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[REDACTED]

[REDACTED] ** See Rebuttal Testimony of Forrest Archibald and Daniel Meyer.

Q: Why was it necessary for KCP&L to involve itself in recovering the Iatan Unit 2 schedule if this is the contractors' responsibility?

A: Because allowing the contractors to fight it out themselves would simply lead to more lost time on the schedule, more contractor claims and a Project where the commercial considerations could have caused the Project to spin out of control. Doing nothing would have been imprudent on the part of KCP&L. KCP&L is obligated to its customers and its shareholders to complete this Project in a reasonable and efficient manner and that means KCP&L has the ultimate responsibility for the Project's success. In our view, it would have been too great a risk to passively sit back and hope the contractors could recover. We recognized that active management of the contractors was the best possible success path. Furthermore, as Company Witnesses Kenneth Roberts and Kris Nielsen testify, blind enforcement of the contracts does not constitute prudent behavior.

Q: Please summarize your view of the prudence KCP&L used in determining the ALSTOM Unit 2 Settlement Agreement was appropriate.

A: The management process leading to the ALSTOM Settlement Agreement included: (1) engaging in analysis and gathering relevant data to identify the least cost option for getting the contractors working together to support high probability completion dates; (2) conducting site meetings, executive level discussions, and facilitated sessions to identify areas of agreement, refine schedule sticking points; (3) ** [REDACTED] [REDACTED] **; and (4) ultimately reach agreement with both ALSTOM and Kiewit to agreed CTO and Milestone Dates that put the Project in a position to be

1 successfully completed. KCP&L has demonstrated active management of the contractors
2 to overcome major obstacles and the ALSTOM Unit 2 Settlement Agreement is an
3 example of that prudent management.

4 **Q: Staff states that as of June 30, 2010, KCP&L had only paid ALSTOM ****
5 **under the ALSTOM Unit 2 Settlement Agreement. Do you agree with that**
6 **statement?**

7 A: No. As of June 30, 2010, KCP&L had paid ALSTOM approximately ** in
8 incentive payments under the Unit 2 Settlement Agreement. KCP&L provided this
9 information to Staff in its response to Data Request 918R. In this Data Request, Staff
10 asks the following: "If KCPL paid Alstom for any bonus milestones reached, please
11 provide a copy of the invoice and documentation showing the approval process of the
12 invoice with all required signatures." KCP&L is required and does update its response to
13 this Data Request on a monthly basis. As a result, Staff was provided with this
14 information and should have been aware of the amount paid by KCP&L.

15 **Q: Do you believe the Commission should rule regarding the prudence of the entire**
16 **ALSTOM Unit 2 Settlement Agreement in this rate case?**

17 A: Yes. The Commission should not be confused by Staff's use of actual costs through the
18 cut-off. Staff fails to provide any analysis of the complex commercial issues underlying
19 the ALSTOM Unit 2 Settlement Agreement and its proposal to simply defer the issue in
20 its entirety to the true-up case is inappropriate, as the dollar amount is fixed at this time
21 and the prudence of our decision can be fully weighed by the Commission in this case.
22 By the time of the hearing, all of the bonus payments under this agreement will have been
23 earned by ALSTOM even if they have not been technically invoiced and paid. Even if

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1 Staff disagrees with the incentive payments made to ALSTOM, Staff cannot disagree that
2 **** [REDACTED] **** had
3 a value and a benefit to the Iatan Project and KCP&L's Missouri customers.
4 Additionally, the organized turnover of ALSTOM's systems to KCP&L's start-up
5 organization ensured that the start-up for Iatan Unit 2 exceeded expectations. I believe
6 that this was money well spent.

7 **SCHIFF HARDIN**

8 **Q: What is your understanding with respect to Staff's proposed disallowances related**
9 **to Schiff Hardin?**

10 **A: Staff has four separate recommended disallowances related to Schiff Hardin, which is**
11 **summarized in the chart below:**

Description	Unit 1	Unit 2
Expense Adjustment	(\$199,226)	(\$806,753)
Project Management Labor Rate Adjustment	(\$1,060,144)	(\$4,292,980)
Legal Services Rate Adjustment	(\$185,403)	(\$750,776)
Unsupported Charges (no invoices)	(\$216,994)	(\$2,537,236)
TOTAL	(\$1,661,767)	(\$8,387,745)

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13 The purpose of my testimony is not to provide a complete response to each of these
14 proposed disallowance amounts, but to respond to specific allegations made by Staff in
15 regard to KCP&L's selection and management of Schiff's work on the Project. Company
16 witnesses Curtis Blanc and Kenneth Roberts will respond to other aspects of this
17 disallowance in their testimony, and Company witnesses Chris Giles, Brent Davis and
18 Robert Bell also testify regarding Schiff Hardin's role on the Iatan Project.

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1 **Q: Do you have any observations about Staff's proposed disallowances or audit of**
2 **Schiff Hardin's costs?**

3 A: My general observation is that Staff apparently spent an inordinate amount of time
4 examining Schiff Hardin. Staff's entire report is 103 pages, of which Staff spends 24
5 pages discussing Schiff Hardin, a contract that constitutes less than 1% of the entire Iatan
6 Project's Budget. Moreover, Staff's complaints about Schiff Hardin never once venture
7 into whether Schiff Hardin performed services of value to the Iatan Project; Staff's entire
8 focus was on how much Schiff Hardin was paid for its work. Staff's complaint that it
9 could not audit \$18 million of Iatan Unit 1 and \$93 million of Iatan Unit 2 costs when
10 juxtaposed against the amount of time Staff concentrated on Schiff Hardin's fees seems
11 strange and hollow. I do not know nor does Staff adequately explain why it chose to
12 target Schiff Hardin and other corporate expenses and not the Iatan Project itself.

13 **Q: On pages 67-70 of Staff's Report, Staff alleges that KCP&L violated its policies in**
14 **its selection and award of work to Schiff Hardin. Do you agree with this**
15 **assessment?**

16 A: I acknowledge that we could have done a better job of documenting how and why we
17 selected Schiff Hardin. However, the lack of pristine documentation does not mean that
18 we violated any of our processes and procedures or that our decision was a bad one.
19 Schiff Hardin came on board very early in the development phase of the Project, and we
20 had an evolving procedure for documenting our early project decisions related to
21 professional support. This does not change the fact that retaining Schiff Hardin was a
22 prudent decision on the part of KCP&L.

23 **Q: How did you first contact Schiff Hardin with respect to the Iatan Projects?**

1 A: I and other Company witnesses have testified to the fact that the CEP was an ambitious
2 program and KCP&L had not embarked on a new-build construction project for about 25
3 years. Staff cites to the transcript from the Kansas Corporation Commission hearings,
4 wherein I recounted the fact that I had reached out to Tom Maiman, my old boss from
5 Commonwealth Edison, who recommended Schiff. What the transcript does not fully
6 recount is the fact that Tom Maiman has over 40 years of experience in all aspects of the
7 electrical utility industry, including operations, maintenance and construction of
8 transmission, distribution and both nuclear and fossil generating facilities. While at
9 Commonwealth Edison ("ComEd"), he had risen through the ranks and held numerous
10 executive positions including Vice President ("VP") of Corporate Engineering, VP of
11 Fossil Plant Operations, VP and Manager of Engineering and Construction, Senior VP of
12 Commercial Operations and Executive VP and CNO of Nuclear Operations. While he
13 was the VP and Manager of Engineering and Construction, Mr. Maiman oversaw the
14 construction of the Byron and Braidwood nuclear stations. During his time at ComEd,
15 Mr. Maiman was also was involved in several construction projects involving numerous
16 fossil fuel plants and as VP of Fossil Plant Operations, he led a program of multiple
17 rehabilitation projects of ComEd's fossil fleet. Mr. Maiman knows how to run a large,
18 complex, multi-year construction project. He told me that it was important that I hire an
19 oversight team that has significant experience in project controls as well as legal and
20 commercial issues that can plague these types of project. Mr. Maiman stressed that it
21 was important to have an experienced oversight team in order to ensure that Senior
22 Management was receiving all of the relevant data it needed to make prudent decisions

1 regarding the Project. It was on his advice that I contacted Ken Roberts at Schiff Hardin
2 and asked him and his team to make a proposal to the KCP&L executive team.

3 **Q: Did KCP&L attempt to find other firms to provide the same services as Schiff**
4 **Hardin?**

5 A: Yes, however, we were unsuccessful. For the CEP projects, I believed it was important
6 for the oversight team to have both legal and project controls capabilities. This is
7 because information regarding costs and schedule will typically provide early warning
8 signs regarding potential commercial disputes. We did not find another team that could
9 provide the same integrated services as Schiff. I consider their team to have a rare
10 specialty.

11 **Q: Staff argues that Duane Morris provides the same services as Schiff. Do you agree?**

12 A: Duane Morris is a very good firm with a number of highly qualified individuals with
13 experience in construction. However, we believed that they were more law firm focused,
14 and could not provide the same project controls expertise as Schiff Hardin.

15 **Q: What else influenced your decision to hire Schiff?**

16 A: The fact that Tom Maiman recommended Schiff as strongly as he did was extremely
17 important. Due to the expertise necessary for this type of work, simply going with the
18 lowest cost law firm, one without a recommendation or without the reputation Schiff
19 Hardin has would not be a prudent decision in my opinion. Most people would not go to
20 a doctor, particularly a specialist, simply because he or she was the cheapest, and I don't
21 think that solely looking at cost is a good way of choosing a provider of legal services.

22 **Q: Do KCP&L's policies require that it request and receive bids for every contract?**

1 A: No. In fact, KCP&L's policy provides for awarding sole source work where
2 "professional or highly technical services are of a continuing nature." See Staff Report
3 on p. 68. Schiff's services fell into this category.

4 **Q: Were you aware of the work Schiff Hardin was performing on the Iatan Projects?**

5 A: Yes. I was in close contact on a daily or weekly basis with Ken Roberts to discuss
6 Schiff's activities. For most of the duration of the Iatan project, I attended weekly status
7 meetings where members of both my team and Schiff made presentations regarding the
8 Project's status and engaged in a discussion of major issues. Schiff has also presented at
9 each of the monthly EOC meetings since February of 2006. I testified extensively in my
10 Direct Testimony regarding Schiff's oversight role on the Iatan Project. See Downey
11 Direct Testimony at p. 8-9.

12 **Q: Can you please provide a summary of your Direct Testimony with respect to Schiff
13 Hardin's oversight role on the Iatan Projects?**

14 A: As I stated in my Direct Testimony, in the fall of 2005, after Schiff was brought in to
15 review the CEP Projects' schedules and procurement options, the Senior Management
16 team that ultimately composed the EOC had a number of important meetings. One
17 notable formal meeting of this group occurred on September 29, 2005 when the project
18 team and Schiff presented various contracting options for the CEP Projects. A second
19 important meeting of this group was held on November 23, 2005. See Downey Direct
20 Testimony at p. 4. Once the Executive Oversight Committee ("EOC") was formally
21 established, Schiff provided the EOC with an update on the CEP projects. Schiff
22 presented both written and verbal reports, as well as project tracking metrics. See *id.* at 3.

1 **Q: As a part of its oversight role, did Schiff provide assistance in helping KCP&L**
2 **develop the necessary management tools for the Iatan Projects?**

3 A: Yes. I previously testified in the 0089 Docket that our corporate policies and procedures
4 required updating for use on large construction projects. Therefore, from 2006 to 2007,
5 the CEP Project team had to develop several policies and procedures that would be used
6 exclusively on the Iatan, Spearville and La Cygne projects. Most notably, in July 2006,
7 with the assistance of Schiff Hardin, KCP&L created the Cost Control System which
8 governed the reporting processes that the CEP Projects would utilize, including schedule
9 and cost controls that were intended to provide information to senior management for
10 management purposes as well as to provide transparency to the Commission Staff and
11 other interested parties. Additional policies and procedures on which Schiff provided its
12 expertise and assistance included change management, invoices, requests for proposal
13 ("RFP"), bid evaluation, claim notification, safety, quality assurance and quality control,
14 and engineering management. In addition, the KCP&L legal department, with Schiff's
15 assistance, developed form contracts for use in procurements of various types that could
16 be adapted to the specific requirements necessary for the CEP Projects.

17 **Q: Are there any other services that Schiff provides in its oversight role?**

18 A: Probably the most important role that Schiff provides on the Iatan Project is to help
19 KCP&L identify potential risks to the Project and to help KCP&L's project management
20 team, Senior Management and EOC vet the various options based upon their experience
21 in deciding the best path forward. It was this expertise that ensured that KCP&L had all
22 of the relevant information in making the major decisions of the Project.

23 **Q: What is the general make-up of the Schiff Hardin Team?**

1 A: Schiff's team had a combination of lawyers and construction professionals who are
2 particularly skilled in providing construction and project management advice. Schiff's
3 team has wide and varied experience and has, in many ways, seen it all when it comes to
4 large, complex construction projects. Company witness Mr. Roberts describes the
5 members of Schiff Hardin's Project Controls team, all of whom played a critical role in
6 putting issues on the table for our management. Company witness Brent Davis testifies
7 regarding the day-to-day workings of the Schiff Hardin team in the field and how they
8 assisted the project management team with commercial and project controls issues.

9 **Q: How was the work divided between those two groups of people?**

10 A: Based upon my observations, the industry professionals performed the day-to-day project
11 controls and construction management functions while the attorneys provided legal
12 services. Ken Roberts oversaw both groups of people to ensure integration of their entire
13 team.

14 **Q: Do you believe that Schiff Hardin provided value to the Iatan Projects?**

15 A: Yes. Schiff Hardin provided immediate value in helping KCP&L determine the
16 appropriate contracting strategy and commercial plan for each of the CEP Projects. In
17 addition, Schiff lent its expertise in the industry in drafting and negotiating the Projects'
18 contracts. Schiff also provided day-to-day support in the field and identified risks that
19 could have added costs to the Projects. Finally, Schiff has been instrumental in resolving
20 commercial issues with the major contractors that could have significantly impacted the
21 schedule and budget of the Projects.

22



1

[REDACTED]

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[REDACTED]

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[REDACTED]

4

[REDACTED]

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[REDACTED]

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

7 **A:** Yes, it does.

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

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

AFFIDAVIT OF WILLIAM H. DOWNEY

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

William H. Downey, being first duly sworn on his oath, states:

1. My name is William H. Downey. I work in Kansas City, Missouri, and I am employed by Kansas City Power & Light Company as President and Chief Operating Officer.

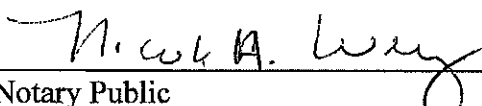
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Kansas City Power & Light Company consisting of eighty-five (85) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

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



William H. Downey

Subscribed and sworn before me this 1st day of December, 2010.



Notary Public

My commission expires: Feb 4, 2011

" NOTARY SEAL "
Nicole A. Wehry, Notary Public
Jackson County, State of Missouri
My Commission Expires 2/4/2011
Commission Number 07391200