature and extent of the activity. Fourth,
3 whether KCPL is properly responding to Staff data requests and information that Staff brings to
4 the attention of KCPL.

5 The second level of concern above is an indication of a shortfall in KCPL's senior
6 management's compliance with KCPL's own internal control system. KCPL policies and
7 procedures related to expense accounting are adequate to prevent the inappropriate charges to the
8 Iatan Project if the procedures were followed. Under KCPL's internal control system at least
9 two employees must fail in their responsibilities for the Iatan Project to be charged for an
10 inappropriate item.

11 Schedule 4 attached to this Report is a list of the inappropriate or questionable costs Staff
12 identified during the audit, excluding those costs that are attributed to the KCPL Senior VP –
13 Supply position. The Senior VP – Supply position costs were examined separately for a pattern
14 of systemically charging expense items to the Iatan 2 to effectuate capital versus expense
15 recognition, as well as a 45.29% reimbursement of these costs from the other partners to the
16 Iatan 2 segment.

17 During the audit Staff found a pattern of a KCPL officer who consistently charged the
18 Iatan 2 segment for items that should have been charged to KCPL expense accounts. Schedule 5
19 attached to this Report is a schedule produced from Staff's construction audit/prudence review.
20 The schedule indicates a few Iatan Project charges that Staff noted for various reasons.
21 Schedule 5 shows three (3) instances where the same item appears twice in the individual's
22 expense reports.

23 Staff proposes \$25,000 and \$75,000 adjustments to the Iatan 1 AQC's and Iatan 2
24 segments, respectively, in order to remove a level of costs that should be adequate in the Staff's
25 opinion to address these type of inappropriate costs from being passed on to Missouri retail
26 customers.

1 **VIII. Detailed Findings – Non dollar adjustments**

2 **A. Engineering Reviews**

3 *Staff Expert: David W. Elliott*

4 **1. Scope**

5 The Engineering Analysis Section of the Energy Department, Utility Operations
6 Division, is responsible for and conducts Engineering Reviews of major electric utility
7 construction projects. The Engineering Review consists of two activities-monitor project
8 construction progress and review construction project change orders.

9 To monitor the progress of the project during construction, Engineering Staff makes
10 periodic field visits to the site. Ideally, Engineering Staff begin making field visits at the on-set
11 of the construction and continue visits until a project is determined to meet the criteria to be
12 considered “fully operational and useful for service”. During a field visit, Engineering Staff
13 meet with construction and company personnel to review the overall progress of construction,
14 review documents related to changes affecting the project, including documents of changes in the
15 schedule and changes in costs, and to receive updates of safety-related aspects of the project.

16 Engineering Staff review construction project change orders associated with the project
17 for the following:

- 18 • To understand the reason for the change at the point in time when the change
19 order was issued;
- 20 • To determine whether the change corrected an engineering-related problem,
21 resulted in a better design, or improved the operation or construction of the plant;
22 and
- 23 • To determine whether the change resulted in a safety concern, caused unnecessary
24 construction, or caused unnecessary duplication of facilities or work.

25 In any particular Engineering Review the number of field visits to monitor construction
26 progress, the number of meetings with construction and company personnel and the number of
27 construction project change orders that Engineering Staff reviews vary depending on a number
28 of factors, including the project type, the project size, the project location, and the availability of
29 Engineering Staff to perform the Engineering Review.

30 Other than as it relates to the foregoing list, the Engineering Staff’s review of change
31 orders does not include a review of events preceding issuance of a change order, any change in

1 construction project costs due to a change order, or any other action or inaction by the company
2 which resulted in a change order.

3 During an Engineering Review, the Engineering Staff discuss the change orders with
4 company and construction project personnel to understand the reasons for the change orders. In
5 addition, the Engineering Staff review contracts, agreements, purchase orders, drawings, and
6 correspondences related to the change orders. If Engineering Staff determine there is an
7 engineering concern with a change order, such as an unnecessary coal conveyor, the Engineering
8 Staff would share its concern with the Commission's Auditing Staff and consult with Staff
9 management to determine the appropriate response to take to address the concern.

10 **2. Activities and Conclusions related to the Staff Engineering Review of Iatan 2**

11 Based on its Engineering Review of KCPL's change orders, Engineering Staff¹ found no
12 engineering concerns with any of the Iatan 2 or Iatan common plant change orders reviewed.

13 Engineering Staff began visits to the Iatan site shortly after construction started, visiting
14 the site twenty (20) times in the period June 2007 to September 2010. The last visit, in
15 September 2010, took place shortly after testing was completed to determine if Iatan 2 met the
16 in-service criteria, as set out in KCPL's Experimental Alternative Regulatory Plan the
17 Commission approved in Case No. EO-2005-0329. During these site visits Engineering Staff
18 toured the construction site, discussed construction progress and future milestones, and reviewed
19 any documentation relevant to change orders they reviewed or construction progress since they
20 were last at the plant. During some of the plant visits the Engineering Staff attended progress
21 meetings between multiple contractors and KCPL construction project personnel where
22 scheduling issues, safety issues, or contractor interference issues were discussed.

23 During the period June 2007 through July 2010 there were numerous change orders for
24 the Iatan 2 construction project with a magnitude of the change in cost associated with a change
25 order ranging from zero to 33 million dollars (\$0 to \$33 million). Based on prior construction
26 project engineering review experience, Engineering Staff selected \$50,000 as an appropriate
27 benchmark minimum level of cost change associated with a change order to limit the number of
28 change orders Engineering Staff reviewed, but still allow Engineering Staff to review the change
29 orders for major work. Therefore, Engineering Staff requested from KCPL copies of all

¹ Engineering Staff that performed this review were David Elliott and Shawn Lange.

1 approved change orders with a value change (increase or decrease) of \$50,000 or more. As of
2 September 20, 2010, Engineering Staff has received from KCPL copies of 647 change orders
3 dated through July 2010 having associated cost changes of \$50,000 or more.

4 The Engineering Staff did an initial review of the 647 change orders and determined that
5 262 were non-engineering issues, such as insurance coverage, temporary support personnel,
6 equipment leasing, purchase order/accounting corrections, negotiated settlements, and project
7 schedule delays. Engineering Staff further selectively reviewed the remaining 385 change orders
8 because of the large number of remaining change orders and the limits on the availability of the
9 Engineering Staff. Engineering Staff decided to comprehensively review 222 of the 385 change
10 orders. To ensure the 222 change orders comprehensively reviewed included the major work,
11 Engineering Staff again used the change order dollar amounts as benchmarks. Engineering Staff
12 selected the 109 change orders with associated cost increases of more than \$250,000 and the 13
13 change orders with associated cost decrease of more than \$250,000. Engineering Staff then
14 randomly selected 100 of the remaining 263 change orders as a representative sample of the
15 remaining 263 change orders. If, in reviewing the sample of 100 change orders, Engineering
16 Staff had found concerns, it would have reviewed the remaining 163 change orders.

17 The Engineering Staff discussed the 222 change orders selected with KCPL construction
18 project personnel to understand the reasons for each of the change orders. In addition, the
19 Engineering Staff reviewed contractor/vendor contracts, purchase orders, drawings, and
20 correspondences related to the change orders. To better understand the different types of
21 circumstances for the 222 change orders, Engineering Staff created six categories representing
22 general reasons for a change order. Staff then sorted the 222 change orders into these categories.

23 The six categories are:

24 *Type 1: Change Orders associated with final design changes or final engineering*
25 *changes.*

26
27 KCPL awarded some contracts before completion of final design. Therefore,
28 there were changes due to work that started before the final design, or the final
29 engineering was completed. Also during construction, additional work was added to
30 the contractor/engineer/consultant contracts.

31
32 *Type 2: Change Orders associated with changes made by KCPL*

33
34 KCPL made changes for more efficient or safer operation and/or maintenance of
35 Iatan 2 and the associated common plant after construction started. This category

1 also includes change orders due to the selection of a particular design by KCPL
2 during construction.

3
4 Type 3: Change Orders associated with field design

5
6 This type of change was made due to final design decisions left to be worked out
7 during actual construction, and design changes made in the field. This type also
8 includes changes in the way work was to be done in order to avoid potential problems
9 and moving work from one contractor's work scope to another contractor's work
10 scope.

11
12 Type 4: Change Orders associated with field construction issues

13
14 These changes were made due to unforeseen problems or obstacles encountered
15 during actual construction. This would include changing the design, making repairs,
16 and/or modifying material/equipment to make it work as required. This category also
17 includes changes due to moving contractors, or equipment, and adding equipment for
18 easier access to work areas.

19
20 Type 5: Change Orders associated with contracts that specify the actual amounts
21 and/or prices would be determined at time of the work.

22
23 Some contracts were written such that the final cost would be determined at a
24 later date. Either the amount of work, or number of items purchased, or the prices
25 were trued-up with change orders at some point during the construction project.

26
27 Type 6: Change Orders associated with changes to the type of contract

28
29 The type of contract changed e.g., a time-and-material contract was converted to a
30 fixed-price contract.

31
32 SUMMARY OF CATEGORIES

33

Change Order Category	Type of Change Order	Number of Change Orders Reviewed
Type 1	Final Design or Engineering Change	36
Type 2	KCPL change	35
Type 3	Field Design Change	66
Type 4	Field Construction Change	44
Type 5	Contract Term Defined at Performance	38
Type 6	Change in Contract Type	3
Total Number of Change Orders		222

34

1 The Engineering Staff will attend future Staff meetings in regard to Iatan 2 commercial
2 issues and discussions of possible adjustments. The Engineering Staff will also continue to
3 monitor the construction project to determine if any updated information concerning the change
4 orders initially included in the engineering review requires additional review.

5 **B. Iatan 2 In-Service**

6 *Staff Expert: David W. Elliott*

7 Iatan 2 is an 850 MW supercritical, pulverized coal generating unit located next to the
8 existing Iatan 1 unit in Platte County, Missouri.

9 The in-service criteria to be used for this coal generating unit and the for the associated
10 pollution reduction equipment were developed by Staff and KCPL. These criteria appear in
11 Appendix H of KCPL's Experimental Alternative Regulatory Plan that the Commission
12 approved in Case No. EO-2005-0329. The basis for the in-service criteria for the pollution
13 reduction equipment is found in paragraph 8 on page H-2 of Appendix H. When the
14 Commission approved KCPL's Experimental Alternative Regulatory Plan, the in-service criteria
15 for the pollution reduction equipment had not been agreed upon. Based on subsequent
16 discussions between Staff and KCPL, pollution reduction equipment in-service criteria were
17 finalized. The final agreed upon in-service criteria Staff used for Iatan 2, including the Iatan 2
18 pollution reduction equipment, appears in Schedule BCD2010-10 of KCPL Witness Brent C.
19 Davis' pre-filed direct testimony in this case. In addition, Item 4(g) coal handling systems was
20 added to the Iatan 2 coal unit in-service criteria. Staff used these in-service criteria for
21 determining whether Iatan 2, including the pollution reduction equipment, is "fully operational
22 and used for service."

23 The specific in-service criteria and Staff's evaluation notes are attached as Schedule 8
24 attached to this Report. Based on the Staff's on-site observation of Iatan 2, supplemented by
25 Staff's review of Iatan 2 test data, test results, operating logs, computer data, and other
26 documentation, Staff concludes that the Iatan 2 generating unit successfully met all of the in-
27 service criteria and was "fully operational and used for service" as of August 26, 2010.

28 As Staff utilized the agreed upon in-service criteria for Iatan 2, Staff found some
29 instances where the criteria could have been better defined. Therefore, Staff plans to review its

1 current coal generating unit in-service criteria and revise them for use in determining whether
2 future coal generating units are “fully operational and used for service.”

3 **C. KCPL Has Withheld a Significant Volume of Material from Staff’s Audit**

4 *Staff Expert: Keith Majors*

5 On November 1, 2010, the Staff filed a pleading requesting the Commission appoint a
6 Special Master to conduct in-camera reviews to determine whether documents being withheld or
7 redacted by KCPL and/or GMO appropriately qualify for privilege and/or immunity from
8 discovery under the claims of attorney-client privilege, the attorney work product doctrine and/or
9 other qualified privilege made by KCPL and/or GMO. Schedule 6, attached to this Report, is the
10 cumulative list of privilege logs received by Staff as of November 2, 2010. In examining the
11 privilege logs, Staff identified 1,800 total documents either redacted or withheld in entirety. Of
12 the 1,800 documents, KCPL did not identify the number of pages redacted or withheld in 1,677
13 of the documents. KCPL did identify 1,043 pages comprising 123 documents that contain
14 redacted or withheld material. The average number of pages per redacted or withheld documents
15 is 8.47 pages. Using this average, Staff estimates that KCPL is withholding 14,220 pages
16 comprising 1,677 documents with the number of pages not specifically identified. Additionally,
17 KCPL withheld privilege logs for 17 Staff data requests. Because Staff has not examined nor
18 has KCPL provided these documents in their entirety, Staff cannot evaluate the impact this
19 material has on its prudence construction\review audit of the Iatan Project.

20 **IX. Detailed Findings – Adjustments**

21 **A. Unexplained Cost Overruns**

22 *Staff Expert: Charles R. Hyneman*

23 During the Staff’s Iatan construction audit/prudence review, it reminded KCPL of its
24 obligation under the Experimental Alternative Regulatory Plan to document, identify and explain
25 any cost overrun above the definitive cost estimate of both of its Iatan 1 and Iatan 2 construction
26 projects. In the Staff’s opinion, KCPL has disregarded this responsibility and the terms and
27 conditions of the Experimental Alternative Regulatory Plan. The Experimental Alternative
28 Regulatory Plan Stipulation And Agreement, page 28, Case No. EO-2005-0329 states:

1 III.B.1.q. Cost Control Process for Construction Expenditures:

2 KCPL must develop and have a cost control system in place that identifies
3 and explains any cost overruns above the definitive estimate during the
4 construction period of the Iatan 2 project, the wind generation projects and
5 the environmental investments.

6 In Staff Data Request Nos. 969 and 970 in File No. EO-2010-0259, the Staff asked KCPL
7 to provide a list of all Iatan 1 and Iatan 2 cost overruns through April 2010. A cost overrun is the
8 amount of actual costs incurred that exceed the sum of (1) the budget plus (2) the contingency,
9 plus (3) other cost areas, where the actual costs incurred were less than the budget. Consistent
10 with what the Staff believes KCPL was required by its Experimental Alternative Regulatory Plan
11 to create, which is a system that identifies and explains any cost overrun above the budget, the
12 Staff requested a list that shows the amount of each cost overrun and an explanation of each cost
13 overrun. KCPL's response, in substance, was that it was unable or unwilling to identify and
14 explain any cost overrun and KCPL decided to provide no explanation of any cost overrun. In its
15 response to Staff Data Requests Nos. 969 and 970, KCPL indicated that its cost overruns are
16 reported in its Cost Portfolio and the Staff can do the calculations of the amounts in the Cost
17 Portfolio and the supporting documents of the overruns were provided in previous responses to
18 Staff Data Requests.

19 The Staff did calculate the amount of cost overruns at June 30, 2010 (calculated as actual
20 June 30, 2010 costs less the Control Budget Estimate) to arrive at a cost overrun amount of
21 \$129,953,322 or approximately \$130 million. The cost overrun amount at June 30, 2010 for
22 Iatan 1 is \$69,676,748, or approximately \$70 million. Both of these calculations are shown in
23 the tables below:
24

IATAN 1	Control Budget	June 2010	Difference
MECHANICAL PROCUREMENT	\$9,671,319	\$8,238,250	(\$1,433,069)
ELECTRICAL PROCUREMENT	\$9,048,569	\$6,313,786	(\$2,734,783)
CONTROL PROCUREMENT	\$7,085,020	\$5,230,888	(\$1,854,132)
CIVIL/STRUCTURAL - ALSTOM	\$230,967,556	\$262,562,141	\$31,594,585
CIVIL/STRUCTURAL - NON ALSTOM	\$47,712,908	\$54,650,694	\$6,937,786
MECHANICAL CONSTRUCTION	\$4,964,000	\$14,178,415	\$9,214,415
ELECTRICAL CONSTRUCTION	\$17,505,475	\$2,993,959	(\$14,511,516)
BOP CONTRACT	\$0	\$43,799,192	\$43,799,192
CONSTRUCTION INDIRECTS	<u>\$24,101,996</u>	<u>\$48,512,803</u>	<u>\$24,410,807</u>
TOTAL BEFORE CONTINGENCY	\$351,056,843	\$446,480,128	\$95,423,285
CONTINGENCY - PROJECT MGT (7%)	<u>\$25,746,537</u>		<u>(\$25,746,537)</u>
TOTAL CONTROL BUDGET ESTIMATE	\$376,803,380		\$69,676,748

IATAN 2	Control Budget	June 2010	Difference
CIVIL / STRUCTURAL PROCUREMENT	\$562,110	\$736,511	\$174,401
MECHANICAL PROCUREMENT	\$146,089,858	\$139,957,431	(\$6,132,427)
ELECTRICAL PROCUREMENT	\$32,643,309	\$31,204,453	(\$1,438,856)
CONTROL PROCUREMENT	\$9,618,231	\$7,072,066	(\$2,546,165)
CIVIL/STRUCTURAL - ALSTOM	\$485,619,731	\$515,284,912	\$29,665,181
CIVIL/STRUCTURAL - NON ALSTOM	\$303,988,462	\$298,511,638	(\$5,476,824)
MECHANICAL CONSTRUCTION	\$150,490,600	\$5,937,274	(\$144,553,326)
ELECTRICAL CONSTRUCTION	\$78,029,612	\$29,715,939	(\$48,313,673)
BOP CONTRACT	\$0	\$498,179,692	\$498,179,692
CONSTRUCTION INDIRECTS	\$147,101,487	\$212,354,751	\$65,253,264
OWNER'S INDIRECTS	<u>\$110,856,600</u>	<u>\$75,998,655</u>	<u>(\$34,857,945)</u>
TOTAL BEFORE CONTINGENCY	\$1,465,000,000	\$1,814,953,322	\$349,953,322
CONTINGENCY - PROJECT MGT (10%)	\$145,000,000		(\$145,000,000)
CONTINGENCY - EXECUTIVE (5%)	\$75,000,000		(\$75,000,000)
TOTAL CONTROL BUDGET ESTIMATE	\$1,685,000,000		\$129,953,322

As previously indicated, the Staff considers KCPL responses not to be nonresponsive to certain Staff Data Requests and not consistent with its obligation under the Experimental Alternative Regulatory Plan. KCPL's response to Staff Data Request No. 970 (Iatan 2) is shown below. KCPL's response to Staff Data Request No. 969 (Iatan 1) is exactly the same with the exception that it included different amounts for the Iatan 1 cost overruns. In these responses KCPL merely advises Staff how it can track budget variances, which is not the issue and is not the data the Staff requested. The Staff asked for a listing and description and explanation of all overruns. KCPL did not even attempt to answer this request in its response.

1 Question No. 0970: For Iatan 2, please provide a list of all cost overruns
2 (from KCPL's original Definitive Estimate / Control Budget Estimate)
3 through April 2010, the amount for each cost overrun, a detailed
4 description of the overrun, why each cost overrun was incurred and
5 charged to the project, and how the cost overrun was mitigated, if it was
6 mitigated.

7 RESPONSE: As discussed in Question No. 0445A, all variances from the
8 Project Control Budget estimate are captured in, and reported from, the
9 Cost Control System. The System provides the detailed tracking process
10 in the Cost Portfolio, which includes the Control Budget as well as each
11 budget change, the Committed Costs, the Uncommitted Costs, the Current
12 Forecast Total Cost At Completion and the Actuals Including Accruals.
13 These details are maintained by Budget Line Item and the supporting
14 documentation is voluminous. There is not a single set of output
15 documents resulting from the process.

16 Utilizing the April 2010, Iatan 2 K^(a) Cost Report, the Control Budget
17 Estimate (Column A) is \$1,685.0 billion [sic]. As of April 2010, the
18 Actuals Including Accruals (Column M) total \$1,782.4 billion [sic].

19 The justification for the additional \$97.4 million is located within the
20 documentation previously provided to staff in multiple data requests. As
21 discussed above, the variance is explained within the documentation
22 previously provided in data requests such Contingency Logs, PO logs,
23 Change Order logs, Reforecast Presentations and supporting
24 documentation, Budget Transfer Logs, etcetera.

25 (a) The K Cost Reports are routinely provided in hard copy in the
26 Strategic Infrastructure Investment Status Reports on a quarterly basis and
27 has been provided in Microsoft Excel format in data requests question
28 series number 0622.

29 A drawing illustrating how to track variances is attached, "*Example for*
30 *DR 0970 Rev 1.xls*." Mr. Forrest Archibald has walked through the
31 portfolio in previous meetings and would be able to provide the assistance
32 again if requested.

33 As shown in the above table for Iatan 2, KCPL's control budget includes \$1.465 billion
34 of Procurement, Construction and Indirect costs. This is what KCPL and its advisors and
35 consultants expected the final cost of construction to be if costs escalations and labor rate
36 increases and other events occurred as planned. However, construction projects typically include
37 a budget of dollars for events and circumstances that are unforeseen at the time the budget is set.
38 This bucket of cost dollars represents the risk that unforeseen cost increases will not be offset by

1 unforeseen cost decreases. This bucket of dollars is called a contingency. Included in Iatan 2's
2 control budget is a construction contingency amount of \$145 million. This represents 10 percent
3 (10%) of the estimated construction cost. [REDACTED] **

4 [REDACTED]
5 [REDACTED]
6 [REDACTED] **
7 The \$1.465 billion control budget for Iatan 2 is KCPL's number. KCPL created it. In
8 fact, the Staff is aware that KCPL spent months and months just preparing this budget. KCPL
9 was supposed to provide this budget to the Staff in August 2006 and it was not provided to the
10 Staff until January 2007. KCPL's control budget is very detailed with hundreds of line items. It
11 is clear that KCPL has the capability to track, identify and explain control budget cost overruns.
12 This is the type of information that is critical to the Staff's audit. KCPL's refusal to provide a
13 tracking and explanation of Iatan Project cost overruns, together with its refusal to provide the
14 Staff with thousands of pages of requested documents indicates KCPL lack of transparency in its
15 execution of the Iatan construction projects.

16 To incur a cost overrun on Iatan, KCPL has to first spend the entire budget for
17 procurement, construction and indirect, and then incur an additional \$225 million above this
18 amount. Not only did KCPL expend its entire contingency amount of \$225 million, but it spent
19 another \$130 million in cost overruns. This \$130 million is the amount that the Staff must
20 address in this Report.

21 The Staff insisted on including in KCPL's Experimental Alternative Regulatory Plan the
22 specific requirement that KCPL identify and explain any cost overrun. This was a major
23 problem the Staff had in the 1985 Wolf Creek nuclear generating station construction
24 audit/prudence review where Wolf Creek's significant costs overruns and lack of appropriate
25 documentation placed a great hardship on Staff resources and ability to perform a construction
26 audit/prudence review. For the Iatan Project, the Staff attempted to avoid a repeat of such a
27 situation for Staff and the Commission. KCPL failed to justify its cost overruns. Among the
28 Staff's concerns with the \$200 million in Iatan Project cost overruns is that KCPL has not even
29 identified or explained the cost overruns, nor did it manage them or even demonstrate that it
30 took positive steps to mitigate them. In a project the size of the Iatan Project there are many

1 factors which can cause an entity to lose control of costs and either not have the ability to control
2 the cost overruns or not place appropriate concern regarding the cost overruns.

3 The Staff believes that a major factor that led to KCPL incurring \$200 million in cost
4 overruns is KCPL's management decision to fast track the project schedule by running the
5 design and construction phases simultaneously. While this technique is not unusual in the
6 construction industry, it has to be employed by a very experienced project management team and
7 demands very high quality work from the owner's engineer. The Staff believes that both of these
8 requirements were absent in the Iatan construction projects. Regardless of the specific causes of
9 the \$200 million in cost overruns, the fact remains that, among other things, KCPL's failure to be
10 able to document and explain these overruns means that it is responsible to absorb these costs.
11 KCPL recognized this risk. In response to Staff Data Request No. 443, KCPL provided a copy
12 of its Iatan Construction Project Risk Assessment. In its Risk Assessment for the first quarter of
13 2008^{**}

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]^{**} Certainly KCPL
19 would regard compliance with its Experimental Alternative Regulatory Plan as a success
20 criterion in its CEP. Because of all of these factors and because KCPL cannot identify and
21 explain its cost overruns, the Staff recommends that the Commission not allow KCPL to charge
22 the \$200 million in cost overruns to KCPL's Missouri retail customers.

23 **B. Iatan 1 AQCS Indirect Costs related to Common Plant**

24 *Staff Expert: Robert E. Schallenberg*

25 Staff proposes three adjustments related to Common Plant. The first adjustment is to
26 transfer \$111,285,722 from the June 30, 2010 Iatan 1 AQCS cost segment to the Iatan Project
27 Common Plant segment. The second adjustment is to transfer \$12,658,815 of Iatan 1 AQCS
28 indirect costs to the Iatan Project Common Plant for the direct common plant costs charged to the
29 Iatan 1 AQCS. The third adjustment is to transfer \$273,070,234 from the June 30, 2010 Iatan 2
30 cost segment to the Iatan Project Common Plant segment.

1 In rate Case No. ER-2009-0089 KCPL filed Schedule SJ-5 attached to the rebuttal
2 testimony of Steve Jones. Schedule SJ-5 represented that the Iatan Project had \$382,965,000 of
3 common plant related to the operation of Iatan 1 and Iatan 2. The assets identified in this
4 schedule were assigned an estimated value of \$382,965,000.

5 These common costs are contained either in the project budgets of Iatan 1 AQCS or
6 Iatan 2 segments. The Iatan 1 AQCS and Iatan 2 budgets contained \$114,109,251 and
7 \$268,855,749 of these common costs, respectively. The Commission July 7, 2010 Orders
8 specified that the construction audit/prudence review filing on August 6, 2010 was to address the
9 Iatan 1 AQCS costs with the Iatan Project Common Plant costs to be addressed in conjunction
10 with Iatan 2 costs later. Thus, Staff needed to remove the Iatan Common Plant costs from the
11 Iatan 1 AQCS costs to determine the actual costs for the Iatan 1 AQCS segment.

12 There is one component of the Iatan Project Common Plant Estimate that impacts the
13 Iatan 1 AQCS actual costs. The assignment of indirect costs to the Iatan Project Common Plant
14 Estimate is traceable to actual costs as KCPL assigned \$30,665,000 of Iatan 2 Project Indirect
15 Committed Costs at December 31, 2008. The Iatan 2 indirect costs assignment excluded
16 B&McD engineering costs because these costs were already considered in the Iatan Project
17 Common Plant Estimate.

18 While KCPL represented that its position to transfer its Iatan Project Common Plant
19 Estimate from the Iatan 1 AQCS and Iatan 2 budgets creates no increase to the Iatan Project
20 overall costs,^{vii} the Staff's risk assessment for this area indicates that KCPL's share of the Iatan
21 Project costs is influenced by the amounts transferred from the Iatan 1 AQCS, Iatan 2, and Iatan
22 Project Common Plant segments. KCPL is charged seventy percent (70%) of the dollars
23 assigned to Iatan 1, approximately fifty-five percent (54.71%)^{viii} for Iatan 2, and approximately
24 sixty-one percent (61.45%) for Iatan Project Common Plant. The transfer of Iatan Project
25 Common Plant Estimate from the Iatan 1 AQCS and Iatan 2 budgets increases KCPL's costs
26 from the Iatan Project by \$8,364,537. The following table shows the impact of the Iatan
27 Common Plant Estimate transfer on KCPL's Iatan Project costs:

1

A	B	C	D
Description	Dollars Transferred to Iatan Project Common Plant	Percent Increase or <Decrease> assigned to KCPL	Dollar Impact on KCPL (B x C)
Iatan 1 AQCS Dollars Transferred	\$114,109,251	<8.55%>	<\$9,756,351>
Iatan 2 Dollars Transferred	\$268,855,749	6.74%	\$ 18,120,877
Total	\$382,965,000		\$ 8,364,537

2

3 Since KCPL's percentage ownership in Iatan 2 differs from its percentage ownership in
4 Iatan 1, KCPL's share of the total Iatan Project cost is impacted by the amount of funds
5 transferred to Iatan Common Plant from Iatan 2.

6 Only Iatan 2 Indirect Costs are assigned to the Iatan Project Common Plant Estimate.
7 No Iatan 1 AQCS Indirect Costs are included in the Iatan Project Common Plant Estimate. This
8 appears to be unreasonable because the Iatan 1 AQCS direct costs being transferred represent
9 approximately 32%^{ix} of all the common plant direct costs being transferred from the combined
10 Iatan 1 AQCS and Iatan 2 budgets. This issue overstates the Iatan 1 AQCS costs and thus
11 increased the Iatan Project costs charged to KCPL.

12 KCPL stated that the reason Iatan 1 AQCS indirect costs were excluded from the cost
13 assignment of indirect costs to the Iatan Project Common Plant was that all indirect costs for the
14 Common Plant were charged to Iatan 2. Staff could not verify this proposition. If this
15 proposition were true, then there would be no need to use an allocation methodology to transfer
16 indirect costs from Iatan 2 to the Iatan Project Common Plant. If all the Iatan Common Plant
17 indirect costs were charged against the Iatan 2 budget, then the amount of those costs charged to
18 Iatan 2 should be transferred to the Iatan Project Common Plant, and no allocation process would
19 be necessary. Allocation methodologies are used when the amount of costs in question
20 (i.e., indirect costs) is not known and is commingled with other costs that cannot be separately
21 identified. Staff found no general accounting instruction requiring the charge of all Iatan Project
22 Common Plant indirect costs against the Iatan 2 budget.

23 Schedule 7, attached to this Report, is Staff's calculation of the Iatan 1 AQCS Indirect
24 Costs that should be assigned to the Iatan Project Common Plant Estimate. This schedule shows

1 that Staff recommends that \$12,658,815 of Iatan 1 AQCS Indirect Costs should be transferred
2 from the Iatan 1 AQCS June 30, 2010 costs to the Iatan Project Common Plant Estimate for the
3 Common Plant direct costs contained in the Iatan 1 AQCS project.

4 **C. May 23, 2008 Crane Accident Iatan 1**

5 *Staff Expert: Charles R. Hyneman*

6 As of June 30, 2010, the Iatan 1 AQCS project had recorded ^{**} [REDACTED] ^{**} related to the
7 May 23, 2008 Crane accident at the Iatan Project site in Weston, Missouri. It has been KCPL's
8 position that KCPL has no liability related to this event and is accumulating its costs with
9 AFUDC for reimbursement. ^{**} [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 ^{**} [REDACTED]
13 On June 11, 2008 in testimony before the Commission in Case No. EM-2007-0374,
14 KCPL personnel made statements that indicated KCPL would not have any financial
15 responsibility as a result of the May 23, 2008 Crane Incident. ^{**} [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 ^{**} [REDACTED] The Staff has not done a
20 detailed review of project costs to determine if the amount of direct charges and allocated KCPL
21 labor, benefit and overheard charges to the crane accident project are accurate and complete.
22 The Staff has relied on KCPL for the accuracy and completeness of this accounting.

23 **D. Project Development Costs**

24 *Staff Expert: Charles R. Hyneman*

25 Included in the Iatan 1 work order is \$1,081,116 charged to WBS code 5071, Project
26 Development. These costs consist mainly of consulting fees, internal KCPL labor, and legal fees
27 incurred from September 2004 through March 2006 for work on the Iatan Project. Instead of
28 trying to match these costs into the specific detailed WBS codes in the Cost Portfolio, KCPL
29 grouped all these costs into a single line item and labeled them "Project Development." Monthly

1 costs are not tracked in the cost portfolio prior to November 2006. In a review of the costs
2 charged to WBS 5071, Project Development, Staff noted \$426,017 in costs that are related to
3 Iatan 2 instead of Iatan 1, which should be charged to the Iatan 2 work order, along with the
4 associated AFUDC accrued on this amount. The charges are reflected below

Adaptive Ecosystem	Iatan 2 Section 404 Compliance	311,877
Spencer, Fane, Britt & Browne	Legal - Iatan 2 Permit	114,139
	Total	426,017

7 **E. Severance Adjustment**

8 *Staff Expert: Charles R. Hyneman*

9 KCPL charged \$41,568 in employment severance charges to the Iatan 1 and \$35,953 to
10 Iatan 2. In Staff Data Request No. 837, the Staff asked for a copy of the severance agreements
11 associated with the severance charges to the Iatan work orders. The severance agreements
12 involve three former employees. The Staff reviewed these documents on December 22, 2009, at
13 KCPL's headquarters. The severance agreements reviewed by the Staff contained the same
14 clauses of typical KCPL severance agreements. The severance agreements contain language
15 designed to protect KCPL officers and shareholders from potential litigation and embarrassment
16 in reciprocation for the payment of additional benefits, cash compensation, medical coverage
17 costs and outplacement services. KCPL requires the employee to waive and release any legal
18 claims the employee may have against KCPL for any reason and prohibits the employee from
19 making any disparaging or critical statements of any nature whatsoever about KCPL.

20 Staff asked KCPL why the cost was charged to the Iatan construction projects as opposed
21 to an operating expense. KCPL responded that "given that these employees were fully assigned
22 to the Iatan construction project at the time of the severance, the decision was made that the
23 severance cost should follow the labor cost and be charged to the construction project."

24 The Staff is proposing an adjustment to remove the severance charges from the Iatan
25 work orders for two reasons. First, the Commission ruled in a recent KCPL rate case,
26 Case No. ER-2006-0314, that severance costs should not be recovered from KCPL's ratepayers.
27 In addition, the severance payments charged to the Iatan work order are not capital costs that are
28 necessary to the construction of the Iatan 1 AQCS system and will not provide benefits over
29 future years. These charges are period costs which are charged to expense in the period incurred.

1 The Staff is proposing an adjustment to remove the severance payments charged to the Iatan
2 construction project.

3 **F. Campus Relocation for Unit 2 Turbine Building**

4 *Staff Expert: Charles R. Hyneman*

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

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

14 Kiewit's plan necessitated moving the existing campus trailers to provide the area for
15 laydown space. Additionally, Kiewit's new plan of where it wanted to locate erection cranes
16 caused concerns because Kiewit would be lifting loads near or over the campus. Each of the
17 trailers was moved approximately 100 feet east in the spring and summer of 2008.

18 Total cost incurred for the campus relocation through June 2010 is ^{**} [REDACTED] ^{**} Of this
19 amount, KCPL charged ^{**} [REDACTED] ^{**} to Iatan 1 and ^{**} [REDACTED] ^{**} to Iatan 2.

20 The only justifiable reasons why KCPL would agree to incur over ^{**} [REDACTED] ^{**} in costs to
21 relocate construction trailers at the Iatan site is

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

28 2) The cost savings or other benefits to the Iatan construction project
29 resulting from the relocation would exceed the cost of the relocation
30 charged to the project. In other words, the design and location of the
31 campus was sufficient for the successful completion of the project but a

1 change in the trailer locations would result in project savings and/or other
2 benefits that exceed the cost of the relocation.

3 The Staff requested a meeting with KCPL on this issue, and the meeting was held
4 on December 7, 2009. In attendance at this meeting was Mr. Eric Gould, a Schiff Project
5 Controls Analyst. Mr. Gould advised that the relocation resulted in cost savings. He advised
6 Staff that he was going to look for documentation of cost savings on the Balance of Plant
7 contract as a result of the ^{**} [REDACTED] ^{**} campus relocation. Subsequent to this meeting Staff has
8 been advised that Mr. Gould was unable to locate any documentation supporting a cost savings
9 associated with the campus relocation.

10 Staff Data Request No. 730 ask for the reasons why the trailers were moved KCPL
11 responded that the newly selected balance of plant contractor, Kiewit, found it necessary to
12 revise the existing campus trailer locations in order to make room for unloading the turbine
13 generator into the Iatan 2 turbine bay:

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

18 In the summer of 2007, the Balance of Plant contractor, Kiewit, developed
19 a revised plan for laydown space needed for access to the turbine
20 generator building. This plan included providing a new path for unloading
21 the turbine generator into the turbine bay. Kiewit's plan necessitated the
22 moving of the existing campus' trailers to provide the area for laydown
23 space. Additionally, Kiewit's plan of where it wanted to locate erection
24 cranes caused safety concerns because Kiewit would be lifting loads near
25 or over the campus.

26 Staff finds that the allocation of any costs of the campus relocation to the Iatan Project is
27 inappropriate. The reason for the cost appears to be a significant design error. The most
28 appropriate method for KCPL to recover these costs is to seek backcharges for the cost of this
29 work from the entity who was responsible for the design of the construction campus laydown
30 area.

1 **G. JLG Accident August 25, 2007**

2 *Staff Expert: Charles R. Hyneman*

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

9 In a September 27, 2007 letter from KCPL Iatan 2 Project Director Brent Davis to
10 Gary Lexa of Alstom, KCPL noted that it had completed an investigation of the JLG accident.
11 The investigation included conducting 12 soil compaction tests and the results of those tests
12 confirmed that the soil compaction was within specified tolerances. KCPL stated in this letter
13 that it therefore ruled out abnormal, unusual or unknown soil conditions as the cause of the JLG
14 accident. In this letter KCPL also advised Alstom it did not believe the JLG accident was a
15 compensable event.

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

- 19 1. Alstom had been operating the JLG in the area for several days and was
20 apparently satisfied with the soil conditions as no objections were
21 raised.
- 22 2. Following an August 24 rain storm & prior to operation of the JLG the
23 next day, Alstom should have checked the soil conditions as Alstom is
24 responsible for its construction means, manner and methods.
- 25 3. Alstom failed to notify KCPL of any soil issues
- 26 4. The JLG was mis-operated, which caused it to tip over.
- 27 5. KCPL promptly took action (at its own cost) to:
 - 28 1. Re-Check the Soil compaction in all applicable areas-
29 compaction found to either meet or exceed the specifications
30 requirements
 - 31 2. Install up to 2 feet of bottom/fly ash mixture to additionally
32 harden the surface.
- 33 6. The Balance of Plant contractor at the site uses steel plates for a level
34 working surface for its JLG's and it is unclear why Alstom did not
35 have the same policy if it was concerned about soil surface stability.

- 1 7. KCPL spent over ^{**} [REDACTED] ^{**} on the resurfacing and to date has never
2 asked Alstom for reimbursement, but now reserves its right to make a
3 claim against Alstom to recover this cost.
4 8. Based on the aforementioned, KCPL is not liable for any of the repair
5 cost of the damaged JLG.

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

7 In KCPL's December 2007 Iatan 2 & Common Status Report it was noted that on
8 December 10, 2007 Alstom was willing to split the cost of the JLG accident (which it estimated
9 to be approximately ^{**} [REDACTED] ^{**} with KCPL on a 50-50 basis. However, on December 11, 2007,
10 Alstom rescinded this offer.

11 ^{**} [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 ^{**} [REDACTED] ^{**} These two amounts add up to ^{**} [REDACTED] ^{**} and the
16 change order effecting this March 19, 2009 settlement agreement was in the amount of ^{**} [REDACTED] ^{**}
17 Of this ^{**} [REDACTED] ^{**} was charged to the Iatan 1 work order. This change order, number
18 AP00834X16072100834, was signed for KCPL on April 14, 2008 by Steve Jones, an
19 independent contractor hired by KCPL to work on the Iatan construction projects, and
20 Steve Easley, then KCPL Vice-President of Supply.

21 In a Change Order Supplemental Documentation Form attached to this change order by
22 KCPL on October 13, 2008, seven months after the JLG accident settlement agreement with
23 Alstom, KCPL reiterated its belief that operator error was the cause of the JLG accident, not soil
24 conditions. This supplemental change order documentation signed by Steve Jones and
25 Carl Churchman, former KCPL Vice-President of Construction, provided the rationale behind
26 KCPL's decision to pay Alstom ^{**} [REDACTED] ^{**} for costs for which KCPL believed it bore no
27 responsibility. The rationale was that KCPL wanted to "resolve these issues and keep the project
28 moving forward."

29 From Staff's review of the documentation surrounding the JLG accident, Staff concludes
30 that KCPL developed a strong case of why it bore no responsibility for the cost of this accident.
31 Staff does not believe it was reasonable and prudent for KCPL to enter into this settlement
32 agreement and pay any costs for the JLG accident. Staff is also concerned that KCPL agreed to

1 settle this issue at exactly what Alstom originally sought to recover from KCPL. The Staff is
2 recommending that no costs associated with the JLG accident "settlement" be charged to the
3 Iatan construction project.

4 **H. Construction Resurfacing Project**

5 *Staff Expert: Charles R. Hyneman*

6 Staff reviewed 48 documents related to KCPL's Construction Resurfacing Project that
7 were provided by KCPL in response to Staff Data Request No. 408 in Case No. ER-2009-0090.
8 Based on its review of these documents, Staff believes that all costs related to the resurfacing
9 settlement ^{**} [REDACTED] ^{**} total of which ^{**} [REDACTED] ^{**} was charged to Iatan 1) should not be included
10 in the costs of the Iatan construction project.

11 According to KCPL, based on concerns for safety, it conducted a Construction
12 Resurfacing Project on August 27, 2007 through September 27, 2007. The purpose of the project
13 was to ensure soil conditions would support heavy equipment resting and traveling on it, and
14 improve contractors' confidence that the soil would not be an impediment to safe operation.
15 According to KCPL it spent ^{**} [REDACTED] ^{**} on the resurfacing project including a change order in the
16 amount of ^{**} [REDACTED] ^{**} issued to List & Clark Construction Company. As a result of KCPL's
17 Construction Resurfacing Project, Alstom made claims for delays. KCPL strongly opposed
18 Alstom's claim, however, KCPL agreed to pay Alstom ^{**} [REDACTED] ^{**} to settle the claim.

19 This settlement is reflected in R&O 360. The costs of this settlement were challenged by
20 the KCC Staff in its Iatan 1 prudence review. The Staff is of the understanding that KCPL has
21 agreed not challenge the KCC Staff's adjustment to remove the costs of this settlement from the
22 Iatan Project.

23 The following is a statement of facts included in KCPL's R&O 360 approving the
24 settlement:

25 ^{**} [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]

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[REDACTED]

I. Employee Mileage Charges

Staff Expert: Charles R. Hyneman

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

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

KCPL eventually provided the data requested by Staff. In a supplemental response to Staff Data Request No. 787, KCPL provided the report "MPSC0787S - HC_Mileage_Empl_Info.xls" that included a list of all employees who charged mileage to the

1 Iatan Project (Iatan 1 environmental upgrades and/or Iatan 2), the employee's primary work
2 location, and his/her home address.

3 Staff compared this data with the data provided by KCPL in response to Staff
4 Data Request No. 643 in report "*Q0643_Mileage Reimbursement Charged to Iatan Projects.xls*"
5 showing a complete list of employees who received mileage reimbursements that were charged
6 to Iatan construction projects. A comparison of these two reports showed that KCPL reimbursed
7 \$51,113 of mileage charges to employees whose primary work location is listed as Iatan. KCPL
8 employees should not be reimbursed for regular commuting miles to and from their primary
9 work location. Staff is proposing an adjustment to the Iatan 1 work order to remove this amount
10 and the associated AFUDC.

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

17 After removing the mileage charges inappropriately provided to employees who were not
18 eligible for reimbursement because their primary work location was Iatan, the pool of mileage
19 charges remaining in the Iatan 1 work order as of May 31, 2009 was \$80,234. Staff made an
20 additional adjustment of ten percent of this amount, or \$8,023, to reflect a reasonable
21 approximation of actual overcharges that were made to the Iatan work order prior to
22 January 2008 and estimated overcharges made after January 2008. Given the weak internal cost
23 controls over mileage charges to the Iatan construction projects Staff believes that a 10 percent
24 adjustment of the remaining mileage charges is reasonable.

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

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

2 *Staff Expert: Charles R. Hyneman*

3 The Iatan 1 AQCS cost report at June 2010 includes ^{**}██████████^{**} in Project 05-00051 KCPL
4 Only related to costs originally incurred by KCPL's nonregulated affiliate, Great Plains Power
5 (GPP) in its nonregulated operations. The Iatan 2 June 2010 cost report includes similar GPP
6 costs of ^{**}██████████^{**} in work code 0050, Project Development and ^{**}██████████^{**} in Project 05-0052
7 KCPL Only. The KCPL Only projects were created by KCPL to segregate costs that KCPL
8 either cannot charge or has decided not to charge the other Iatan joint partners.

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

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

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

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

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

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

34 Around the time of early 2003, following the collapse of Enron and
35 concerns that the deregulated model was not in the best interests of serving

1 customers, the deregulation movement in Missouri and Kansas appeared
2 to be stalled.

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

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

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

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

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

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

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

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

6 Page 6 of GPE's 2005 Annual Report:

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

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

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

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

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

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

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

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

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

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

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

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

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

4 KCPL's response was:

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

11 Because KCPL has failed to show that any of the costs of the GPP "assets" acquired
12 provide any benefit to the Iatan Construction Project these costs should not be included in this
13 work order. In addition, until KCPL can show that the actual market value of these "assets"
14 were greater than the "cost" it paid to acquire these assets from an affiliate, no GPP acquired
15 asset cost should be included in any KCPL construction project.

16 **K. KCPL's July 18, 2008 Alstom Settlement Iatan 1**

17 *Staff Expert: Charles R. Hyneman*

18 In response to Staff Data Request No. 633 Staff reviewed Risk and Opportunity (R&O)
19 Analysis Sheets item numbers 367a, 367b and 367c prepared by KCPL on April 23, 2008. In
20 these R&Os, KCPL noted that it had evaluated Alstom claims against KCPL in the amount of
21 ^{**} [REDACTED] ^{**} resulting from what Alstom asserted were delays to Alstom's work on the
22 Iatan AQCS due to contract performance delays caused by KCPL and force majeure events.
23 KCPL's Iatan Project Team evaluated a potential cost exposure in the range of ^{**} [REDACTED] ^{**}
24 ^{**} [REDACTED] ^{**} For the purposes of its Iatan 1 cost projection, KCPL decided to carry these
25 claims at an amount of ^{**} [REDACTED] ^{**} and move this amount into the current budget.

26 In R&O number 367b, KCPL also noted that it believes it would be entitled to receive
27 liquidated damages from Alstom in the amount of ^{**} [REDACTED] ^{**} to ^{**} [REDACTED] ^{**} if Alstom
28 continued to fall behind schedule.

29 Because of the existing KCPL claims against Alstom and Alstom's claims against KCPL,
30 KCPL created a budget contingency amount for the Iatan 1 AQCS project for these claims.
31 KCPL calculated the budget contingency amount by including the ^{**} [REDACTED] ^{**} Alstom claim

1 reduced by KCPL's claim of liquidated damages against Alstom in a range of [REDACTED] to
2 [REDACTED] This amount was further reduced by the amount that KCPL moved into the
3 current budget of [REDACTED] for a net contingency range of [REDACTED] to [REDACTED]

4 In a settlement agreement between KCPL and Alstom executed on July 18, 2008, KCPL
5 and Alstom agreed to settle all existing claims by KCPL paying Alstom [REDACTED] an amount
6 that exceeded the high end of KCPL's contingency range.

7 Mr. Carl Churchman, KCPL's then Vice President of Construction submitted testimony
8 before this Commission in Case No. ER-2009-0089 on the July 18, 2008 Alstom Settlement
9 Agreement. In his March 11, 2009 rebuttal testimony, starting at page 3, line 4. Mr. Churchman
10 described his involvement in and his understanding of the terms of the agreement:

11 **Q: What was your involvement with the ALSTOM Settlement**
12 **Agreement?**

13 A: During my first week as Vice President of Construction, I was involved
14 in negotiation sessions with ALSTOM over the terms under which
15 ALSTOM's would agree to implement the revised Unit 1 baseline
16 schedule (the "Revised Unit 1 Schedule") that had been previously
17 established by the Tiger Team. As discussed by Company witness William
18 Downey, the Revised Unit 1 Schedule increased the outage length from
19 fifty-six to seventy-three days to accommodate all of the necessary outage
20 work. I was part of a team that engaged in direct negotiations with
21 ALSTOM's management in Bethesda, Maryland, at the offices of
22 Jonathan Marks, who facilitated those discussions. I continued to be
23 engaged in these negotiations over the next several months until the
24 ALSTOM Settlement Agreement was completed on July 18, 2008.

25 **Q: Are you familiar with the terms of the ALSTOM Settlement**
26 **Agreement?**

27 A: Yes. Under the ALSTOM Settlement Agreement, ALSTOM agreed to
28 [REDACTED]

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[REDACTED] These non conformance issues also carried considerable value to KCP&L because their resolution could have impacted KCP&L's ability to obtain an occupancy permit from Platte County.

The ALSTOM Settlement Agreement also included ^{**}
[REDACTED]
^{**}

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

Kris R. Nielsen, a consultant for KCPL, filed testimony on behalf of KCPL in Kansas Corporation Commission Docket No. 10-KCPE-415-RTS, KCPL's current rate case in which the prudence issues of Iatan 2 are being addressed. In his rebuttal testimony at page 41, line 19 in this docket, Mr. Nielsen addressed the issue of contractor claims on a construction project. Mr. Nielsen made the following statement in which the Staff is in agreement:

The fact that a claim was submitted on a project does not suggest that a management decision was imprudent. In fact, even the validity of a claim does not suggest that a management decision was imprudent. One must review and understand the circumstances giving rise to the claim, and the event to which an allegedly imprudent decision of management – based upon facts known or reasonably available at the time of the decision – caused the costs being claimed.

1 In its review of the ^{**} [REDACTED] ^{**} Alstom settlement the Staff attempted to understand the
2 circumstances which caused the claim. The Staff has concluded that both KCPL and Alstom
3 bear responsibility. Alstom was due payment for delays and other circumstances that appeared
4 to be under the control of KCPL or other contractors who work for KCPL. KCPL and not its
5 ratepayers should be charged these costs. If KCPL bears responsibility, it should absorb the
6 costs. If other vendors under KCPL's control on the project, such as its owner-engineer, caused
7 the costs to be incurred, these contractors should absorb the costs. KCPL's ratepayers should not
8 be responsible for bearing these costs. Likewise, if Alstom was the responsible party, it is
9 KCPL's responsibility to manage this project and hold Alstom accountable to comply with its
10 contract terms and conditions.

11 In accounting for the cost of the ^{**} [REDACTED] ^{**} settlement, KCPL made no attempt to
12 quantify the costs that may have been caused by its own project management team or the
13 owner-engineering firm it hired, Burns & McDonnell ("B&McD"), or any other Iatan 1
14 contractor or subcontractor. ^{**} [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 ^{**} [REDACTED] KCPL simply paid Alstom ^{**} [REDACTED] ^{**} and charged all ^{**} [REDACTED] ^{**} to the Iatan
21 Project.

22 ^{**} [REDACTED]
23 ^{**} [REDACTED] ^{**} Staff has found no
24 documentation supporting any reason for a change in KCPL's position ^{**} [REDACTED]

25 ^{**} [REDACTED] ^{**} The Staff is taking the position
26 in this case to remove the ^{**} [REDACTED] ^{**} settlement payment by KCPL to Alstom. In addition, the
27 Staff is reducing the cost of the Iatan Project by the ^{**} [REDACTED]

28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]

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3 1) ** [REDACTED]
4 [REDACTED]
5 [REDACTED]**

6 2) ** [REDACTED]
7 [REDACTED]
8 [REDACTED]**

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

14 An additional concern is that if the Alstom settlement is allowed to stand, KCPL's
15 customers will suffer the harm of KCPL management's decision** [REDACTED]
16 [REDACTED]** Staff is recommending that none of the** [REDACTED]** Alstom settlement costs be
17 included in the Iatan 1 work order and the Staff is adjusting the Iatan 1 work order to include the
18 ** [REDACTED]**

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

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

30 Mr. Roberts' comments were in response to a proposed KCC Staff adjustment, similar to
31 the MoPSC Staff adjustment in this case to remove costs of the Alstom settlement from the
32 Iatan 1 AQCS construction work order.

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

5 The Staff believes that it was likely that Alstom had legitimate claims against KCPL for
6 ^{**} [REDACTED]

7 [REDACTED]
8 ^{*} In addition, because of KCPL's inexperienced Project Management team, Alstom
9 was able to take advantage of this situation to the detriment of KCPL and potentially to KCPL's
10 ratepayers. To the extent Alstom did delay the completion of the Iatan Project, KCPL failed to
11 hold Alstom accountable.

12 In the March 2007, Ernst & Young Phase 1 Risk Assessment, ^{**} [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 [REDACTED]
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[Redacted text block 1-20]

[Redacted text block 21-25]

[Redacted text block 26-29]

a) ** [Redacted text block 30-31]

b) ** [Redacted text block 32-33]

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[REDACTED]

KCPL has not shown the Staff that paying ^{**}[REDACTED] ^{**}to Alstom to settle the outstanding issues was a prudent decision for KCPL's management from the interests of KCPL's ratepaying customers.

There is a lack of justification of this settlement put forth by KCPL, and is coupled with the findings of KCPL's own internal auditors that ^{**}[REDACTED]

L. KCPL's Iatan 2 Alstom Settlement

Mr. William Downey, KCPL's Chief Operating Officer signed the "Settlement Agreement Regarding Unit 2 ("January 2010 Alstom Settlement Agreement" or "Settlement Agreement") on January 13, 2010. This document was signed by Alstom on January 14, 2010.

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[REDACTED]

Because substantially all of the Alstom January 2010 Alstom Settlement Agreement payments were made after the Staff's June 30, 2010 cost cutoff date, the Staff will not be proposing an adjustment in this Audit Report. The Staff will address the costs of this Settlement Agreement in its January 2011 Iatan 2 and Common Audit Report.

Dr. Kris Nielsen, KCPL's Prudence witness on the Iatan Project in KCPL's Kansas rate case, made the following statement in his rebuttal testimony in Docket No. 10-KCPE-415-RTS at page 240:

Under its Fixed Price EPC contract, Alstom was responsible for these costs to recover delays unless the delays and inefficiencies were the result of actions by KCP&L or a third party responsible to KCP&L.

The Staff agrees completely with Dr. Nielsen's statement. Alstom has a fixed-price EPC contract. This means that Alstom is responsible for completing the contract work scope and charge KCPL no more than the firm fixed-price amount of the contract for that work scope. In fact, because Alstom takes on more monetary risk under a fixed-price contract than under a non fixed-price contract, it is assumed that the fixed-price contract bid includes an extra premium for taking on this monetary risk.

KCPL witness Ken Roberts of Schiff Harin points out in his rebuttal testimony in Docket No. 10-KCPE-415-RTS that it is not unreasonable for contract modifications or change orders to increase the price of a firm fixed-price contract. This is certainly true. There are several reasons why the cost of a firm fixed-price contract may be increased, such as increased scope of work and delays imposed upon the firm fixed-price contractor through no fault of its own. That

1 appears to be the cause of the increased cost of Alstom's firm fixed-price contract. Since KCPL
2 agreed to make these bonus payments, as Dr. Nielen states, "the delays and inefficiencies were
3 the result of actions by KCP&L or a third party responsible to KCP&L. If these delays and
4 inefficiencies were the result of actions by KCPL, KCPL's shareholders should absorb these
5 costs. If these delays and inefficiencies were the result of third parties responsible to KCPL,
6 KCPL's Project Management team should seek appropriate compensation for these bonus
7 payments it made to Alstom under this agreement. The Staff cannot see any reason why these
8 bonus payments to complete the work in the quality and timeframe included in the original cost
9 of Alstom's firm fixed-price contract should be paid twice by KCPL's customers. The Staff can
10 only identify ^{**} [REDACTED] ^{**} of costs related to this settlement charged to the Iatan 2 project as of
11 June 30, 2010. The Staff understands approximately ^{**} [REDACTED] ^{**} additional costs have been
12 charged to the project after June 30, 2010. The Staff will address these costs in its true-up
13 Iatan 2 audit report.

14 **M. Schiff Hardin, LLP**

15 *Staff Expert: Charles R. Hyneman*

16 Schiff Hardin, LLP, (Schiff) is a limited liability partnership, general practice law firm,
17 with offices located in Chicago, Illinois, among other cities. Although Schiff is a general
18 practice law firm, in addition to providing legal services to the Iatan construction project, it has
19 been assisting KCPL in its project management duties.

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

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

6 Schiff's total budget (the amount in KCPL's control budget estimate for Schiff) for work
7 on the Iatan 1 construction project is identified in KCPL's Iatan 1 Cost Report at \$154,314. This
8 document was received by the Staff in response to Staff Data Request No. 622. As of June 2010,
9 KCPL charged the Iatan 1 construction project with ^{**} [REDACTED] ^{**} of Schiff charges classified as
10 “Audit Services” and is budgeted to charge an additional ^{**} [REDACTED] ^{**} to the Iatan 1 AQCS
11 construction project for a total of ^{**} [REDACTED] ^{**}.

12 The cost overruns for Schiff extend to Iatan Unit 2. The first indication of a budget for
13 Schiff costs was in April 2006. At that time Schiff's scope of work was described as “outside
14 management oversight” (email from Joseph Freedman to Lori Wright on January 6, 2007 re:
15 Project List Matrix). In the Iatan 2 Cost Report, the total Schiff amount in the control budget
16 estimate is ^{**} [REDACTED] ^{**}. The current budget for Schiff is ^{**} [REDACTED] ^{**}. To get to the current
17 budget from the Control Budget Estimate, KCPL had to allocate ^{**} [REDACTED] ^{**} of Project
18 Contingency to Schiff's scope of work. As of June 30, 2010, KCPL has charged Iatan 2 a total
19 of ^{**} [REDACTED] ^{**} for project oversight, Iatan contracts and legal services and this amount is
20 expected to increase by an additional ^{**} [REDACTED] ^{**} by project completion.

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

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

1 Each of the three audit procedures are described below. Based on this analysis, the Staff
2 is proposing three adjustments to the Schiff costs charged to the Iatan construction project.
3 These adjustments effectively reduce the hourly rate for services charged by Schiff employees
4 and subcontractors for both project management and legal consulting, eliminate an estimated
5 amount of unsupported travel and other expenses, and remove costs charged to the project
6 without the support of invoices.

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

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

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

- 22 1. ^{**} [REDACTED] ^{**}
- 23 [REDACTED]
- 24 2. ^{**} [REDACTED] ^{**}
- 25 [REDACTED]
- 26 [REDACTED] ^{**}
- 27 3. ^{**} [REDACTED] ^{**}
- 28 [REDACTED]
- 29 [REDACTED]
- 30 [REDACTED] ^{**}

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

- 33 1. ^{**} [REDACTED] ^{**}

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9 At the KCPL rate case hearings at the Kansas Corporation Commission (KCC) on August 19,
10 2010, Mr. Downey explained to KCC Commissioner Ward Loyd how Schiff was selected. In
11 response to Commissioner Loyd's question as to how Mr. Downey became aware of the services
12 of Schiff, Mr. William Downey, as KCPL's President and Chief Operation Office, as noted in
13 the hearings transcript on that date, replied:

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

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

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

33 In Staff Data Request No. 410, the Staff asked for KCPL to provide documentation
34 identifying all qualified vendors who could provide independent oversight and project controls
35 advice for Iatan 1 construction activities. The Staff also asked for a list of all vendors who were

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

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

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

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

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

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

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

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

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

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

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

35 When directly asked in Staff Data Request No. 410.1 question 2 for the specific process
36 KCPL used in its search to show that Schiff is the only company that can provide these services,
37 KCPL could not identify any process it performed but simply responded that it "has been unable

1 to identify a law firm in the Midwest that has Schiff Hardin's construction law and in-house
2 project controls experience as it relates to building base load power plants.”

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

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

20 In response to Staff Data Request No. 410.2 KCPL indicated that Schiff was selected by
21 KCPL's President and Chief Operating Officer, William Downey, based on information
22 Mr. Downey obtained from other utility executives with experience with Schiff. According to
23 KCPL, based on the information provided from other utility executives with extensive
24 experience with Schiff, Mr. Downey identified Schiff as a firm that had expertise in project
25 controls, construction law and regulatory experience specific to the construction of large base
26 load generation. The resumes of numerous construction law practice groups throughout the
27 country were reviewed. Schiff was the only law firm that KCPL contacted.

28 When the Staff inquired in Staff Data Request No. 410.2 as to the rationale for limiting
29 its search for qualified vendors to the Midwest, KCPL responded that it believed it would be
30 “beneficial to engage a law firm that was familiar with the major construction contractors
31 working on projects in the Midwest as well as the regulatory environment in the Midwest.” In

1 response to Staff Data Request No. 410.2 KCPL was asked to describe its understanding of the
2 regulatory climate in the Midwest as opposed to the regulator climate in other regions in the
3 country and why an understanding of the regulatory climate in the Midwest is a relevant
4 consideration in the selection of a vendor to perform the role Schiff performs for the Iatan
5 Projects. KCPL replied that:

- 6 A. A utility that is held to a prudence standard in a regulatory environment needs to put
7 different policies, procedures and rigor around its decision making than a utility
8 responsible for a major construction project that is not subject to regulatory scrutiny.
9
- 10 B. A state public utility's policy preferences and the tradeoffs made by a PUC are likely
11 to have significant consequences on a utility and its customers. This is what was
12 meant by the use of the phrase "regulatory climate."
13
- 14 C. KCP&L believes that Schiff's knowledge of policies and procedures utilized by other
15 regulated utilities on large construction projects has provided added value in terms of
16 preparing for and participating in KCP&L's rate cases.

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

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

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

31 In Staff Data Request No. 410.1, Staff asked KCPL how it determined that the legal rates
32 and paralegal rates used by Schiff were reasonable. KCPL's response was that "among other
33 things, KCP&L made these determinations based on data gathered from its own records and its
34 general knowledge of legal rates for complex legal work." When asked in Staff Data Request

1 No. 410.2 to define “among other things”, KCPL responded that “it relied primarily on its
2 records its general knowledge of legal rates. In addition, KCP&L’s attorneys periodically review
3 industry publications regarding legal rates.” When asked to provide a copy of these records,
4 KCPL responded that it did not maintain a list of the records it reviewed.

5 For the Iatan 1 project, KCPL estimated that it will pay Schiff approximately ^{**}██████████^{**}
6 For the Iatan 2 project, KCPL estimated it will pay Schiff an additional ^{**}██████████^{**} Besides the
7 fact that these estimated costs exceed budgeted amounts by significant amounts, the fact that
8 KCPL will pay ^{**}██████████^{**} in construction-related work to a vendor without a competitive bid is
9 a major concern to the Staff.

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

13 The Schiff contract was entered into on January 17, 2007. The contract states that Schiff
14 is retained by KCPL to perform and render for KCPL's executives and KCPL’s legal,
15 procurement, and engineering departments, professional services in accordance with Schiff
16 Hardin LLP Roles and Responsibilities for KCPL Comprehensive Energy Plan Projects. The
17 executive summary of Attachment A to this contract, Schiff Hardin LLP Roles and
18 Responsibilities for KCP&L Comprehensive Energy Plan Projects, states:

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

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

28 Moreover, Schiff will be available to KCP&L as a resource throughout the
29 CEP Projects. Schiff recognizes it is vitally important to identify to
30 KCP&L methods for analyzing, correcting and averting potential errors in
31 Project Controls methodology, planning, scheduling, budgeting and/or
32 field performance Project reporting before such could have an impact on
33 the CEP Projects. As such, Schiff commits to reviewing the data provided
34 by KCP&L on a real-time basis and providing immediate commentary and

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

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

Staff DR 409 Schiff Contract

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

	2005	2006	Inc	2007	Inc	2008	Inc	2009	Inc	2010
Paralegal	** [REDACTED] **	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] **
Paralegal	** [REDACTED] **	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] **
Partner	** [REDACTED] **	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] **
Partner	** [REDACTED] **	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] **
Equity Partner	** [REDACTED] **	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] **

As of November 3, 2010, the Staff has not yet received any invoice from Schiff describing the work Schiff's employees performed for Iatan 1 or Iatan 2 in any month in 2010. The last invoice received by the Staff (and to the Staff's knowledge KCPL) has been for work performed in 2009. In discussions with KCPL the Staff learned that KCPL has not received any invoices for Schiff employees who performed work on the Iatan Project since the work performed in 2009. Because Schiff has not provided KCPL with any invoices to support cost charged to the Project, the Staff was forced to remove all Schiff charges from the Project for the months of December 2009 through June 2010, approximately [REDACTED].

As reflected in the chart above, even though the hourly rate increases have moderated somewhat in 2009, the increases charged to KCPL over the period 2005 through 2009 appear to

1 be excessive, especially in this time of a distressed economy with significantly high
2 unemployment rates and a heavy downward pressure on compensation increases.

3 In its attempt to determine how KCPL found the Schiff annual rate increases to be
4 reasonable, the Staff first reviewed the KCPL-Schiff contract. ^{**} [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]**

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

13 KCPL attached three documents to this data request response. These documents include a
14 January 5, 2009 memo from Schiff to KCPL advising KCPL of the 2009 Schiff billing rates, one
15 document listing the names and hourly rates of the Schiff employees and consultants from
16 2005 through 2009, and a March 15, 2007 email from Schiff to KCPL providing the Schiff
17 billing rates since Schiff started working at KCPL. No documentation was provided that
18 indicated KCPL approved any Schiff hourly rate increases.

19 KCPL's statement that it "generally" approved Schiff rate increases verbally coupled
20 with the fact that it has no documentation supporting written approval indicates that KCPL has
21 either approved the rate increases orally or had not approved the rate increases at all. The fact
22 that KCPL intentionally decided not to enforce the terms and conditions of its contract with
23 Schiff that require rate increases to be approved in advance is a serious matter. Likewise,
24 approving significant cost increases orally is a serious matter and is an indication of weak
25 internal control respecting the incurrence and disbursement of Iatan construction project funds.

26 An example of Schiff hourly rates being excessive should have been abundantly clear to
27 KCPL after Mr. Steve Jones transferred from a KCPL Procurement advisor on one day to being a
28 Schiff Procurement subcontractor the next day, and his hourly rate increased from ^{**} [REDACTED] ^{**} per hour
29 to ^{**} [REDACTED] ^{**} per hour overnight.

30 KCPL and Steve Jones entered into an Independent Contractor Agreement (Agreement)
31 to provide procurement services for the Iatan Projects for the period March 16, 2006 through

1 March 16, 2008. Under the Agreement, Mr. Jones was required to be available to provide
2 procurement services as reasonably requested by KCPL and its affiliates. ** [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED]**

11 Mr. Jones filed rebuttal testimony on behalf of KCPL in Case No. ER-2009-0089 on
12 March 10, 2009. In his rebuttal testimony he explains that he was an independent contractor
13 working for KCPL as Senior Procurement Director and he was at that time responsible for all
14 procurement activities for KCPL's Comprehensive Energy Plan. He also states that he was
15 responsible for the commercial management of all contracts and contract administration as well
16 as material management and distribution.

17 While the Staff does not know the exact date KCPL and Mr. Jones ended their
18 Agreement, Mr. Jones started to work for Schiff in the exact same capacity as he did for KCPL.
19 The only difference is that as an independent contractor Mr. Jones charged KCPL ** [REDACTED] ** per hour.
20 As a Schiff subcontractor, Mr. Jones currently charges KCPL ** [REDACTED] ** per hour.

21 The contract between Schiff and KCPL lists the ** [REDACTED]
22 [REDACTED]

23 ** [REDACTED] ** The contract also includes the ** [REDACTED]
24 [REDACTED] ** Staff has not been provided with any updates, change orders or
25 other modifications to the contract between Schiff and KCPL to authorize the work of Mr. Jones
26 and his ** [REDACTED] ** per hour compensation.

27 In a supplemental response to Staff Data Request No. 415, KCPL provided three invoices
28 for Mr. Jones' work submitted by Schiff. As shown below, Schiff charged KCPL ** [REDACTED] **
29 in excess of what KCPL would have been billed by Mr. Jones (if he had remained working as an
30 independent contractor for KCPL at ** [REDACTED] ** per hour) in only a four month period of April 2009

1 through July 2009. The Staff included in its Schiff adjustment a reduction to Mr. Jones'
2 compensation to a more reasonable level.

3

Months	Hours	Schiff Rate	KCPL Rate	Diff	Excess charge
April and May 2009	** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]**
June 2009	** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]**
July 2009	** [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]**

4

5 **N. Schiff Adjustments**

6 As noted above, to reduce the likelihood that inappropriate costs are charged to the Iatan
7 construction project, the Staff found it necessary to make adjustments to remove inappropriate,
8 excessive and unsupported Schiff costs from the Iatan Project.

9 The only reasons why these adjustments are necessary is that KCPL, in violation of its
10 own procurement policies issued a sole source contract to Schiff which resulted in additional
11 costs of approximately for [REDACTED] for Iatan 1 and [REDACTED] for Iatan 2. KCPL provided
12 no basis to the Staff that the costs charged by Schiff were fair and reasonable as it issued no
13 request for proposals for this work, contacted no other vendors about this work, and did not do
14 any formal study or analysis about the costs proposed to be charged by Schiff. Finally, KCPL
15 did not convincingly justify its failure to enforce the terms and conditions of its contract with
16 Schiff.

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

24 Finally, as noted above, a further indication of the apparent lack of concern about the
25 costs charged by Schiff was KCPL acquiescence in Schiff hiring the KCPL Procurement
26 Director, Steve Jones, and allowing Schiff to charge KCPL [REDACTED] per hour for the exact same
27 service KCPL has been paying [REDACTED] per hour.

1 **1. Travel and other expenses adjustment**

2 In its review of Schiff invoices, the Staff found that Schiff has charged the construction
3 project hundreds of thousands of dollars in travel expenses, with virtually no document support.

4 In October 2007 alone, Schiff charged KCPL ^{**} [REDACTED] ^{**} in travel expenses. ^{**} [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] ^{**}

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

14 Staff made a specific inquiry to KCPL about the lack of receipts for expenses included in
15 the Schiff invoices, and KCPL indicated that no additional documentation was available.

16 Because of KCPL's failure to require Schiff to comply with the terms of its contract ^{**} [REDACTED]

17 ^{**} [REDACTED] Staff was unable to audit and

18 assess the reasonableness of the expenses Schiff charged to KCPL.

19 Question No. 0881

20 1. Reference Schiff Hardin Invoice No. 1366223 dated 3/31/09. Please
21 provide a copy of all receipts received by KCPL in support for Schiff's
22 request for payment of ^{**} [REDACTED] ^{**} in travel, meals and other expenses
23 excluding the ^{**} [REDACTED] ^{**} charge for professional services. Please provide
24 the date the receipts were received. If no receipts were received to support
25 these expenses please explain how KCPL determined the expenses were
26 reasonable and prudent.

27 2. Reference Schiff Hardin Invoice No. 1357268 page 70 dated 2/28/09.
28 Please provide a copy of all receipts received by KCPL in support for
29 Schiff's request for payment of travel, meals and other expenses. Please
30 provide the date the receipts were received. If no receipts were received to
31 support these expenses please explain how KCPL determined the expenses
32 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.

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

18 **2. Hourly rate adjustment for Project Management duties**

19 Staff reviewed invoices submitted by Schiff 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 are at times significantly in excess of the hourly rates charged
23 by other consultants with equal or greater experience than Schiff who provided similar services
24 to the project as Schiff.

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

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

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

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

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

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

26 Q: Please describe Schiff's oversight role.

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

- 29 (1) utilize their industry expertise to review and validate the
30 essential milestone dates and critical path activity durations needed
31 to achieve the critical in-service dates for Iatan Units 1 and 2, the
32 LaCygne 1 SCR, and the Spearville 1 wind project in accordance
33 with the Stipulation;

1
2 (2) provide procurement advice regarding potential contracting
3 methods for each of the CEP Projects based on Schiff's
4 considerable experience with major procurements in the utility
5 construction industry;

6
7 (3) assist KCP&L in the development of and procurement of the
8 goods and services needed for the CEP Projects,

9
10 (4) provide project oversight and reporting to the Senior
11 Management of KCP&L,

12
13 (5) assist the CEP Projects teams with developing appropriate and
14 industry standard project controls standards and metrics, and

15
16 (6) assist KCP&L in the development of policies and procedures
17 for the cost and schedule management of the CEP Projects.

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

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

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

28 When Carl Churchman joined KCP&L in May, 2008 Mr. Churchman
29 contracted with LogOn Consulting to conduct an assessment of the status
30 of the project regarding procedures, human and technological resources,
31 organization of staff and management, policy and administrative controls,
32 and contract management. This portion of the engagement with LogOn
33 was intended to serve two purposes. One was to identify opportunities for
34 improvement and take appropriate actions. For instance, KCP&L moved
35 from a largely manual cost tracking system to a more automated system.
36 Second, was to create a template or a manual of how to execute major
37 capital construction projects based on the information available from the
38 Iatan projects. This manual would then be available and applicable for
39 future use in any large capital construction projects. The manual is not
40 complete; however, drafts of the various documents are provided in the
41 attachment. Any final documents (1000-5000) are also attached.

1 Completion of the manual is dependent on time to meet with other
2 impacted groups within the Company prior to issuance of a final manual.
3 Any actions required pursuant to the assessments in the attached
4 documents have been accomplished throughout the past 12 months.

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

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

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

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

28 Project Assurance Program: LogOn will work with a client to design,
29 develop and deploy a program aligned with the specific functions and
30 conditions. The following services would be performed as part of the
31 Project Assurance Program. The content of the program can include
32 overall project strategies, project planning and development, engineering
33 and design, site selection, licensing, construction, litigation/claims, rates
34 and regulatory (including prudence verification) and on-going operations.

35 Risk Assessments/Management: LogOn offers complete set of risk
36 assessment and management services needed for large complex projects.
37 Our services reflect specific electric utility experience tuned to the

1 evolving functions on various assets configuration as well as the accepted
2 risk profile of an individual utility. Further, our approach incorporates the
3 latest governance and internal controls demanded by all stakeholders.

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

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

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

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

33 Prudence Support/Rate Recovery: LogOn provides services to support the
34 management and execution of the steps to justify project expenditures and
35 recover costs through the regulatory process. LogOn provides advisory
36 services to support strategies consistent with regulatory requirements to
37 demonstrate the prudence of project expenditures and actions. Our
38 experienced personnel can establish the framework necessary to define
39 and explain the actions of key project participants and the
40 contemporaneous actions of management.

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

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Also in response to Staff Data Request No. 652, KCPL provided a copy of the invoices submitted by LogOn for May 2009 and other months. The hourly rate charged by the most senior Project Management consultants for May 2009 was [REDACTED] per hour. Mid-level personnel billed at [REDACTED] per hour. The lowest rate charged was [REDACTED] per hour. Taking a weighting of 40 percent to [REDACTED] 40 percent to [REDACTED] and 20 percent to [REDACTED] resulted in a weighted average rate for LogOn of [REDACTED] per hour. The Staff used this [REDACTED] per hour as a reasonable rate for experienced project management services. As reasonableness check on this rate the Staff calculated the average hour rate charged by Logon to KCPL for work on Iatan 2 in April 2010. The average rate for this month was [REDACTED] per hour.

18

LogOn Invoice April 2010

Hours	Rate	Dollars
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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As a check on the reasonableness of the fees charged by Schiff for non-legal services the Staff used the hourly rate of Mr. Tom Maiman, who, as described above is a subcontractor for Schiff on the Iatan Project. Mr. Maiman charged KCPL, through Schiff, [REDACTED] per hour for consulting work in 2006. Increasing this hourly rate by 3 percent per year results in a 2009 rate of [REDACTED]. This rate is comparable to this top range of the LogOn rate and appears to be a reasonable rate for Mr. Maiman's level of experience even considering the high overhead rate charged by Schiff to KCPL for subcontracted services.

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

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

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

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

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

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

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

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

1 of [REDACTED] per hour for the paralegal employee with greater than 20 years of experience in lieu of
2 the [REDACTED] per hour paralegal fee charged by Schiff to KCPL.

3 **3. Schiff Hourly rate adjustment for legal services**

4 One of the services included in the KCPL-Schiff contract called for Schiff [REDACTED]
5 [REDACTED]
6 [REDACTED] Because Schiff was hired
7 to assist KCPL's in-house attorneys, Staff attempted to determine the reasonableness of Schiff's
8 hourly rates for legal services.

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

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

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

29 * * * *

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

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

10 * * * *

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

17 The Laffey Matrix can be found on the United States Attorney's Office for the District of
 18 Columbia's website: http://www.justice.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_7.html

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

LAFFEY MATRIX 2003-2010

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

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

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

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

5 For example, in 2009 Mr. Roberts billed KCPL ^{**} [REDACTED] ^{**} for each hour he worked on Iatan.
6 His 2010 rate is not yet known by Staff. According to the Laffey Matrix and his experience
7 level, a reasonable rate for this type of service in the Washington, D.C. area is \$465 per hour.
8 The Staff estimated that 40 percent of the Schiff Iatan construction project legal services were
9 performed by Mr. Roberts, so bundled in a Staff-calculated fair and reasonable legal rate is 40
10 percent of a \$465 per hour rate less a 10 percent volume discount. Also included in this weighted
11 legal rate is a 20 percent weighting of the Staff adjusted rates for two other Schiff attorneys who
12 spent many hours on Iatan construction legal issues and a 20 percent weighting of a Schiff
13 paralegal employee using Laffey rates and a volume discount.

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

15 *Staff Expert: Keith A. Majors*

16 **Definition**

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

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

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

31 4 CSR 240-20.030 Uniform System of Accounts—Electrical Corporations

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

5 * * * *

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

11 **1. Additional AFUDC due to Iatan 1 Turbine Start-Up Failure**

12 *Staff Expert: Keith A. Majors*

13 On February 4, 2009, the Iatan 1 turbine tripped during start-up activities due to vibration
14 in the turbine that was beyond its operating parameters. This event occurred following the
15 replacement of the high pressure turbine by KCPL contractor General Electric. The turbine
16 replacement and costs associated with the turbine incident were not within the scope of the
17 Iatan 1 AQCS project and are similar to other period or capital costs not within the scope of this
18 audit such as fuel, maintenance, etc. The unit was repaired and returned to availability for
19 in-service testing on March 9, 2009. The 33 day delay of the unit's ability to perform in-service
20 testing increased the amount of AFUDC accrued on the balance of Iatan 1 plant in construction
21 as it could not be declared in-service until April 19, 2009. It is Staff's belief that the increase in
22 AFUDC accrued during the 33 day delay should be removed from the plant balance of the
23 Iatan 1 AQCS and charged to the work order capturing the costs for the turbine trip. The
24 prudence of the costs of the turbine trip including this additional AFUDC is out of the scope of
25 the Iatan 1 AQCS audit and should be examined in the rate proceeding as these costs are not
26 related to the Iatan 1 AQCS or the Iatan Common Plant needed to operate Iatan 1. Additionally,
27 these costs are unrelated to the Iatan 2 project and would not be evaluated in an audit of Iatan 2
28 costs. If the appropriateness for recovery of the costs of the turbine trip is examined and
29 established, then KCPL should include the incremental AFUDC on the Iatan 1 AQCS at that
30 time net of any adjustments. Staff is addressing the inclusion of the AFUDC in the work order
31 capturing the costs of the turbine trip in the current pending rate case, File No. ER-2010-0355.

1 **2. Additional AFUDC Caused By GPE Acquisition of Aquila**

2 *Staff Expert: Keith A. Majors*

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

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

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

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

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

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

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

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

1 IT IS ORDERED THAT:

2 * * * *

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

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

17 **3. Adjustment of the Equity Rate Used in Calculation of AFUDC**

18 *Staff Expert: Keith A. Majors*

19 Staff analyzed the equity rate used in the calculation of AFUDC for the Iatan Projects.
20 The FERC USOA identifies under Electric Plant Instructions, paragraph 17, subparagraph (b),
21 that:

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

26 Beginning January 1, 2007, the effective date of the rate increase resulting from Case
27 No. ER-2006-0314, the equity rate for AFUDC on Iatan 1 was 11.25%, the equity rate awarded
28 in that proceeding. For Iatan 2, the equity rate for AFUDC was 8.75%. Prior to January 1, 2007,
29 KCPL used an equity rate purported to be the result of Case No. HO-86-139 (In the matter of the
30 investigation of steam service rendered by Kansas City Power & Light Company). Staff
31 examined the Commission Report and Order in this case, which was not a rate case, but rather a
32 case to determine the future of KCPL's district steam service. No return on equity determination

1 was made in that case. In response to Staff Data Request No. 719, Case No. ER-2009-0089,
2 KCPL could not substantiate the equity rate used during the eight months of 2006 prior to
3 January 1, 2007. The stated equity rate during this time period was 12.50%.

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

12 **4. Additional AFUDC due Transfer of Iatan 1 Common Plant**

13 *Staff Expert: Keith A. Majors*

14 The common plant transfer from Iatan 1 AQCS discussed in a previous section of this
15 Report has an effect on the AFUDC that KCPL is allowed to accrue. The amount of plant
16 transferred in April 2009 from Iatan 1 AQCS to Iatan Common Plant needed to operate Iatan 1
17 was \$113,767,821. This plant had accrued AFUDC for the duration of the project under the
18 premise that it was Iatan 1 plant of which KCPL owns 70%. When the plant was transferred to
19 Iatan Common Plant, KCPL's ownership became 61.45%. Because KCPL owns different
20 percentages/portions of Iatan 1 AQCS and Iatan Common Plant, it should not be entitled to
21 accrue AFUDC on the portion of the differential in this instance. Staff also transferred a portion
22 of Iatan 1 Indirects to Iatan Common Plant in a previous section of this Report. The Staff is
23 proposing an adjustment based upon the differential, the difference between 70% and 61.45% or
24 8.55%, of the AFUDC accrued on the Iatan 1 plant and Iatan 1 Indirects transferred to the
25 Iatan Common Plant.

26 **X. Section 48A Advanced Coal Project Tax Credit AFUDC**

27 *Staff Expert: Keith Majors*

28 On October 30, 2007, KCPL applied for \$125 million in Internal Revenue Code (IRC)
29 Section 48A federal advanced coal investment tax credits (ITC) on. On April 28, 2008, KCPL

1 received a letter from the Department of Treasury accepting KCPL's application and allocating
2 \$125 million of IRC Section 48A credits to the Iatan 2 Construction Project. In the response to
3 Data Request No. 386 in File No. ER-2010-0355 KCPL stated that it generated and used
4 \$29,151,583 of advanced coal credits on the 2007 Great Plains Energy (GPE) consolidated
5 federal return. KCPL generated Section 48A credits of \$46,921,017 and \$31,214,900 in 2008
6 and 2009, respectively, but have not been used to offset GPE's tax liability.

7 In Staff's March 9, 2010 "Staff's Reply to KCPL's and GMO's February 16, 2010 Initial
8 Response", Staff attached to its filing an arbitration decision dated December 30, 2009. This
9 arbitration decision ordered KCPL and Empire to apply to the Internal Revenue Service (IRS) to
10 amend the Memorandum of Understanding (MOU) to allow Empire District Electric (Empire) its
11 fair share of the tax credit, as well as a prorated share of KEPCO's and MJMEUC's ownership
12 share of the tax credit. KEPCO is a tax exempt organization under Section 503(C)(12)(B) of the
13 Internal Revenue Code and MJMEUC is a political subdivision of the State of Missouri and both
14 are unable to utilize these federal tax credits. The total amount allocated to Empire is
15 \$17,712,500, leaving KCPL \$107,287,500.

16 In the response to DR 386, KCPL stated that "GMO would likely not have been able to
17 utilize the tax credits since it was not paying income taxes due to significant net operating
18 losses." Upon acquiring GMO, GPE was able to utilize the net operating losses against current
19 income on its consolidated tax return, creating a carry forward of the coal tax credit. If not for the
20 non-regulated net operating loss carry forwards, both KCPL and GMO could have utilized the
21 coal tax credits to offset current income tax creating a source of cash flow to finance Iatan 2, the
22 very reason why KCPL and GMO would have received the tax credits. In prior GMO rate cases,
23 Staff did not reflect the benefits or the costs of the non-regulated operations of GMO, then
24 Aquila, which would include net operating loss tax benefits. Staff is continuing the practice of
25 shielding customers from the effects of non-regulated operations in the current pending rate case,
26 File Nos. ER-2010-0355 and ER-2010-0356.

27 As discussed in an earlier section of this report, AFUDC includes a reasonable rate on other
28 funds used for financing a construction project. The coal tax credits would have been an interest
29 free source of cash flow for KCPL and GMO to use to finance the Iatan 2 construction project
30 had it not been for the use of the non-regulated net operating losses used in 2008 and 2009.
31 Therefore, Staff recommends an adjustment to remove the AFUDC on the coal tax credit funds

1 with a portion of the funds to KCPL and GMO, based on their share of the Iatan 2 project net of
2 Empire's share of the tax credit.

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

4 *Staff Expert: Keith A. Majors*

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

12 **XI. Excess Property Taxes Transferred from Iatan 1 to Iatan Common**

13 *Staff Expert: Keith A. Majors*

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

22 **XII. Cushman & Associates**

23 *Staff Expert: Charles R. Hyneman*

24 In Staff Data Request No. 943, KCPL was asked to describe how the awarding of a
25 purchase order or other awards to Cushman & Associates ("Cushman") was made in accordance
26 with KCPL/GPES Procurement Policy GPES-E100 Competitive Bidding requirements. KCPL
27 responded that it would not be appropriate to apply KCPL's rule for competitive bidding to

1 Cushman because Cushman has previous knowledge of KCPL and had in the past worked with
2 some of its employees:

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

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

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

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

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

- 30 1. [REDACTED] **
- 31 2. [REDACTED] **
- 32 3. [REDACTED] **
- 33 4. [REDACTED] **
- 34 5. [REDACTED] **
- 35 6. [REDACTED] **
- 36 [REDACTED] **

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7.** [REDACTED]
8.** [REDACTED]
9.** [REDACTED]

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

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

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

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

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

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

21 **XIII. Permanent Auxiliary Electric Boilers**

22 *Staff Expert: Robert E. Schallenberg*

23 Staff proposes to transfer \$633,493 from the Iatan 1 AQCS costs to the Iatan Project
24 Common Plant costs related to the placement of three (3) additional permanent auxiliary electric
25 boilers at the Iatan site. Auxiliary boilers are extra boilers used to produce steam when the main
26 boiler is not producing enough steam for the plant's needs. Prior to the Iatan Project, two (2)
27 permanent auxiliary boilers existed at the Iatan site to support the operation of the Iatan 1
28 generating plant.

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

1 information regarding this matter is contain in Staff's discussion of its adjustment to Iatan 2 for
2 the use of these temporary boilers in lieu of the use of these permanent boilers being completed
3 earlier to provide the necessary steam to support the Iatan 2 start up activities. The costs
4 associated with the Temporary Auxiliary Boilers are reflected in the Iatan Unit 2 cost report.
5 These boilers are currently operational.

6 The Iatan Project developed an integrated schedule to expedite the design, procurement
7 and construction of the three (3) permanent auxiliary electric boilers. Design and procurement
8 activities are in progress. Currently, the contract for the manufacturing and installation of the
9 permanent auxiliary electric boilers is under negotiation and has not been awarded. Construction
10 is scheduled to meet the commissioning date for Iatan 2 by the end of 2010. KCPL plans for the
11 three (3) new permanent electric boilers at Iatan to be cross-tied to the two existing Iatan Unit 1
12 auxiliary boilers. All five (5) permanent auxiliary boilers will be piped to feed steam to both
13 Iatan Units 1 and 2 as needed.

14 The costs associated with the three (3) permanent auxiliary electric boilers are in the
15 Iatan Unit 1 Cost Report which were provided as attachments to the Kansas City Power & Light
16 Company's Strategic Infrastructure Investment Status Report for First Quarter 2010. The costs
17 for the three (3) permanent auxiliary electric boilers are in lines X035 (Mechanical
18 Contracts-Permanent Auxiliary Boilers) and 5038 (Indirect Costs-Burns & McDonnell
19 engineering) of the Iatan Cost Portfolio. The forecasted costs for these lines at the end of
20 April 2010 are \$7.6 million for X035 and \$0.4 million for 5038, for a total of \$8.0 million.

21 These boilers will serve both Iatan Units 1 and 2 and therefore the costs for this
22 equipment should be charged to the Iatan Common Plant work order. KCPL expects the total
23 cost of the three (3) permanent auxiliary electric boilers to be \$7,577,732 with costs continuing
24 to be incurred at least through December 2010. These costs are beyond the scope of this Report.

25 **XIV. Adjustments from KCC Staff Iatan 1 Audit**

26 *Staff Expert: Charles R. Hyneman*

27 Adjustments from KCC Staff Iatan 1 Audit

28 As noted above, the KCC Staff has addressed the Iatan 1 prudence disallowances in
29 KCPL's 2010 rate case, Docket No. 10-KCPE-41S-RTS. The disallowances were initially

1 proposed by the KCC Staff in KCPL's 2009 rate case, Docket No.09-KCPE-246-RTS. Included
2 in this list of adjustments are costs related to R&Os 139 and 330.

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

13 KCPL has agreed that some of the KCC Staff's adjustments have merit and has decided not to
14 challenge these adjustments in Kansas. The Missouri Staff is including these adjustments to
15 ensure that no inappropriate or imprudent charges are included in the Iatan 1 plant in service.

16

Item	Description	KCPL Position	Amount
R&O 330	Accelerating Delivery of Steel for Ash Pipe Rack	KCPL not challenge	** [REDACTED] **
R&O 139	Accelerating Building and Tank Pilings	KCPL not challenge	** [REDACTED] **
	Total		\$1,948,115

17

18 R&O 330 is related to costs to accelerate the ash pipe rack support steel delivery by 3-6 weeks.
19 According to the KCC Staff this need for the accelerated shipping was caused by a late start with
20 engineering.

21 R&O 139 was the result of additional concrete piles that were added beneath the pre-
22 engineered buildings and tank foundations to accelerate construction schedule. A Change Order
23 for the value of this work was issued to Kissick in the amount of [REDACTED]

24 [REDACTED] According to the KCC Staff, these costs should not have been
25 necessary. The cost was caused due to a late start on engineering and lack of adequate resources
26 by B&McD.

27 **XV. Alstom Welding Services Incorporated (WSI) Change Order Adjustment**

28 *Staff Expert: Charles R. Hyneman*

29 The Staff is recommending the disallowances from recovery of \$12.7 million related to
30 payment by KCPL to Alstom for additional welding services. The Staff first learned about this

1 cost when it attended KCPL's rate case hearing in Docket No. 10-KCPE-415-RTS in August
 2 2010. KCPL Prudence consultant Dr. Kris Nielsen of Pegasus-Global asserted in his rebuttal
 3 testimony in that case, and under cross-examination during the hearings that because KCPL
 4 lacked adequate documentation to support the costs included in KCPL change orders on this cost
 5 and KCPL failed to follow appropriate procedures, he determined that this cost was not
 6 prudently incurred. Pegasus-Global recommended that the total amount of \$12.7 million paid to
 7 Alstom and expended by KCPL to manage, administer and control this work be disallowed.

8 ** [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]*

12 WSI was a subcontractor to Babcock and Wilcox on the Iatan 1 project and KCPL was pleased
 13 with its performance.

14 As Dr Nielsen notes in his testimony, under its fixed price EPC contract, Alstom is
 15 responsible for costs to delays unless the delays and inefficiencies were the result of actions by
 16 KCPL or a third party responsible to KCPL. In the review of the documentation surrounding the
 17 WSI change orders the Staff could find no evidence that the Alstom delays and inefficiencies
 18 that led to its being behind schedule were the result of actions by KCPL or other parties. As a
 19 result, Alstom should be responsible for the cost of employing WSI to get back on schedule, not
 20 KCPL. However, KCPL made payments to Alstom in the Amount of \$12.7 million for WSI.

21 The costs of this disallowance are reflected in the following Iatan 2 change orders:

22	Change Order	Description	Amount
23	AP01757	Welding Augmentation	\$10,616,330
24	AP03389	Welding Services	\$2,219,762
25	AP04205	WSI Reconciliation	<u>\$(121,495)</u>
26			\$12,714,596

27 **XVI. Temporary Auxillary Boiler**

28 *Staff Expert: Charles R. Hyneman*

29 The Staff is recommending the disallowance from recovery of \$7.75 million incurred by
 30 KCPL related to the use of a temporary auxiliary boiler at Iatan Unit 2. Similar to the WSI costs
 31 found by Dr. Nielsen to be imprudent, he also expressed on page 245 of his rebuttal testimony in

1 Docket No.10-KCPE-415-RTS that the costs associated with the temporary auxiliary boiler were
2 also imprudently incurred by KCPL.

3 In his rebuttal testimony Dr. Nielsen explained that in June 2006 the Iatan Unit 2 Project
4 design included an auxiliary boiler, and a procurement specification had been developed to
5 acquire that boiler and related equipment. In January 2007 KCPL eliminated the auxiliary boiler
6 from the Iatan Unit 2 project scope of work after it concluded that the Iatan Unit 1 auxiliary
7 boiler could be used to produce startup steam for Iatan Unit 2. In June 2009, during the Iatan
8 Unit 2 preparation for testing and startup it was determined that the Iatan Unit 1 auxiliary boiler
9 would not be sufficient. In August 2009 KCPL rented an auxiliary boiler and recreated the scope
10 of work for the permanent auxiliary boiler. But instead of putting the new permanent auxiliary
11 boiler scope of work in the Iatan Unit 2 project, KCPL inexplicably put it in the Iatan Unit 1
12 project.

13 KCPL is currently renting an auxiliary steam boiler for use until the design, procurement and
14 installation of the permanent auxiliary steam boiler for the project is completed.

15 The Staff agrees with Mr. Nielsen of Pegasus-Global that KCPL, with the same design data
16 available in June 2006 as it had in June 2009, decided to delete the auxiliary boiler from the
17 design in January 2007, and incur the additional costs of renting an auxiliary boiler without
18 sufficient documentation to support the decision for deleting the original scope of work. For the
19 purposes of this report, the Staff has relied upon the accuracy of Mr. Nielsen's quantification of
20 the \$7.75 million disallowance. The Staff will true-up this cost number in its January 2011 true-
21 up Report.

ⁱ Iatan 2 Cost Summary Report April 09 line 67

ⁱⁱ [REDACTED]

^{**}

ⁱⁱⁱ See Data Request No. 0623(i) in File No. EO-2010-0259.

^{iv} \$484,123,692 - \$445,701,482

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

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

mere filing of schedules and testimony in support of a rate increase is insufficient to sustain the burden.

Emphasis added.

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

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

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

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

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

^{vi} Construction Audit Guide: Overview, Monitoring, and Auditing by Denise Cicchella

^{vii} Rebuttal Testimony of Steven Jones in Case No. ER-2009-0089, p 25. line 19 through p 26 line 2

^{viii} Iatan 2 Cost Summary Report April 09 line 67

^{ix} Iatan 1 AQCS Common Plant Direct Cost (\$114,109,251) divided by KCPL Total Common Costs less Iatan 2 Indirects (\$352,300,000)

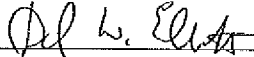
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City)
Power & Light Company and KCP&L Greater) Case Nos. ER-2010-0355
Missouri Operations Company for Approval to) and
Make Certain Changes in its Charges for)
Electric Service to Continue the) ER-2010-0356
Implementation of Its Regulatory Plan)

AFFIDAVIT OF DAVID W. ELLIOTT

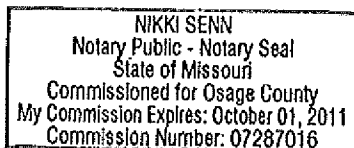
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

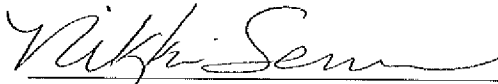
David W. Elliott, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Construction Audit and Prudence Review of the Iatan Construction Project; that he has knowledge of the matters set forth in the Engineering Review and the Iatan 2 In-Service Sections on pages 28-33 in the Construction Audit and Prudence Review of the Iatan Construction Project for Costs Reported as of June 30, 2010; and that such matters are true to the best of his knowledge and belief.



David W. Elliott

Subscribed and sworn to before me this 3rd day of November, 2010.





Notary Public

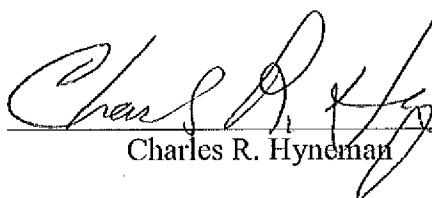
BEFORE THE PUBLIC SERVICE COMMISSION
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Missouri Operations Company for Approval to) and
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Electric Service to Continue the) ER-2010-0356
Implementation of Its Regulatory Plan)

AFFIDAVIT OF CHARLES R. HYNEMAN

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Charles R. Hyneman, of lawful age, on his oath states: that he has participated in the preparation of the foregoing **CONSTRUCTION AUDIT AND PRUDENCE REVIEW IATAN CONSTRUCTION PROJECT FOR COSTS REPORTED AS OF JUNE 30, 2010** in pages 16-20, 25-27, 33-38, 41-89, 95-98 and 99-102; that he has knowledge of the matters set forth in such Report; and that such matters are true to the best of his knowledge and belief and that he conducted his audit activities in accordance with Generally Accepted Auditing Standards (GAAS).



Charles R. Hyneman

Subscribed and sworn to before me this 3rd day of November, 2010.

NIKKI SENN
Notary Public - Notary Seal
State of Missouri
Commissioned for Osage County
My Commission Expires: October 01, 2011
Commission Number: 07287016



Notary Public

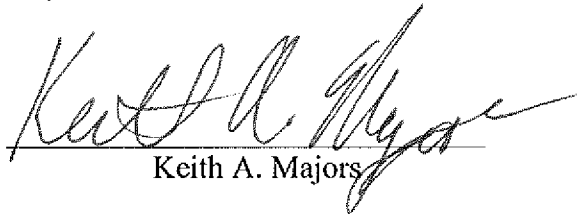
BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of the Application of Kansas City)
Power & Light Company and KCP&L Greater) File Nos. ER-2010-0355
Missouri Operations Company for Approval to) and
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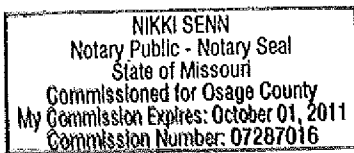
AFFIDAVIT OF KEITH A. MAJORS

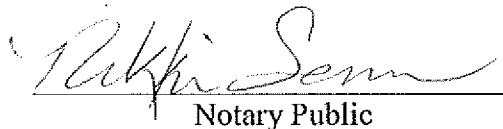
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Keith A. Majors, of lawful age, on his oath states: that he has participated in the preparation of the foregoing **CONSTRUCTION AUDIT AND PRUDENCE REVIEW IATAN CONSTRUCTION PROJECT FOR COSTS REPORTED AS OF JUNE 30, 2010** in pages 33 and 89-95; that he has knowledge of the matters set forth in such Report; and that such matters are true to the best of his knowledge and belief and that he conducted his audit activities in accordance with Generally Accepted Auditing Standards (GAAS).


Keith A. Majors

Subscribed and sworn to before me this 3rd day of November, 2010.




Notary Public

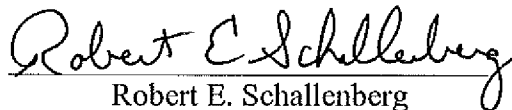
BEFORE THE PUBLIC SERVICE COMMISSION
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In the Matter of the Application of Kansas City) File Nos. ER-2010-0355
Power & Light Company and KCP&L Greater)
Missouri Operations Company for Approval to) and
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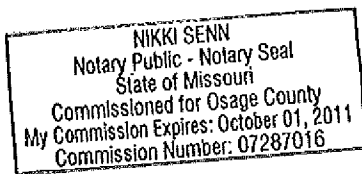
AFFIDAVIT OF ROBERT E. SCHALLENBERG

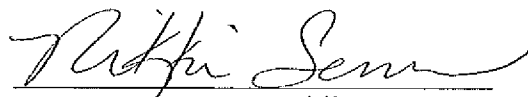
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Robert E. Schallenberg, of lawful age, on his oath states: that he has participated in the preparation of the foregoing **CONSTRUCTION AUDIT AND PRUDENCE REVIEW IATAN CONSTRUCTION PROJECT FOR COSTS REPORTED AS OF JUNE 30, 2010** in pages 1-8, 12-16, 21-25, 38-41 and 98-99; that he has knowledge of the matters set forth in such Report; and that such matters are true to the best of his knowledge and belief and that he conducted his audit activities in accordance with Generally Accepted Auditing Standards (GAAS).


Robert E. Schallenberg

Subscribed and sworn to before me this 3rd day of November, 2010.




Notary Public

David W. Elliott

Educational Background and work Experience:

I am employed by the Missouri Public Service Commission (Commission) as a Utility Engineering Specialist III in the Energy Department of the Utility Operations Division.

I graduated from Iowa State University with a Bachelor of Science degree in Mechanical Engineering in May 1975. I was employed by Iowa-Illinois Gas and Electric Company (IIGE) as an engineer from July 1975 to May 1993. While at IIGE, I worked at Riverside Generating Station, first as an assistant to the maintenance engineer, and then as an engineer responsible for monitoring station performance. In 1982, I transferred to the Mechanical Design Division of the Engineering Department where I was an engineer responsible for various projects at IIGE's power plants. In September 1993, I began my employment with the Commission. While employed by The Commission I have been responsible for running a production cost model to determine variable fuel costs for generating units, and conducting engineering construction audits for construction of new generating units and power plant equipment.

Previous Testimony Filed of
David W. Elliott

- 1) ER-94-163, St. Joseph Light & Power Co.
- 2) HR-94-177, St. Joseph Light & Power Co.
- 3) ER-94-174, The Empire District Electric Co.
- 4) ER-95-279, The Empire District Electric Co.
- 5) EM-96-149, Union Electric Co.
- 6) ER-99-247, St. Joseph Light & Power Co.
- 7) EM-2000-369, UtiliCorp United, Inc. and The Empire District Electric Co.
- 8) ER-2001-299, The Empire District Electric Co.
- 9) ER-2001-672, Utilicorp United, Inc.
- 10) ER-2002-424, The Empire District Electric Co.
- 11) ER-2004-0034, Aquila, Inc.
- 12) ER-2004-0570, The Empire District Electric Co.
- 13) HM-2004-0618, Trigen-Kansas City Energy Corp. and Thermal North America, Inc.
- 14) ER-2005-0436, Aquila, Inc.
- 15) HR-2005-0450, Aquila, Inc.
- 16) ER-2006-0314, Kansas City Power & Light Co.
- 17) ER-2006-0315, The Empire District Electric Co.
- 18) ER-2007-0004, Aquila, Inc.
- 19) ER-2007-0291, Kansas City Power & Light Co.
- 20) ER-2008-0093, The Empire District Electric Co.
- 21) ER-2009-0090, KCPL Greater Missouri Operations Co.
- 22) HR-2009-0092, KCPL Greater Missouri Operations Co.
- 23) ER-2010-0036, Union Electric Co. d/b/a AmerenUE

Charles R. Hyneman

Educational and Employment Background and Credentials

I am employed as a Utility Regulatory Auditor V for the Missouri Public Service Commission (Commission). Prior to serving with the Commission I served 12 years on active duty in the United States Air Force in the missile operations and contracting career fields. My experience in defense contracting included the contract administration of construction and services contracts in accordance with the Federal Acquisition Regulation (FAR). I was promoted to the rank of Captain in 1989. I was honorably discharged from the Air Force in December 1992 and joined the Commission Staff in April 1993.

I have approximately 17 year experience in the field of utility rate regulation. During my tenure at the Commission I have been involved in and testified before the Commission in numerous utility rate cases and several utility merger and acquisition cases.

I was awarded a Masters of Business Administration from the University of Missouri at Columbia in 1988. I also earned a Bachelor of Science degree (cum laude) with a double major in Accounting and Business Administration from Indiana State University in 1985. For the past 15 years I have been a licensed Certified Public Accountant (CPA) licensed in Missouri.

CHARLES R. HYNEMAN

CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
08/06/2010	Kansas City Power and Light Company-Greater Missouri Operations	ER-2010-0356	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Construction Audit And Prudence Review Of Iatan 1 Environmental Upgrades (Air Quality Control System - AQCS) For Costs Reported As Of April 30, 2010
08/06/2010	Kansas City Power and Light Company	ER-2010-0355	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Construction Audit And Prudence Review Of Iatan 1 Environmental Upgrades (Air Quality Control System - AQCS) For Costs Reported As Of April 30, 2010
01/01/2010	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Report Regarding Construction Audit and Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant
12/31/2009	Kansas City Power and Light Company	ER-2009-0089	Iatan 1 AQCS Construction Audit and Prudence Review	Staff's Report Regarding Construction Audit and Prudence Review of Environmental Upgrades to Iatan 1 and Iatan Common Plant
04/09/2009	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Transition costs, SJLP SERP, Acquisition Detriments, Capacity Costs, Crossroads Deferred Taxes	Surrebuttal

CHARLES R. HYNEMAN

CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
03/13/2009	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Crossroads Energy Center, Acquisition Saving and Transition Cost Recovery	Rebuttal
02/27/2009	Kansas City Power and Light Company-Greater Missouri Operations	ER-2009-0090	Various Ratemaking issues	Direct COS Report
04/07/2009	Kansas City Power and Light Company	ER-2009-0089	Transition Costs, Talent Assessment Program, SERP, STB Recovery, Settlements, Refueling Outage, Expense Disallowance	Surrebuttal
03/11/2009	Kansas City Power and Light Company	ER-2009-0089	KCPL Acquisition Savings and Transition Costs	Rebuttal
02/11/2009	Kansas City Power and Light Company	ER-2009-0089	Corporate Costs, Merger Costs, Warranty Payments	Direct COS Report
09/24/2007	Kansas City Power and Light Company	ER-2007-0291	Miscellaneous A&G Expense	Surrebuttal
07/24/2007	Kansas City Power and Light Company	ER-2007-0291	Miscellaneous	Staff COS Report
07/24/2007	Kansas City Power and Light Company	ER-2007-0291	Talent Assessment, Severance, Hawthorn V Subrogation Proceeds	Direct
03/20/2007	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2007-0004	Hedging Policy Plant Capacity	Surrebuttal
02/20/2007	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2007-0004	Natural Gas Prices	Rebuttal
01/18/2007	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2007-0004	Fuel Prices Corporate Allocation	Direct
11/07/2006	Kansas City Power and Light Company	ER-2006-0314	Fuel Prices	True-Up
10/06/2006	Kansas City Power and Light Company	ER-2006-0314	Severance, SO ₂ Liability, Corporate Projects	Surrebuttal
08/08/2006	Kansas City Power and Light Company	ER-2006-0314	Fuel Prices Miscellaneous Adjustments	Direct
12/13/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2005-0436	Natural Gas Prices; Supplemental Executive Retirement Plan Costs; Merger Transition Costs	Surrebuttal

CHARLES R. HYNEMAN**CASE PARTICIPATION**

Date Filed	Case Name	Case Number	Issue	Exhibit
12/13/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	HR-2005-0450	Natural Gas Prices; Supplemental Executive Retirement Plan Costs; Merger Transition Costs	Surrebuttal
11/18/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2005-0436	Natural Gas Prices	Rebuttal
10/14/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2005-0436	Corporate Allocations, Natural Gas Prices Merger Transition Costs	Direct
10/14/2005	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	HR-2005-0450	Corporate Allocations, Natural Gas Prices Merger Transition Costs	Direct
02/15/2005	Missouri Gas Energy	GU20050095	Accounting Authority Order	Direct
01/14/2005	Missouri Gas Energy	GU20050095	Accounting Authority Order	Direct
06/14/2004	Missouri Gas Energy	GR20040209	Alternative Minimum Tax; Stipulation Compliance; NYC Office; Executive Compensation; Corporate Incentive Compensation; True-up Audit; Pension Expense; Cost of Removal; Lobbying.	Surrebuttal
04/15/2004	Missouri Gas Energy	GR20040209	Pensions and OPEBs; True-Up Audit; Cost of Removal; Prepaid Pensions; Lobbying Activities; Corporate Costs; Miscellaneous Adjustments	Direct
02/13/2004	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	HR20040024	Severance Adjustment; Supplemental Executive Retirement Plan; Corporate Cost Allocations	Surrebuttal
02/13/2004	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER20040034	Severance Adjustment; Corporate Cost Allocations; Supplemental Executive Retirement Plan	Surrebuttal
01/06/2004	Aquila, Inc.	GR20040072	Corporate Allocation Adjustments; Reserve Allocations; Corporate Plant	Direct

CHARLES R. HYNEMAN

CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
12/09/2003	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	HR20040024	Current Corporate Structure; Aquila's Financial Problems; Aquila's Organizational Structure in 2001; Corporate History; Corporate Plant and Reserve Allocations; Corporate Allocation Adjustments	Direct
12/09/2003	Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER20040034	Corporate Plant and Reserve Allocations; Corporate Allocation Adjustments; Aquila's Financial Problems; Aquila's Organizational Structure in 2001; Corporate History; Current Corporate Structure	Direct
03/17/2003	Southern Union Co. d/b/a Missouri Gas Energy	GM20030238	Acquisition Detriment	Rebuttal
08/16/2002	The Empire District Electric Company	ER2002424	Prepaid Pension Asset; FAS 87 Volatility; Historical Ratemaking Treatments-Pensions & OPEB Costs; Pension Expense-FAS 87 & OPEB Expense-FAS 106; Bad Debt Expense; Sale of Emission Credits; Revenues	Direct
04/17/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service & St. Joseph Light & Power	GO2002175	Accounting Authority Order	Rebuttal
01/22/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER2001265	Acquisition Adjustment	Surrebuttal
01/22/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	EC2001265	Acquisition Adjustment; Corporate Allocations;	Surrebuttal
01/08/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	EC2002265	Acquisition Adjustment	Rebuttal
01/08/2002	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER2001672	Acquisition Adjustment	Rebuttal

CHARLES R. HYNEMAN

CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
12/06/2001	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER2001672	Corporate Allocations	Direct
12/06/2001	UtiliCorp United, Inc. d/b/a Missouri Public Service	EC2002265	Corporate Allocations	Direct
04/19/2001	Missouri Gas Energy, a Division of Southern Union Company	GR2001292	Revenue Requirement; Corporate Allocations; Income Taxes; Miscellaneous Rate Base Components; Miscellaneous Income Statement Adjustments	Direct
11/30/2000	Holway Telephone Company	TT2001119	Revenue Requirements	Rebuttal
06/21/2000	UtiliCorp United, Inc. / Empire District Electric Company	EM2000369	Merger Accounting Acquisition	Rebuttal
05/02/2000	UtiliCorp United, Inc. / St. Joseph Light and Power	EM2000292	Deferred Taxes; Acquisition Adjustment; Merger Benefits; Merger Premium; Merger Accounting; Pooling of Interests	Rebuttal
03/01/2000	Atmos Energy Company and Associated Natural Gas Company	GM2000312	Acquisition Detriments	Rebuttal
09/02/1999	Missouri Gas Energy	GO99258	Accounting Authority Order	Rebuttal
04/26/1999	Western Resources Inc. and Kansas City Power and Light Company	EM97515	Merger Premium; Merger Accounting	Rebuttal
07/10/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	SLRP AAOs; Reserve; Deferred Taxes; Plant	True-Up
05/15/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	SLRP AAOs; Automated Meter Reading (AMR)	Surrebuttal
04/23/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	Service Line Replacement Program; Accounting Authority Order	Rebuttal
03/13/1998	Missouri Gas Energy, a Division of Southern Union Company	GR98140	Miscellaneous Adjustments; Plant; Reserve; SLRP; AMR; Income and Property Taxes;	Direct

CHARLES R. HYNEMAN

CASE PARTICIPATION

Date Filed	Case Name	Case Number	Issue	Exhibit
11/21/1997	UtiliCorp United, Inc. d/b/a Missouri Public Service	ER97394	OPEB's; Pensions	Surrebuttal
08/07/1997	Associated Natural Gas Company, Division of Arkansas Western Gas Company	GR97272	FAS 106 and FAS 109 Regulatory Assets	Rebuttal
06/26/1997	Associated Natural Gas Company, Division of Arkansas Western Gas Company	GR97272	Property Taxes; Store Expense; Material & Supplies; Deferred Tax Reserve; Cash Working Capital; Postretirement Benefits; Pensions; Income Tax Expense	Direct
10/11/1996	Missouri Gas Energy	GR96285	Income Tax Expense; AAO Deferrals; Acquisition Savings	Surrebuttal
09/27/1996	Missouri Gas Energy	GR96285	Income Tax Expense; AAO Deferrals; Acquisition Savings	Rebuttal
08/09/1996	Missouri Gas Energy	GR96285	Income Tax Expense; AAO Deferrals; Acquisition Savings	Direct
05/07/1996	Union Electric Company	EM96149	Merger Premium	Rebuttal
04/20/1995	United Cities Gas Company	GR95160	Pension Expense; OPEB Expense; Deferred Taxes; Income Taxes; Property Taxes	Direct
05/16/1994	St. Joseph Light & Power Company	HR94177	Pension Expense; Other Postretirement Benefits	Direct
04/11/1994	St. Joseph Light & Power Company	ER94163	Pension Expense; Other Postretirement Benefits	Direct
08/25/1993	United Telephone Company of Missouri	TR93181	Cash Working Capital	Surrebuttal
08/13/1993	United Telephone Company of Missouri	TR93181	Cash Working Capital	Rebuttal
07/16/1993	United Telephone Company of Missouri	TR93181	Cash Working Capital; Other Rate Base Components	Direct

Keith A. Majors

Educational and Employment Background and Credentials

I am currently employed as a Utility Regulatory Auditor IV for the Missouri Public Service Commission (Commission). I was employed by the Commission in June 2007. I earned a Bachelor of Science degree in Accounting from Truman State University in May 2007.

As a Utility Regulatory Auditor, I perform rate audits and prepare miscellaneous filings as ordered by the Commission. In addition, I review all exhibits and testimony on assigned issues, develop accounting adjustments and issue positions which are supported by workpapers and written testimony. For cases that do not require prepared testimony, I prepare Staff Recommendation Memorandums.

Prior Case Assignments:

Date Filed	Case Name	Case Number	Issues	Exhibit
12/31/2009 8/3/2010 11/3/2010	KCP&L Construction Audit and Prudence Review	EO-2010-0259	AFUDC, Property Taxes	Staff Report
2/13/2009 3/13/2009 4/9/2009	KCP&L - Greater Missouri Operations Company	HR-2009-0092	Payroll, Employee Benefits, Incentive Compensation	Direct COS Report, Rebuttal, Surrebuttal
2/13/2009 3/13/2009 4/9/2009	KCP&L - Greater Missouri Operations Company	ER-2009-0090	Payroll, Employee Benefits, Incentive Compensation	Direct COS Report, Rebuttal, Surrebuttal
2/11/2009 3/11/2009 4/7/2009	Kansas City Power & Light Company	ER-2009-0089	Payroll, Employee Benefits, Incentive Compensation	Direct COS Report, Rebuttal, Surrebuttal
8/1/2008	Trigen Kansas City Energy Corporation	HR-2008-0300	Fuel Inventories, Prepayments, Materials and Supplies, Property Taxes, Non-wage Maintenance, PSC Assessment Rate Case Expense	Direct COS Report
4/28/2008	Spokane Highlands Water Company	WR-2008-0314	Plant, CIAC	Staff Recommendation
12/17/2007	Missouri Gas Energy ISRS	GO-2008-0113		Staff Memorandum

Bob Schallenberg
Utility Services Division Director
Missouri Public Service Commission Staff

Bob is a 1976 graduate of the University of Missouri at Kansas City with a Bachelor of Science degree with a major emphasis in Accounting. In November 1976, Bob successfully completed the Uniform Certified Public Accountant (CPA) examination and received his CPA certificate. In 1989, Bob received his CPA license to practice in Missouri.

Bob has worked for the Commission for 33 years. Bob began employment with the Missouri Public Service Commission as a Public Utility Accountant in November 1976. He remained on the Staff of the Missouri Public Service Commission until May 1978, when he accepted the position of Senior Regulatory Auditor with the Kansas State Corporation Commission. In October 1978, Bob returned to the Staff of the Missouri Public Service Commission and continues his employment to this date.

In October 1997, Bob began to work in his current position as Division Director of the Utility Services Division of the Commission. This group has primary responsibilities in the areas of accounting, auditing, depreciation and finance. This group conducts regulatory, financial and management audits on both a formal and informal basis. Bob is actively involved in several reviews of the Agency's practices to find opportunities to improve the efficiency and effectiveness of the Commission operations.

Bob has filed and given testimony before the Commission, Kansas Corporation Commission and the Federal Energy Regulatory Commission. Bob has been a participant in prudence reviews and the related legal proceedings. Bob has been involved with many of the incentive or alternative regulatory plans that have been implemented here in Missouri. These endeavors span the electric, natural gas and telephone industries.

RATE CASE PROCEEDING PARTICIPATION
ROBERT E. SCHALLENBERG

<u>COMPANY</u>	<u>CASE NO.</u>
KCP&L Greater Missouri Operations Company	ER-2010-0356
Kansas City Power & Light Company	ER-2010-0355
Great Plains Energy Incorporated, Kansas City Power & Light Company	ER-2009-0089
Great Plains Energy Incorporated, Kansas City Power & Light Company, Aquila, Inc.	EM-2007-0374
Missouri Pipeline Company	GC-2006-0491
Aquila, Inc.	ER-2005-0436
Union Electric Company, d/b/a AmerenUE	EC-2002-1
Mississippi River Transmission	RP96-199-000
Williams Natural Gas Company	RP95-136-000
Williams Natural Gas Company	RP94-365-000
Western Resources	GM-94-40
Laclede Gas Company	GR-94-220
Western Resources	GR-93-240
St. Joseph Light & Power Company	ER-93-41
Southwestern Bell Telephone Company	TC-93-224
St. Joseph Light & Power Company	EC-92-214
Kansas Power & Light Company	GR-91-291
Kansas Power & Light Company	EC-91-213
Kansas Power & Light Company	EM-91-213
Arkansas Power & Light Company	EM-91-29
Missouri Public Service Company	ER-90-101
Southwestern Bell Telephone Company	TR-90-98
Southwestern Bell Telephone Company	TC-89-14
Southwestern Bell Telephone Company	TO-89-56
General Telephone	TR-89-182
General Telephone	TM-87-19

RATE CASE PROCEEDING PARTICIPATION

ROBERT E. SCHALLENBERG

General Telephone	TC-87-57
<u>COMPANY</u>	<u>CASE NO.</u>
Union Electric Company	EC-87-114
General Telephone	TR-86-148
Southwestern Bell Telephone Company	TR-86-84
Kansas City Power & Light Company	EO-85-185
Kansas City Power & Light Company	ER-85-128
Southwestern Bell Telephone Company	TR-83-253
Kansas City Power & Light Company	ER-83-49
Kansas City Power & Light Company	ER-82-66
Kansas City Power & Light Company	HR-82-67
Southwestern Bell Telephone Company	TO-82-3
Southwestern Bell Telephone Company	TR-82-199
Southwestern Bell Telephone Company	TR-81-208
Kansas City Power & Light Company	ER-81-42
Kansas City Power & Light Company	ER-80-48
Southwestern Bell Telephone Company	TR-80-256
United Telephone Company of Missouri	TR-80-235
Gas Service Company	GR-79-114
Southwestern Bell Telephone Company	TR-79-213
Kansas City Power & Light Company	ER-78-252
Missouri Public Service Company	GR-78-30
Missouri Public Service Company	ER-78-29
Gas Service Company	GR-78-70
Kansas City Power & Light Company	ER-77-118

**CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG**

Great Plains Energy Incorporated,
Kansas City Power & Light Company
Case No. ER-2009-0089
Date: April 7, 2009 (Surebuttal)
Areas: Iatan Prudence Review

Great Plains Energy Incorporated,
Kansas City Power & Light Company, Aquila, Inc.
Case No. EM-2007-0374
Date: October 12, 2007 (Rebuttal – Staff Report)
Areas: GPE Acquisition of Aquila

Union Electric Company, d/b/a AmerenUE
Case No. ER-2007-0002
Date: February 28, 2007 (Surrebuttal)
Areas: EEInc.

Union Electric Company, d/b/a AmerenUE
Case No. ER-2007-0002
Date: January 31, 2007 (Rebuttal)
Areas: EEInc. and 4 CSR 240-10.020

Missouri Pipeline Company
Case No. GC-2006-0491
Affiliate Transactions, Tariff Violations and Associated Penalties; Transportation Tariffs

Union Electric Company, d/b/a AmerenUE
Case No. EA-2005-0180
Date: October 15, 2005 (Rebuttal)
Areas: East Transfer

Aquila, Inc.
Case No. ER-2005-0436
Date: October, 14 2005 (Direct) December 13, 2005 (Surrebuttal)
Areas: Unit Ownership Costs

Union Electric Company d/b/a AmerenUE
Case No.: EC-2002-1
Date: June 24, 2002
Area: Overview, 4 CSR 240-10.020, Alternative Regulation Plan

Laclede Gas Company

**CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG**

Case No. GR-94-220
Date: July 1, 1994
Areas: Property Taxes, Manufactured Gas Accruals, Deregulated Cost Assignments

Western Resources
Case No. GM-94-40
Date: November 29, 1993
Areas: Jurisdictional Consequences of the Sale of Missouri Gas Properties

Kansas Power & Light Company
Case No. EM-91-213
Date: April 15, 1991
Areas: Purchase of Kansas Gas & Electric Company

Arkansas Power & Light Company and Union Electric Company
Case No. EM-91-29
Date: 1990-1991
No pre-filed rebuttal testimony by Staff before non-unanimous stipulation and agreement reached.

General Telephone Company of the Midwest
Case No. TM-87-19
Date: December 17, 1986
Areas: Merger

Union Electric Company
Case No. EC-87-114
Date: April 27, 1987
Areas: Elimination of Further Company Phase-In Increases, Write-Off of Callaway I to Company's Capital Structure

General Telephone Company of the Midwest
Case No. TC-87-57
Date: December 22, 1986
Areas: Background and Overview, GTE Service Corporation, Merger Adjustment, Adjustments to Income Statement

Southwestern Bell Telephone Company
Case No. TR-86-84
Date: 1986
No prefiled direct testimony by Staff - case settled before Staff direct testimony filed.
Kansas City Power & Light Company

**CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG**

Case Nos. EO-85-185 and ER-85-128

Date: April 11, 1985

Areas: Phase I - Electric Jurisdictional Allocations

Date: June 21, 1985

Areas: Phase III - Deferred Taxes Offset to Rate Base

Date: July 3, 1985

Areas: Phase IV - 47% vs. 41.5% Ownership, Interest, Phase-In, Test Year/True-Up,
Decision to Build Wolf Creek, Non-Wolf Creek Depreciation Rates, Depreciation
Reserve

Southwestern Bell Telephone Company

Case No. TR-83-253

Date: September 23, 1983

Areas: Cost of Divestiture Relating to AT&T Communications, Test Year, True-Up,
Management Efficiency and Economy

Kansas City Power & Light Company

Case No. ER-83-49

Date: February 11, 1983

Areas: Test Year, Fuel Inventories, Other O&M Expense Adjustment, Attrition Adjustment,
Fuel Expense-Forecasted Fuel Prices, Deferred Taxes Offset to Rate Base

Generic Telecommunications

Straight Line Equal Life Group and Remaining Life Depreciation Methods

Case No. TO-82-3

Date: December 23, 1981

Areas: Depreciation

Kansas City Power & Light Company

Case Nos. ER-82-66 and HR-82-67

Date: March 26, 1982

Areas: Indexing/Attrition, Normalization vs. Flow-Through, Deferred Taxes as an Offset to
Rate Base, Annualization of Amortization of Deferred Income Taxes, Cost of
Money/Rate of Return, Allocations, Fuel Inventories, Iatan AFDC Associated with
AEC Sale, Forecasted Coal and Natural Gas Prices, Allowance for Known and
Measurable Changes

**CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG**

Southwestern Bell Telephone Company

Case No. TR-82-199

Date: August 27, 1982

Areas: License Contract, Capitalized Property Taxes, Normalization vs. Flow-Through, Interest Expense, Separations, Consent Decree, Capital Structure Relationship

Southwestern Bell Telephone Company

Case No. TR-81-208

Date: August 6, 1981

Areas: License Contract, Flow-Through vs. Normalization

Kansas City Power & Light Company

Case No. ER-81-42

Date: March 13, 1981

Areas: Iatan (AEC Sale), Normalization vs. Flow-Through, Allocations, Allowance for Known and Measurable Changes

United Telephone Company of Missouri

Case No. TR-80-235

Date: December 1980

Areas: Rate of Return

Southwestern Bell Telephone Company

Case No. TR-80-256

Date: October 23, 1980

Areas: Flow-Through vs. Normalization

Kansas City Power & Light Company

Case Nos. ER-80-48 and ER-80-204

Date: March 11, 1980

Areas: Iatan Station Excess Capacity, Interest Synchronization, Allocations

Missouri Public Service Company

Case Nos. ER-79-60 and GR-79-61

Date: April 9, 1979

Areas: Depreciation Reserve, Cash Working Capital

**CASE SUMMARY OF INVOLVEMENT
OF
ROBERT E. SCHALLENBERG**

Southwestern Bell Telephone Company

Case No. TR-79-213

Date: October 19, 1979

Areas: Income Taxes, Deferred Taxes

Gas Service Company

Case No. GR-79-114

Date: June 15, 1979

Areas: Deferred Taxes as an Offset to Rate Base

Missouri Public Service Company

Case Nos. ER-78-29 and GR-78-30

Date: August 10, 1978

Areas: Fuel Expense, Electric Materials and Supplies, Electric and Gas Prepayments,
Electric and Gas Cash Working Capital, Electric Revenues

While in the employ of the Kansas State Corporation Commission in 1978, Mr. Schallenberg worked on a Gas Service Company rate case and rate cases of various electric cooperatives.